

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Matthew Lane (“Plaintiff”) and defendant Ferguson Enterprises, LLC (“Ferguson”). The Agreement refers to Plaintiff and Ferguson collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s PAGA lawsuit alleging wage-and-hour violations against Ferguson captioned *Matthew Lane v. Ferguson Enterprises, LLC*, pending before the Superior Court of the State of California, for the County of Alameda (the “State Court”), No. 22CV020738 (the “State Court Action”).
- 1.2 “Administrator” means Atticus Administration, LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses, presently estimated to be \$13,379 in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4 “Covered Employee” means all current and former employees of Defendant in California who were paid wages at any time during the period from August 2, 2021 to May 15, 2023 (the “Covered Period”) while classified as hourly, non-exempt employees.
- 1.5 “Covered Employee Data” means Covered Employee identifying information in Ferguson’s possession including the Covered Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6 “Covered Employee Address Search” means the Administrator’s investigation and search for current Covered Employee mailing addresses using all reasonably available sources, methods, and means including, but not limited to, the National Change of Address Database, skip traces, and direct contact by the Administrator with Covered Employees.
- 1.7 “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.8 “Court” means the Superior Court of California, County of Alameda.
- 1.9 “Defense Counsel” means Leslie L. Abbott, Esq. and Eric Distelburger, Esq. of Paul Hastings, LLP.
- 1.10 “Effective Date” means the earliest date, following entry by the Court of the Judgment, upon which one of the following has occurred, and provided that

Plaintiff has dismissed with prejudice his individual claims in the federal court action entitled *Matthew Lane v. Ferguson Enterprises, LLC*, pending before the District Court of the Northern District of California, No. 22-CV-06077-KAW (the “Federal Court Action”), and dismissed his putative class claims in the Federal Court Action without prejudice: (i) expiration of all potential appeal periods without a filing of a notice of appeal of the Judgment; (ii) final affirmance of the Judgment by an appellate court as a result of any appeal(s); or (iii) final dismissal or denial of all such appeals (including any petitions for review, rehearing, *certiorari*, etc.) such that the Judgment is no longer subject to further judicial review.

- 1.11 “Gross Settlement Amount” means \$1,500,000, which is the total amount Ferguson agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, PAGA Representative Payment, and the Administrator’s Expenses Payment. The Parties stipulate that beyond the Total Settlement Amount, Defendant shall not owe any further monies to the PAGA Representative, the Aggrieved Employees, the LWDA, or to Plaintiff’s Counsel based upon the claims made and facts alleged in the Action.
- 1.12 “Individual PAGA Payment” means the Covered Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Covered Employee worked during the PAGA Period.
- 1.13 “Judgment” means the judgment entered by the Court based upon the Court’s approval of the settlement.
- 1.14 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.15 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.16 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, PAGA Representative Payment, and the Administration Expenses Payment. The remainder is to be paid to Covered Employees as Individual PAGA Payments.
- 1.17 “Notice of PAGA Settlement” means the letter, substantially similar to the form attached hereto as **Exhibit A**, explaining the Settlement to the Covered Employees, which will accompany each settlement check.
- 1.18 “PAGA Counsel” means Samuel A. Wong , Kashif Haque, Jessica L. Campbell, and Carolyn M. Bell of AEGIS LAW FIRM, PC, the attorneys representing the Plaintiff in the Action.

- 1.19 “PAGA Counsel Fees Payment” means the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees incurred to prosecute the Action.
- 1.20 “PAGA Counsel Litigation Expenses Payment” means the amount allocated to PAGA Counsel for reimbursement of reasonable expenses incurred to prosecute the Action.
- 1.21 “PAGA Pay Period” means any Pay Period during which a Covered Employee actively worked for Ferguson for at least one day during the PAGA Period.
- 1.22 “PAGA Period” means the period from August 2, 2021 to May 15, 2023.
- 1.23 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).
- 1.24 “PAGA Notice” means Plaintiff’s August 2, 2022 letter to Ferguson and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).
- 1.25 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Covered Employees and 75% to the LWDA in settlement of PAGA claims.
- 1.26 “PAGA Representative” means the named Plaintiff in the Complaint in the Action.
- 1.27 “PAGA Representative Payment” means the payment to the PAGA Representative for initiating the Action and providing services in support of the Action.
- 1.28 “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.29 “Released Parties” means: Ferguson Enterprises, LLC.
- 1.30 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

- 2.1 On August 2, 2022, Plaintiff filed suit in Alameda Superior Court, asserting claims based on Ferguson’s alleged: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay wages timely during employment; and (8) failure to pay all wages due upon separation of employment. Plaintiff also asserted a violation of California’s Unfair Competition Law (“UCL”), including for Ferguson’s alleged violation of Labor Code sections 212 and 213 related to Ferguson allegedly paying Plaintiff his final wages via a pay card that charged fees for its use.

- 2.2 On October 12, 2022, Ferguson timely answered the complaint, denying the claims and asserting various affirmative defenses. Ferguson timely removed the case to the U.S. District Court for the Northern District of California on October 14, 2022.
- 2.3 After removal of the Federal Court Action, Plaintiff commenced the State Court Action on October 28, 2022, by filing a Complaint alleging a single cause of action against Ferguson under PAGA for alleged unpaid minimum wages, overtime wages, meal-and-rest period premium wages, reimbursement of out-of-pocket business expenses, wage statement violations, and the timely payment of wages upon separation of employment. Plaintiff also alleged that Ferguson issued final wages through a payment card that charged fees to obtain the payment. Ferguson denies the allegations in the Complaint, denies any failure to comply with the laws identified in in the Complaint and denies any and all liability for the causes of action alleged.
- 2.4 Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff purports to have given timely written notice to Ferguson and the LWDA by sending the PAGA Notice.
- 2.5 On February 17, 2023, the Parties participated in an all-day mediation presided over by David Rotman, Esq., which led to this Agreement to settle the Action.
- 2.6 Prior to mediation, Plaintiff obtained, through informal discovery, a sampling of time and corresponding pay records of Covered Employees, relevant Ferguson policies, Plaintiff's time and payroll records and wage statements, and the total number of Covered Employees and pay periods worked during the PAGA Period.

3. **MONETARY TERMS.**

- 3.1 Gross Settlement Amount. Ferguson promises to pay \$1,500,000.00 and no more as the Gross Settlement Amount. Ferguson has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Covered Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Ferguson.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:
 - 3.2.1 To Plaintiff: A PAGA Representative Payment to Plaintiff of not more than \$10,000 (in addition to any Individual PAGA Payment the Plaintiff is entitled to as a Covered Employee). Ferguson will not oppose Plaintiff's request for a PAGA Representative Payment that does not exceed this amount. As part of the Settlement approval motion, Plaintiff and/or PAGA Counsel will request approval for a PAGA Representative Payment. If the Court approves a PAGA Representative Payment less than the amount requested, the Administrator will allocate the remainder to the Net

Settlement Amount. The Administrator will pay the PAGA Representative Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the PAGA Representative Payment.

3.2.2 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 1/3 of the Gross Settlement Amount, which is currently estimated to be \$500,000.00 and PAGA Counsel Litigation Expenses Payment of up to \$25,000.00. Ferguson will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. As part of the Settlement approval motion, Plaintiff and/or PAGA Counsel will request approval for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The payment approved by the Court pursuant to this subparagraph shall constitute full satisfaction of Ferguson's obligations to pay amounts to any person, attorney, or law firm for attorneys' fees, expenses or costs incurred on behalf of the Plaintiff, the LWDA and/or the Aggrieved Employees, and shall relieve Ferguson from any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of the Plaintiff, the LWDA or the Covered Employees as it relates to this Settlement. Plaintiff's Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made pursuant to this subparagraph and agrees to indemnify and hold harmless Ferguson from any claim or liability for taxes, penalties or interest for which Plaintiff's Counsel are responsible as a result of the payment or any allocation of the payment made pursuant to this subparagraph. An IRS Form 1099 shall be provided by the Settlement Administrator to AEGIS LAW FIRM, PC for the total payment made pursuant to this subparagraph. Plaintiff's Counsel shall provide a W-9 to Ferguson for this payment to be made.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$13,379 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$13,379, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.4 To the LWDA and Covered Employees: PAGA Penalties shall be paid from the Gross Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.4.1 The Administrator will calculate each Individual PAGA Payment by dividing the amount of the Covered Employees' 25% share of PAGA Penalties on a pro rata basis according to their respective pay periods in which they actually worked one or more days according to Ferguson's time records during the PAGA Period Pay Periods.

Covered Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Covered Employee Pay Periods. Based on a review of its records to date, Ferguson estimate there are approximately 3,500 Covered Employees who worked approximately 95,000 PAGA Pay Periods.
- 4.2 Covered Employee Data. Within thirty (30) days after the Court's approval of the settlement, Ferguson will provide to the Settlement Administrator the names, last known addresses and telephone numbers, Social Security numbers, and Covered Pay Periods of all Covered Employees. Under no circumstances shall Plaintiff's Counsel (or any third-party) be entitled to this information. To protect Covered Employees' privacy rights, the Administrator must maintain the Covered Employee Data in confidence, use the Covered Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Covered Employee Data to Administrator employees who need access to the Covered Employee Data to effect and perform under this Agreement. Ferguson has a continuing duty to immediately notify PAGA Counsel if it discovers that the Covered Employee Data omitted employee identifying information and to provide corrected or updated Covered Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Ferguson must send the Covered Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Covered Employee Data.
- 4.3 Funding of Gross Settlement Amount. The Settlement Administrator will provide Ferguson with wire transfer information within five (5) days after the Effective Date. Ferguson shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than ten (10) days after the Settlement Administrator provides Ferguson with wire transfer information. Ferguson shall have no obligation to fund the Gross Settlement Amount unless and until the Federal Court grants the dismissal of Plaintiff's claims in the Federal Court Action.
- 4.4 Payments from the Gross Settlement Amount. Within fifteen (15) days after Ferguson funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Representative Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

- 4.4.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Covered Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2 The distribution of Individual PAGA Payments shall be accompanied by the Notice of PAGA Settlement.
- 4.4.3 The Administrator must conduct a Covered Employee Address Search for all Covered Employees whose checks are returned undelivered without a USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Covered Employee Address Search. The Administrator need not take further steps to deliver checks to Covered Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Covered Employee whose original check was lost or misplaced, requested by the Covered Employee prior to the void date.
- 4.4.4 For any Covered Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Covered Employee.
- 4.4.5 The payment of Individual PAGA Payments shall not obligate Ferguson to confer any additional benefits or make any additional payments to the Covered Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Ferguson fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

- 5.1 Release by Plaintiff: In consideration of Plaintiff's awarded Individual PAGA Payment, Plaintiff's awarded PAGA Representative Payment, and the other terms and conditions of the Settlement, Plaintiff releases any and all known and unknown claims against Ferguson, and waives the protection of California Civil Code section 1542 ("Plaintiff's Released Claims") as set forth in paragraph 5.3.
- 5.2 Release By Covered Employees. The Plaintiff, on behalf of himself, the State of California, the LWDA, and the Covered Employees, fully releases and discharges Ferguson from any and all individual and representative claims for relief under PAGA, of whatever kind or nature, whether known or unknown, arising during the

Covered Period based on the facts alleged by Plaintiff in the Action and Plaintiff's notice letter to the LWDA including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 212, 213, 225.5, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802 and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under PAGA (the "PAGA Released Claims").

- 5.3 With respect to the Plaintiff's Released Claims only, the Parties stipulate and agree that the PAGA Representative shall have, by operation of the judgment and approval order entered by the Court, waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the California Civil Code, which provides:

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

The PAGA Representative shall be deemed to have acknowledged that this Settlement Agreement is intended to waive and release all released claims that he does not know or suspect to exist in his favor at the time of the approval of this Settlement Agreement.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

- 6.1 The Parties will cooperate in seeking approval of the Settlement, including by drafting and filing the Motion for Settlement Approval. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement. The Parties agree to work expeditiously in finalizing and filing the application or motion for approval of this Settlement no later than thirty (30) days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion.
- 6.2 Plaintiff will file the Motion for Settlement Approval. If the Court does not grant the application for approval and issue the Final Order, under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court's concerns.
- 6.3 The Parties agree there is no statutory right for any Settlement Group Member to object, opt out or otherwise exclude himself or herself from the Settlement. The

Parties further agree there is no right or opportunity for any Settlement Group Member to appeal the approval of the Settlement by the Court, with the exception of Plaintiff.

- 6.4 If the Court does not grant approval of the Settlement, or if the Court's final approval of the Settlement is reversed or materially modified on appellate review, then the Settlement will become null and void. A modification of amounts payable in attorneys' fees or expenses or the PAGA Representative's Payment shall not be deemed a material modification of the Settlement.
- 6.5 Plaintiff shall submit a copy of the Judgment in this Action and a copy of any other order providing for or denying an award of civil penalties within ten (10) days after entry of the Judgment and/or order, in compliance with section 2699(l)(3) of the California Labor Code. After submitting the settlement to the LWDA Plaintiff shall give notice to Defendant's counsel of the submission.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Atticus Administration, LLC to serve as the Administrator and verified that, as a condition of appointment, Atticus Administration, LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund under U.S. Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. COVERED EMPLOYEE SIZE ESTIMATES.

- 8.1 Based on its records, Ferguson estimate that, as of the date of this Settlement Agreement, there are approximately 3,500 Covered Employees who worked approximately 95,000 Pay Periods during the PAGA Period.
- 8.2 If the total number of pay periods worked by Settlement Group Members exceeds 100,000 pay periods by more than 10%, the release period will be shortened to end at the time the pay periods exceed 10%.

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters under California Civil Procedure Code Section 664.6.

9.1 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties, and their respective counsel, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

9.2 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Covered Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain approval of the Settlement and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the PAGA Representative Payment or any payments to PAGA Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

10. **ADDITIONAL PROVISIONS.**

10.1 **No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly-disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Ferguson that any of the allegations in the Complaint have merit or that Ferguson has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Ferguson's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Ferguson reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Ferguson's defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Ferguson, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Confidentiality Preceding Court Approval: Prior to filing of the Motion for Settlement Approval, Plaintiff and his attorneys will not issue any press or other media releases or have any communication with the press or media or anyone other than family members, clients, Covered Employees, financial advisors, retained experts, and vendors related to settlement administration, regarding the Settlement. If, before the filing of the Motion for Settlement Approval, Plaintiff or his attorneys disclose to any unauthorized party (a) that a settlement has been reached or (b) any of the terms of the Settlement except as required by law or to effect the Settlement, Ferguson may rescind the Settlement, rendering it null and void.
- 10.5 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.6 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.7 No Tax Advice. Neither Plaintiff, PAGA Counsel, Ferguson, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.
- 10.8 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

- 10.9 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.10 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.11 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.12 Use and Return of Covered Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code § 1152, and all copies and summaries of the Covered Employee Data provided to PAGA Counsel by Ferguson in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Covered Employee Data received from Ferguson unless, prior to the Administrator's payment of all Settlement Funds, Ferguson makes a written request to PAGA Counsel for the return, rather than the destruction, of Covered Employee Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands, or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Samuel A. Wong
swong@aegislawfirm.com
Jessica L. Campbell
jcampbell@aegislawfirm.com
Carolyn M. Bell
cbell@aegislawfirm.com
AEGIS LAW FIRM, PC

9811 Irvine Center Drive, Suite 100
Irvine, California 92618

To Ferguson:

Leslie L. Abbott
leslieabbott@paulhastings.com
Eric Distelburger
ericdistelburger@paulhastings.com
PAUL HASTING, LLP
515 S. Flower Street, Floor 25
Los Angeles, California 90071

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.*, DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement, pursuant to California Civil Procedure Code section 583.330, to extend the date to bring a case to trial under California Civil Procedure Code section 583.310 for the entire period of this settlement process.

Dated: March 30, 2023

DocuSigned by:

C3F105E44F234A6...
Plaintiff Matthew Lane

April, 3, 2023
Dated: ~~March~~ xxx, 2023

DocuSigned by:

9DD8B09FE422407...
Julie Yutesler
Defendant Ferguson Enterprises, LLC

Approved As to Content:

Dated: March 30, 2023

AEGIS LAW FIRM, PC


Carolyn M. Bell
Attorneys for Plaintiff

Dated: March 29, 2023

PAUL HASTINGS, LLP

A handwritten signature in black ink, appearing to read 'Eric Distelburger', is written above a horizontal line.

Eric Distelburger, Esq.
Attorneys for Ferguson

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF LOS ANGELES

You are receiving this Notice because you are entitled to money as a result of a court approved settlement in *Matthew Lane v. Ferguson Enterprises, LLC*, Alameda County Superior Court, Case No. 22CV020738 (the “**Lawsuit**”).

What is this case about?

In the Lawsuit, Plaintiff Lane asserted representative claims against Ferguson Enterprises, LLC on behalf of the State of California and all current and former hourly employees of Ferguson who performed work in California at any time during the period from August 2, 2021 to May 15, 2023 (the “**Settlement Period**”). Plaintiff alleges claims for civil penalties pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*, based on the alleged: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay wages timely during employment; and (8) failure to pay all wages due upon separation of employment. Plaintiff also alleges that Ferguson issues final wages through a payment card that charges fees to obtain payment. Ferguson denies each of the claims and contentions alleged by Plaintiff in the Lawsuit, and maintain that it fully complied with the law.

What are the terms of the Settlement?

Plaintiff and Ferguson reached a settlement which was reviewed and approved by the Court. Ferguson’s records show that you were employed by Ferguson in a covered position during the Settlement Period. Accordingly, you are entitled to an Individual Settlement Payment based on your percentage share of pay periods during the Settlement Period.

What should I do now?

You are automatically included in this Settlement. You may immediately deposit your enclosed settlement check and need not take any further action at this time.