

Kayla Smart v. MasTec Services Company, Inc., et al.

Sacramento County Superior Court

Case No. 34-2022-00328496

United States District Court for the Eastern District of California

Case No.: 2:22-cv-02092-DJC-JDP

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement is entered into by and between Plaintiff Kayla Smart, individually and on behalf of all others similarly situated, and Defendants MasTec Services Company, Inc. and SEFNCO Communications, Inc. and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" refers to the case entitled *Smart v. MasTec Services Company, Inc., et al.*, Case No. 34-2022-00328496, filed in the Sacramento County Superior Court and removed to the United States District Court for the Eastern District of California, Case No. 2:22-cv-02092-DJC-JDP.

2. "Allegedly Aggrieved Employees" means all non-exempt, hourly employees who worked for Defendants in California during the PAGA Period, as defined below.

3. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean this Class Action and PAGA Settlement Agreement, including any attached Exhibits.

4. "Class Claims" or "Released Class Claims" will include all claims that were pled in the Complaint, First Amended Complaint, and Second Amended Complaint based on the facts alleged therein, or that could have been alleged based upon the facts asserted therein, except the claim under the PAGA, and includes claims for alleged violations of California Labor Code sections 201-204, 201.3, 201.5, 201.6, 201.8, 210, 218.5, 218.6, 221, 223, 226, 226.2, 226.3, 226.7, 227.3, 233, 234, 246, 246.5, 256, 432, 510, 512, 516, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2804, 2810.5, 6401, and 6403, and California Business and Professions Code sections 17200, 17203, 17208, "applicable Wage Orders," Civil Code §§ 3287, 3289, and California Code of Civil Procedure section 1021.5.

1 5. “Class Counsel” refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and
2 Joshua Falakassa of Falakassa Law, P.C.

3 6. “Class Data” means a complete list that Defendants will diligently and in good
4 faith compile from its records and provide to the Settlement Administrator and shall include each
5 respective Settlement Class Member’s full name, last known address, last known telephone
6 number, Social Security Number; and dates of employment and/or number of Workweeks worked
7 during the Class Period and the number of PAGA Periods worked during the PAGA Period, if
8 applicable.

9 7. “Class Period” and “Class Release Period” shall mean October 17, 2018 through
10 December 31, 2023.

11 8. “Class Representative” or “Plaintiff” means and refers to Kayla Smart.

12 9. “Complaint” refers to the Second Amended Complaint to be filed in the
13 Sacramento County Superior Court action entitled *Smart v. MasTec Services Company, Inc., et*
14 *al.*, Case No. 34-2022-00328496.

15 10. “Court” means the California Superior Court, County of Sacramento, or any Court
16 of competent jurisdiction.

17 11. “Defendants” refers to MasTec Services Company, Inc. and SEFNCO
18 Communications, Inc.

19 12. “Defendants’ Counsel” or “Defense Counsel” means and refers to Steven A.
20 Groode and Nathaniel H. Jenkins of Littler Mendelson, PC.

21 13. “Effective Date” means the latter of (a) if no timely objections are filed, or such
22 objections are withdrawn prior to final approval of the settlement, then sixty calendar days after
23 the Court enters Judgment; (b) the time for appeal has expired if an objection has been filed and
24 no appeal has been filed or has been filed and withdrawn; or (c) the final resolution of any appeal
25 that has been filed.

26 14. “Final Approval” refers to the order of the Court granting final approval of this
27 Settlement Agreement and entering a judgment approving this Settlement on substantially the
28 same terms provided herein or as may be modified by subsequent agreement of the Parties or

1 order of the Court.

2 15. "Final Settlement Class" means all Participating Class Members and Allegedly
3 Aggrieved Employees.

4 16. "Individual Settlement Amount" shall have the meaning ascribed to it in Paragraph
5 48(d) below.

6 17. "Net Settlement Amount" shall have the meaning ascribed to it in Paragraph 48(c)
7 below.

8 18. "Notice" means the Notice of Proposed Class Action Settlement and Final
9 Approval Hearing that will be sent to the Settlement Class Members and Allegedly Aggrieved
10 Employees. The Notice will be substantially similar to the draft Notice attached to this Agreement
11 as **Exhibit "A,"** subject to the resolution by the Court of any and all outstanding issues between
12 the Parties as to the terms contained therein and approval by the Court.

13 19. "Notice Response Deadline" is forty-five (45) calendar days from when the Notice
14 is mailed to the Settlement Class Members.

15 20. "Objecting Settlement Class Member" means a Settlement Class Member, other
16 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
17 respect to the Class Claims pursuant to Paragraph 72(c) below.

18 21. "PAGA" shall refer to the California Labor Code Private Attorneys General Act
19 of 2004, California Labor Code Sections 2698–2699.5.

20 22. "PAGA Claims" or "Released PAGA Claims" shall include any and all claims for
21 penalties pursuant to PAGA (Labor Code section 2698 et al.) based on the allegations stated in
22 the PAGA Notices and that were or could have been pled in the Complaint, as defined above,
23 based on the facts alleged therein, including PAGA claims premised on Labor Code violations:
24 Sections 201-204, 201.3, 201.5, 201.6, 201.8, 210, 218.5, 218.6, 221, 223, 226, 226.2, 226.3,
25 226.7, 227.3, 233, 234, 246, 246.5, 256, 432, 510, 512, 516, 558, 1102.5, 1174, 1174.5, 1182.12,
26 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2804, 2810.5, 6401, and 6403

27 23. "PAGA Notice" shall refer to the notices sent by Plaintiff, by and through counsel,
28 to the Labor and Workforce Development Agency ("LWDA") and Defendants, alleging that

1 Defendants and their affiliated entities engaged in violations of the California Labor Code and
2 California Wage Order(s), .

3 24. "PAGA Period" and "PAGA Release Period" shall mean October 31, 2021
4 through December 31, 2023.

5 25. "Participating Class Member" means any and all Settlement Class Members who
6 are deemed to participate and receive an Individual Settlement Amount for the Class Claims and
7 who do not opt out of the settlement of the Class Claims by submitting timely valid Requests for
8 Exclusion.

9 26. "Parties" or "Settling Parties" mean Plaintiff, the Settlement Class Members, the
10 Allegedly Aggrieved Employees, and Defendants, collectively.

11 27. "Preliminary Approval Date" means the date the Court preliminarily approves the
12 Settlement Agreement and the exhibits thereto and enters the Preliminary Approval Order.

13 28. "Preliminary Approval Order" means the judicial Order to be entered by the Court,
14 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and
15 providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt
16 out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of
17 this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of
18 Settlement, including approval of attorneys' fees and costs.

19 29. "QSF" means the Qualified Settlement Fund set up by the Settlement
20 Administrator for the benefit of the Final Settlement Class, and from which the settlement
21 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
22 Code Section 468B.

23 30. "Release" shall mean the release and discharge of the Class Claims by Plaintiff
24 and all of the Participating Class Members and the release and discharge of the PAGA Claims by
25 Plaintiff and all of the Allegedly Aggrieved Employees.

26 31. "Released Parties" shall refer to Defendants and any of its/their former and present
27 parents, subsidiaries, and affiliates - including MasTec Network Solutions, Inc., MasTec Network
28 Solutions, LLC, MasTec, Inc., MasTec North America, Inc., MasTec Renewables Construction,

1 Company and their insurers, insurance policies, and benefit plans; each of the former and present
2 officers, directors, employees, equity holders (partners, shareholders, holders of membership
3 interests, etc.), agents, representatives, administrators, fiduciaries, and attorneys of the entities
4 and plans described in this sentence; and any other predecessors, successors, transferees, and
5 assigns of each of the persons and entities described in this sentence.

6 32. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 72(a)
7 below.

8 33. “Service Payment” or “Service Award” means the amount approved by the Court
9 to be paid to the Class Representative in addition to her Individual Settlement Amount as a
10 Participating Class Member.

11 34. “Settlement Administration Costs” means the costs payable from the Settlement
12 Amount to the Settlement Administrator for administering this Settlement, including, but not
13 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due
14 diligence, reporting and remittance obligations, distributing the Settlement Amount, and
15 providing necessary reports and declarations, as requested by the Parties and the Court. The
16 Settlement Administration Costs shall be paid from the Settlement Amount.

17 35. “Settlement Administrator” refers to ILYM Group, Inc., which the Parties have
18 mutually agreed to provide the Notice to the Class Members and distribute the settlement amounts
19 described in this Agreement.

20 36. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning
21 ascribed to it in Paragraph 49(a) below.

22 37. “Settlement Class Member” or “Class Member” refers to individual members of
23 the Settlement Class.

24 38. “Settlement Class” and “Settlement Class Members” refer to all persons who are
25 or were previously employed by Defendants in California classified as non-exempt, hourly
26 employees during the Class Period.

27 39. “Workweeks Worked” and “PAGA Pay Periods Worked” for each Settlement
28 Class Member and Aggrieved Employee means any workweek during the Class Period and/or

1 pay period during the PAGA Period, as applicable, in which the Settlement Class Member and/or
2 Aggrieved Employee was employed by Defendants as a non-exempt, hourly employee in
3 California and worked at least one shift during the workweek or pay period, respectfully, for or
4 on behalf of Defendants for which a prior release of claims has not been signed. Workweeks
5 Worked and PAGA Pay Periods Worked shall not include weeks or pay periods where a
6 Settlement Class Member and/or Aggrieved Employee only had sick time, vacation time, was on
7 leave or did not record any actual work time in Defendant's timekeeping system. Workweeks
8 Worked and PAGA Pay Periods Worked will be calculated based on Defendant's business
9 records.

10 **B. General Terms**

11 40. On or about October 17, 2022, Plaintiff filed a Class Action Complaint in the Court
12 against Defendant, including allegations of (1) failure to pay overtime wages, (2) failure to pay
13 sick time wages, (3) meal period violations, (4) rest period violations, (5) wage statement
14 violations, (6) waiting time penalties, (7) failure to reimburse business expenses, and (8) unfair
15 competition. Subsequently, Plaintiff filed a First Amended Complaint to add a PAGA cause of
16 action for the underlying alleged Labor Code violations. Plaintiff will file a Second Amended
17 Complaint to assert additional wage and hour claims, specifically, Failure to Pay Minimum Wage
18 (based on an "Off-the-clock" theory), Failure to Maintain Payroll Records, Failure to Provide
19 Copies of Records, Failure to Timely Pay Wages Owed During Employment (for all alleged
20 unpaid wages), Failure to Provide Written Notice of Employment Terms; Failure to
21 Provide/Properly Pay Paid Time Off; Failure to Provide Safety Devices and Safeguards, and
22 Failure to Provide Recovery Periods

23 41. Plaintiff will file a stipulation to remand the Action to Sacramento County
24 Superior Court. In the event that the Sacramento Superior Court does not grant final approval of
25 the settlement and enter judgment, the parties agree that the status quo before the settlement of
26 the Action is restored. At Defendants' option, the action will be returned to the United States
27 District Court for the Eastern District of California. To accomplish this result, if necessary,
28 Plaintiff agrees to stipulate that the action meets the requirements of CAFA and will not challenge

1 removal on timeliness grounds.

2 42. Defendants deny Plaintiff's claims and allegations in the PAGA Notice, the
3 original Class Action Complaint, the First Amended Complaint, and the Second Amended
4 Complaint in their entirety and contends that the Action is meritless and is not suitable for class
5 certification and/or representative treatment. Nothing in this Agreement is intended or will be
6 construed as an admission by Defendants that the claims in the Action have merit or that
7 Defendants bear any liability to Plaintiff, the Settlement Class Members, or the Allegedly
8 Aggrieved Employees on those claims or any other claims. Nevertheless, Defendants have taken
9 into account the uncertainty and risks inherent in any litigation and have also concluded that
10 further defense of the Action would be protracted and expensive. Defendants, therefore, have
11 determined that it is desirable and beneficial that the Action be settled in a manner and upon the
12 terms and conditions set forth in this Settlement Agreement.

13 43. Class Representative believes she can proceed with her class, and representative
14 claims that the Action is meritorious and that class certification is appropriate.

15 44. The Parties have thoroughly investigated the facts of the Action. This includes
16 conducting an extensive exchange of informal discovery, including Defendants' written policies
17 and practices and the production of a sizeable sampling of payroll and timekeeping records for
18 Settlement Class Members and Allegedly Aggrieved Employees. Class Counsel is both
19 knowledgeable about and has done extensive research with respect to the applicable law and
20 potential defenses to the claims of the Settlement Class Members and Allegedly Aggrieved
21 Employees. Class Counsel has diligently investigated the Class Members' claims against
22 Defendant. Based on the foregoing data and on their own independent investigation and
23 evaluation, Class Counsel is of the opinion that the settlement with Defendants for the
24 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
25 adequate and is in the best interest of the Settlement Class Members and Allegedly Aggrieved
26 Employees in light of all known facts and circumstances, including the risk of significant delay
27 and uncertainty associated with litigation, various defenses asserted by Defendants, and numerous
28 potential appellate issues.

1 45. On August 22, 2023, the Parties participated in mediation before Tripper Ortman,
2 Esq., a highly experienced class and PAGA/representative action mediator. The Parties reached
3 a settlement after a full-day mediation, subsequent negotiations, and an issued mediator's
4 proposal. The Parties agree that the terms and conditions of this Agreement result from lengthy,
5 intensive, arms-length negotiations between the Parties supervised by a highly experienced class
6 and representative action mediator. This Agreement represents a compromise and settlement of
7 highly disputed claims and is intended to settle, compromise, and discharge the Released Claims
8 against the Released Parties fully, finally, and forever.

9 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
10 to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement
11 shall be construed as an admission by Defendants of any wrongdoing or violation of any statute
12 or law or liability on the claims or allegations in the Action.

13 47. Stipulation for Class Certification and Representative Treatment. For settlement
14 purposes only, Defendants will stipulate that the Settlement Class Members described herein who
15 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement
16 class and that the Allegedly Aggrieved Employees are appropriate for representative treatment
17 for purposes of settlement. This stipulation to certification and representative treatment is in no
18 way an admission that class action certification and/or representative treatment is proper and shall
19 not be admissible in this or in any other action except for the sole purposes of enforcing this
20 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
21 stipulation to class certification and representative treatment as part of the Settlement shall
22 become null and void *ab initio* and shall have no bearing on and shall not be admissible in
23 connection with the issue of whether or not class certification and/or representative treatment
24 would be appropriate in a non-settlement context. Defendants expressly reserve their rights and
25 declare that they will continue to oppose class certification, representative treatment, and the
26 substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly
27 reserves her rights and declares that she will continue to pursue class certification, representative
28 treatment, and a trial should the Court fail to issue Final Approval.

1 **C. Terms of Settlement**

2 48. The financial terms of the Settlement are as follows:

3 (a) Gross Settlement Amount: The Parties agree to settle this Action for One Million
4 Five Hundred Fifty Thousand Dollars (\$1,550,000) (“the Gross Settlement Amount”). The Gross
5 Settlement Amount is the maximum amount that will be paid by Defendants and includes
6 Individual Settlement Amounts, attorneys’ fees of Class Counsel, costs and expenses, the Service
7 Payment to Class Representative, all Settlement Administration Costs, and payment to the Labor
8 Workforce Development Agency (LWDA) for PAGA penalties. Defendants shall separately pay
9 the employers’ share of applicable payroll taxes.

10 (b) The Gross Settlement Amount is based on Defendants’ estimation that, as of the
11 date of mediation, (1) there were approximately 1,698 Class Members and approximately 120,756
12 workweeks during the Class Period and (2) there were approximately 822 Aggrieved Employees
13 who worked approximately 29,800 Pay Periods during the PAGA Period. If the number of
14 workweeks is more than 10% greater than the figures outlined herein, Defendants, at their option,
15 shall have the option to 1) shorten the Class Period to reduce the number of workweeks to 120,756
16 workweeks and avoid application of the escalator clause; or 2) increase the Gross Settlement Sum
17 on a proportional basis that reflects the percentage over 10%.

18 (c) Net Settlement Amount: The “Net Settlement Amount” is defined as the Gross
19 Settlement Amount less attorneys’ fees and litigation costs as approved and awarded by the Court,
20 the Service Payment to Class Representative as approved and awarded by the Court, the
21 Settlement Administration Costs as approved and awarded by the Court, and the \$12,500
22 allocated to payment for PAGA penalties to the Aggrieved Employees as described in paragraph
23 49(e) below. If the Court reduces the attorneys’ fees and litigation costs or Service Award,
24 Settlement Administration Costs, or either increases or decreases the amount allocated to PAGA
25 penalties, the Net Settlement Sum shall be increased or decreased accordingly.

26 (d) Individual Settlement Amounts for the Settlement Class: The Settlement
27 Administrator will use the Class Data provided by Defendants to calculate each Participating
28 Class Member’s and Aggrieved Employee’s Individual Settlement Amounts based on the

1 following formula:

2 i. PAGA Amount: \$50,000 of the Gross Settlement Amount has been
3 designated to the PAGA claims. Twenty-five percent (25%), or \$12,500, shall be paid out to
4 Allegedly Aggrieved Employees, while seventy-five percent (75%), or \$37,500, will be paid to
5 the LWDA. Each Aggrieved Employee shall receive a portion of the \$12,500 proportionate to the
6 number of PAGA Pay Periods Worked by the Allegedly Aggrieved Employees during the PAGA
7 Period compared to the total number of PAGA Pay Periods Worked by all Allegedly Aggrieved
8 Employees during the PAGA Period. Allegedly Aggrieved Employees shall have their settlement
9 amount for the Released PAGA claims paid one hundred percent (100%) as civil penalties for
10 which no taxes will be withheld and for which the Settlement Administrator will issue a Form
11 1099.

12 ii. Class Amount: The Net Settlement Amount shall be allocated to each
13 Participating Class Member based on his/her/their proportionate Workweeks Worked during the
14 Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the
15 numerator of which is the Participating Class Member's total Workweeks Worked during the
16 Class Period, and the denominator of which is the total Workweeks Worked by all Participating
17 Class Members during the Class Period. If there are any timely submitted Requests for Exclusion,
18 the Settlement Administrator shall proportionately increase the Individual Settlement Amounts
19 for each Participating Class Member so that the amount actually distributed to Participating Class
20 Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

21 (e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts
22 will be allocated for tax purposes based on the allegations in the Action as follows: thirty-three
23 percent (33%) will be paid as wages subject to withholding of all applicable local, state, and
24 federal taxes; thirty-three percent (33%) will be paid as interest; and thirty-four percent (34%)
25 will be paid as penalties. Pursuant to, e.g., California Labor Code Sections 203, 226, no taxes
26 will be withheld from portions that will be paid as interest and as civil penalties. The Settlement
27 Administrator will issue to each Participating Class Member an Internal Revenue Service Form
28 W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect

1 to the civil penalties and interest allocations.

2 (f) Service Payment to Class Representative: The amount awarded to Class
3 Representative as a Service Payment will be set by the Court in its discretion, not to exceed Seven
4 Thousand and Five Hundred Dollars (\$7,500). Defendants agree not to oppose this request. The
5 Service Payment to Class Representative will be paid out of the Gross Settlement Amount. Class
6 Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be
7 solely and legally responsible to pay any and all applicable taxes on this payment. The Parties
8 agree that any amount awarded by the Court as the Service Payment to Plaintiff less than the
9 requested amount shall not be a basis for Plaintiff or Class Counsel to void this Agreement.
10 Should the Court approve a lesser amount for the Service Payment, the difference shall be added
11 to the Net Settlement Amount to be distributed to the Participating Class Members. In the event
12 of any appeal of the amount of the service awards (if any) approved by the Court, if, after the
13 exhaustion of any such appellate review, additional amounts not awarded to Class Representative
14 shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

15 (g) Attorneys' Fees and Costs: Defendants agree not to oppose a request by Class
16 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Gross Settlement
17 Amount (approximately \$516,666.67, plus reasonable litigation costs not to exceed Twenty
18 Thousand Dollars (\$20,000) ("Attorneys' Fees and Cost Award"). For purposes of this
19 Settlement, Defendants agree not to oppose any contention by Class Counsel that attorneys' fees
20 should be based on the common fund theory. The Attorneys' Fee and Cost Award shall be paid
21 from the Gross Settlement Amount, and except for this award, Defendants shall have no further
22 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
23 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
24 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order
25 awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
26 Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount
27 of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and
28 administration of the portion of the attorneys' fees and/or costs award in dispute will be

segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional amounts not awarded as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or Allegedly Aggrieved Employees. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

(h) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$17,500, subject to Court approval, unless approved by all Parties and the Court.

(i) Tax Liability: Class Counsel, Defendants, and Defendants' Counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendants, or Defendants' Counsel in this regard. Plaintiff and Final Settlement Class Members understand and agree that they will be solely responsible for paying any taxes and penalties assessed on their respective Settlement Amounts described herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Settlement Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the processes set forth in this Section may be modified to bring Defendants into compliance with any such changes.

(j) No Tax Advice. Neither Plaintiff, Class Counsel, Defendants, nor Defendants' Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

1 49. No Credit Towards Benefit Plans. The Individual Settlement Payments and
2 Individual PAGA Payments made to Participating Class Members and/or Allegedly Aggrieved
3 Employees under this Settlement Agreement, as well as any other payment made pursuant to this
4 Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit
5 plans to which any Participating Class Members and/or Allegedly Aggrieved Employees may be
6 eligible, including but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
7 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather,
8 it is the Parties' intention that this Settlement Agreement will not affect the rights, contributions,
9 or amounts to which any Participating Class Member and/or Allegedly Aggrieved Employees
10 may be entitled under benefit plans.

11 50. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
12 no circumstances will any portion of the Settlement Amount revert to Defendants. Final
13 Settlement Class Members will not have to make a claim to receive an Individual Settlement
14 Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to
15 each Final Settlement Class Member. The Settlement Administrator shall be responsible for
16 accurately and timely reporting any remittance obligations with respect to unclaimed funds as a
17 result of a Final Settlement Class Member not cashing an Individual Settlement Amount by the
18 check cashing deadline, as set forth herein.

19 51. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
20 adequate and will so represent same to the Court.

21 **D. Release by Plaintiff and the Final Settlement Class**

22 52. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class
23 Member, for themselves and for their respective agents, spouses, domestic partners, marital
24 community, children, estates, trusts, attorneys, heirs, predecessors, successors, beneficiaries,
25 devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and
26 representatives, will forever completely release and discharge the Released Parties from the
27 Released Class Claims for the Class Release Period. The Released Class Claims include any
28 claims, demands, lawsuits, administrative actions, arbitrations, and participation to any extent in

any pending or future class, collective, or representative actions, or other action of any kind based on the Released Class Claims.

53. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

54. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each Aggrieved Employee, for themselves and for their respective agents, spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, predecessors, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Release Period.

55. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

56. Plaintiff and Defendants intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Settlement Class Members shall be notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opts out of the Settlement for purposes of Class Claims.

57. Plaintiff and Defendants intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Allegedly Aggrieved Employees and the LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the Released PAGA Claims. The Allegedly Aggrieved Employees and the LWDA shall be notified in the Notice.

58. Class Representative, on behalf of herself and the Participating Settlement Class Members, acknowledges and agrees that the Class Claims or Released Class Claims are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to her. Class

Representative, on behalf of herself and the Participating Settlement Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

E. Release by Class Representative

59. (a) Plaintiff's Release. As a material inducement to Defendants to enter into this Settlement Agreement, Class Representative does hereby, for herself and for her respective agents, spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, predecessors, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, forever completely release and discharge the Released Parties from the Released Class Claims and Released PAGA Claims and all claims Class Representative may have against the Released Parties relating to: (i) the payment, taxation, and allocation of attorney's fees and costs to Class Counsel pursuant to this Agreement; and (ii) the payment, taxation and allocation of Class Representative Service Payment, Individual Class Payments, and Individual PAGA Payments pursuant to this Agreement ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time or based on occurrences outside the Class Period. However, Plaintiff's release includes any and all other claims, known or unknown, against Defendant through the end of the Class Period. However, expressly excluded from Plaintiff's Release are any of Plaintiff's individual non-wage and hour claims that are subject to a separate confidential settlement agreement (see below).

(b) Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so, understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of

1 California states:

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

8 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
9 full and complete release and discharge of all Released Parties with regard to Plaintiff's Release,
10 Class Representative and Class Counsel expressly acknowledge that this Settlement Agreement
11 is intended to include in its effect, without limitation, all claims that Class Representative knew
12 of, as well as all claims that Class Representative does not know or suspect to exist in Class
13 Representative's favor against the Released Parties, or any of them, for the time period from the
14 beginning of time to the execution of this Settlement Agreement, and that this Settlement
15 Agreement contemplates the extinguishment of any and all such Class Representative's claims.

16 (c) Plaintiff's Other Claims. Plaintiff represents that she has additional individual,
17 non-wage and hour claims against Defendant. Plaintiff is separately settling these individual
18 claims. In addition to the Gross Settlement Amount, Plaintiff will also separately be paid for
19 resolution of her individual claims as set forth in her separate confidential individual settlement
20 agreement. This individual settlement to be paid to Plaintiff is in addition to the Gross Settlement
21 Amount and will be memorialized in a confidential individual settlement agreement that will be
22 separate from this Agreement. If the Court requires the Parties to submit the terms of the
23 individual settlement agreement to obtain approval of this Settlement, the Parties agree that the
24 individual settlement agreement will be submitted in camera under seal to the Court.

25 **F. Interim Stay of Proceedings**

26 60. Pending completion of all prerequisites necessary to effectuate this Settlement,
27 including remanding and amending the complaint, the Parties agree, subject to Court approval, to
28 stay all proceedings in the Action except those necessary to effectuate the Settlement.

1 **G. Notice Process**

2 61. Appointment of Settlement Administrator. The Parties have agreed to the
3 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
4 including mailing the Notice, using standard devices to obtain forwarding addresses,
5 independently reviewing and verifying documentation associated with any claims or opt-out
6 requests, resolving any disputes regarding the calculation or application of the formula for
7 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
8 Final Settlement Class Members and Allegedly Aggrieved Employees, issuing Forms W-2 and
9 1099, reporting to taxing authorities, due diligence, reporting and remittance obligations, and
10 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
11 orders. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Final
12 Settlement Class Members, and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms
13 as may be required by law for all amounts paid pursuant to this Agreement. The Settlement
14 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding
15 all payroll taxes and penalties to the appropriate government authorities.

16 62. Disputes Regarding Settlement Administration. Any and all disputes relating to
17 the administration of the Settlement by the Settlement Administrator (except for disputes
18 regarding Class Data) shall be referred to the Court, if necessary, which will have continuing
19 jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and
20 Defendants notify the Court that all payments and obligations contemplated by this Settlement
21 Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the
22 Parties will confer in good faith to resolve the dispute without the necessity of Court intervention.

23 63. Class Data. Within fifteen (15) calendar days after entry of the Preliminary
24 Approval Order, Defendants shall provide the Class Data to the Settlement Administrator. The
25 Settlement Administrator will run a check of the Class Members' addresses against those on file
26 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
27 Settlement Administrator will not be provided to Class Counsel and it will remain confidential, it
28 shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone

except as required by applicable tax authorities, pursuant to Defendants' express written consent, or by order of the Court.

64. Notice. As approved by the Court, the Notice shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within seven (7) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

65. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address, and/or Social Security number of the Class Member involved and will then perform a single re-mailing. In the event the procedures in this Paragraph are followed and the intended recipient of a Notice packet still does not receive the Notice packet, the Class Member shall be bound by all terms of the Settlement and any Judgment entered by the Court if the Settlement is approved by the Court. Notices will be re-mailed to any Settlement Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) calendar days after the remailing of the Notice.

66. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if an envelope has not been returned within thirty (30) calendar days of the mailing that the Settlement Class Member received the Notice.

67. Disputes Regarding Class Data. Settlement Class Members are deemed to participate in the Settlement unless they opt-out. The Notice will inform Settlement Class Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks

1 Worked during the Class Period and PAGA Periods Worked during the PAGA Period. Settlement
2 Class Members may dispute their Workweeks Worked if they feel they were employed more
3 workweeks in the Class Period in California than Defendants' records show by timely submitting
4 evidence to the Settlement Administrator. Defendants' records will be presumed determinative
5 absent reliable evidence to rebut Defendants' records, but the Settlement Administrator will
6 evaluate the evidence submitted by the Settlement Class Member and provide the evidence
7 submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith
8 about the evidence to determine the Class Member's actual number of Workweeks Worked and
9 estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to
10 agree, they agree to submit the dispute to the Settlement Administrator to render a final decision.
11 All disputes will be decided within ten (10) business days of the Notice Response Deadline.
12 Settlement Class Members will have until the Notice Response Deadline to dispute Workweeks
13 Worked, object, or opt out unless extended by the Court. In the event that the Settlement
14 Administrator increases the number of Workweeks Worked for any Settlement Class Member,
15 then the Settlement Administrator will recalculate the Participating Class Members' Individual
16 Settlement Amounts; accordingly, in no event will Defendants be required to increase the Gross
17 Settlement Amount.

18 68. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
19 for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing, a
20 declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

21 69. Settlement Class Members' Rights. Each Settlement Class Member will be fully
22 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
23 Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of
24 the Settlement. The Notice will inform the Settlement Class Members of the Court-established
25 deadlines for filing objections or requesting exclusion from the Class Claims provisions of the
26 Settlement in accordance with the following guidelines:

27 (a) Requests for Exclusion from Participating Settlement Class. Any
28 Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating

1 Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator,
2 postmarked on or before the Notice Response Deadline. The Request for Exclusion should be
3 stated in words to this effect:

4 I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
5 THE SMART V. MASTEC LAWSUIT. I UNDERSTAND THAT IF I
6 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL
7 NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE
8 CLASS CLAIMS IN THIS LAWSUIT.

9 Any Request for Exclusion must include the full name, address, telephone number, last
10 four digits of the social security number or date of birth, and signature of the Settlement Class
11 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
12 Settlement Administrator at the specified address in the Notice. Any such Request for Exclusion
13 must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will
14 be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree
15 in writing. Any Settlement Class Member who timely requests exclusion in compliance with these
16 requirements: (i) will not have any rights under this Agreement with respect to the Class Claims,
17 including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to
18 receive any payments under this Agreement with respect to Class Claims; and (iii) will not be
19 bound by this Agreement, or the Judgment, with respect to the Class Claims. Notwithstanding
20 the submission of a timely request for exclusion, allegedly Aggrieved Employees will still be
21 bound by the settlement and release of the Released PAGA Claims or remedies under the
22 Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for exclusion do
23 not apply to the Released PAGA Claims, and will not be effective to preclude the release of the
24 Released PAGA Claims.

25 (b) Binding Effect on Final Settlement Class Members. Except for those
26 Settlement Class Members who exclude themselves in compliance with the procedures set forth
27 above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
28 for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided

herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement of Class Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims and may appear at the Final Approval Hearing and object whether or not they have filed a written objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the full name, address, telephone number, dates of employment with Defendants of the Objecting Settlement Class Member, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if counsel represents the Objecting Settlement Class Member, the name and address of his/her/their counsel. If any Objecting Settlement Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Settlement Class Member's written submission should include a request to be heard, and the Court will determine whether Objecting Settlement Class Members will be permitted to speak. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence it files with the Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection remains eligible to receive monetary compensation from the Settlement and will be bound by the terms of this Agreement, including all releases. Plaintiff and Defendants shall not be responsible for any fees, costs, or expenses incurred by any Settlement Class Member and/or his/her/their counsel related to any objections to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure Section 663. Settlement Class Members and Allegedly Aggrieved Employees may not object to or opt out of the Settlement with respect to the PAGA Claims. At no time will any Parties or their counsel

1 seek to solicit or otherwise encourage Settlement Class Members to submit Requests for
2 Exclusion, Notices of Objection, or disputes regarding Class Data or to appeal from the Final
3 Approval judgment. To the extent a timely Notice of Objection is withdrawn before Final
4 Approval, such an objection shall be treated as though no objection has been made.

5 (d) Failure to Object. Any Settlement Class Member who desires to object
6 with respect to the Class Claims but fails to timely submit a written objection waives any right to
7 object and will be foreclosed from making any objection to this Settlement. Any Settlement Class
8 Member who does not timely and properly become a party of record by intervening or filing a
9 motion to vacate the judgment waives any and all rights to appeal from the judgment, including
10 all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate
11 judgment, motion for new trial, a motion under California Code of Civil Procedure Section 473,
12 and extraordinary writs.

13 (e) Responses to Objections. Counsel for the Parties may file a response to any
14 objections submitted by Objecting Settlement Class Members at least five (5) court days before
15 the date of the Final Approval hearing.

16 70. Settlement Class Members will have until the Notice Response Deadline to object
17 or submit a Request for Exclusion or a dispute regarding Class Data to the Settlement
18 Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel
19 and Defendants' Counsel what objections or Requests for Exclusion or disputes regarding Class
20 Data were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense
21 Counsel.

22 71. Funding of the Settlement Amount. Defendants shall make a one-time deposit into
23 the QSF of the Gross Settlement Amount, as described in Paragraph 48(a) that is necessary to
24 make all payments required under this Settlement, within fourteen (14) calendar days after the
25 Effective Date, plus Defendants shall separately pay its share of employer payroll taxes as
26 calculated and directed by the Settlement Administrator.

27 72. Distribution of Funds. Prior to the disbursement of any funds, the Settlement
28 Administrator will provide a disbursement summary of the calculations for the payments

described above for review and approval by Class Counsel and Defense Counsel. Following approval by Class Counsel and Defense Counsel, and no later than seven (7) calendar days after deposit of the Gross Settlement Payment into the QSF, the Settlement Administrator will mail the payments to the Participating Class Members, Allegedly Aggrieved Employees, the payment for the attorneys' fees and costs to Class Counsel, any Service Payment to the Class Representatives, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs.

73. Deadline for Cashing Settlement Checks. Final Settlement Class Members and Allegedly Aggrieved Employees shall have one hundred eighty (180) calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Final Settlement Class Member or Allegedly Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued. All unclaimed funds shall be sent to the California Unclaimed Property Fund in the name of the Final Settlement Class Member or Allegedly Aggrieved Employee. The release will be binding upon all Final Settlement Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within one hundred eighty (180) days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. If a new address is located by these means, the Settlement Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Final Settlement Class Member notifies the Settlement Administrator that he/she/they believe that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

74. No person shall have any claim against Defendants, Defendants' Counsel,

1 Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions,
2 payments, or reports made in accordance with or pursuant to this Agreement. This provision does
3 not, however, prevent a Party from seeking enforcement of this Agreement.

4 75. Without prejudice to any other remedies, the Settlement Administrator shall agree
5 to be responsible for any breach of its obligations (whether committed by the Settlement
6 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from
7 and against all liabilities, claims, causes of action, costs and expenses (including legal fees and
8 expenses) arising out of any breach committed by the Settlement Administrator or its agents.

9 **H. Duties of the Parties Prior to the Court's Approval**

10 76. Plaintiff will move the Court for Preliminary Approval of this Settlement and entry
11 of the Preliminary Approval Order accomplishing the following:

12 (a) Scheduling the Final Approval hearing on the issue of whether this
13 Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members
14 and a hearing on fees, costs, and the Service Payment;

15 (b) Approving as to form and content the proposed Notice;

16 (c) Directing the mailing of the Notice by first class mail to the Settlement
17 Class Members;

18 (d) Preliminarily approving this Settlement; and

19 (e) Preliminarily certifying the class for purposes of this Settlement only.

20 77. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this
21 Settlement Agreement, and will include the proposed Notice packet, which will include the Notice
22 of Class Action Settlement document and proposed Mailing Envelope.

23 78. In accordance with Section 2699(1)(2) of the California Labor Code, Plaintiff shall
24 provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiff files
25 her motion for Preliminary Approval of this Settlement with the Court.

26 79. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
27 hearing, to approve this Agreement because the amount of the PAGA penalties is not adequate,
28 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within

1 this Agreement, to try to achieve Final Approval of the Agreement upon any subsequent Court
2 hearings.

3 **I. Duties of the Parties Following Court's Final Approval**

4 80. In connection with the Final Approval hearing provided for in this Settlement
5 Agreement, Class Counsel shall submit a proposed Final Approval Order:

6 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and
7 adequate, and directing consummation of its terms and provisions;

8 (b) Approving Class Counsel's application for an award of attorneys' fees and
9 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
10 and the payment to the Settlement Administrator for costs of administering the settlement;

11 (c) Entering judgment approving settlement, thereby permanently barring all
12 Participating Class Members from prosecuting any Released Class Claims against any of the
13 Released Parties and permanently barring all Allegedly Aggrieved Employees and the LWDA
14 from prosecuting any Released PAGA Claims against any of the Released Parties; and

15 (d) Scheduling a conference or hearing to confirm all payments referenced above have
16 been made in accordance with this Agreement and to dismiss the Action.

17 **J. Voiding the Agreement**

18 81. If the Court fails or refuses to issue the Final Approval Order or fails to approve
19 any material condition of this Settlement Agreement which effects a fundamental change of the
20 Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to
21 all Parties herein at the option of either Party.

22 82. If ten percent (10%) or more of the Settlement Class Members timely submit a
23 Request for Exclusion, Defendants shall have the option of terminating or modifying this
24 Agreement without prejudice to its pre-settlement positions and defenses in the Action. If
25 Defendants exercises such option under this paragraph, it shall be relieved of any obligation to
26 pay the Gross Settlement Amount or any other obligations from the Settlement by giving notice
27 to Class Counsel and the Settlement Administrator within ten (10) calendar days of the Notice
28 Response Deadline and Defense Counsel's receipt of all Request for Exclusion reports from the

1 Settlement Administrator.

2 83. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will
3 have no further obligations under the Settlement, including any obligation by Defendants to pay
4 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
5 Settlement.

6 84. If the Settlement is voided or fails for any reason, any costs incurred by the
7 Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise
8 specified in this Agreement.

9 **K. Other Terms**

10 85. Full and Complete Defense. This Agreement may be pleaded by any Released
11 Party as a full and complete defense to and may be used as the basis for an injunction against, any
12 action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted,
13 asserting any Released Claim.

14 86. Waiver. The waiver by one Party of any breach of this Agreement by another Party
15 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

16 87. Parties' Authority. The signatories hereto represent that they are fully authorized
17 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
18 hereof.

19 88. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
20 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
21 such documents and to take such other action as may reasonably be necessary to implement the
22 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
23 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
24 may become necessary by order of the Court, or otherwise, to effectuate this Settlement
25 Agreement and the terms set forth herein. As soon as practicable, Defense Counsel shall, with the
26 assistance and cooperation of Defendants and Class Counsel, to the extent it may become
27 necessary, gather Class Data from all applicable entities including any and all staffing agencies
28 that staffed any of the Class Members and/or Allegedly Aggrieved Employees to Defendants

1 during the respective Class and PAGA Periods. As soon as practicable after execution of this
2 Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants
3 and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final
4 approval of the settlement and the final entry of judgment. This shall include Class Counsel
5 providing Defense Counsel with drafts of the proposed Preliminary Approval Order and proposed
6 Final Approval Order and/or Judgment for review, comment and approval within a reasonable
7 time before the aforementioned documents are filed or submitted to the Court. Class Counsel and
8 Defense Counsel will meet and confer regarding any proposed revisions to the foregoing
9 documents in advance of the documents being submitted to the Court, and if any unresolved issue
10 remains, counsel will bring the outstanding issue or concern to the Court's attention at the
11 appropriate hearing.

12 89. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
13 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
14 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
15 cause of action, or rights released and discharged by this Settlement Agreement.

16 90. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
17 order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
18 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
19 of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
20 Settlement Agreement with the intention of avoiding further disputes and litigation with the
21 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and
22 it, along with all related documents such as the notices, and motions for Preliminary Approval
23 and Final Approval, shall, pursuant to California Evidence Code Section 1152 and/or Federal
24 Rule of Evidence Section 408, be inadmissible in evidence in any proceeding, except an action or
25 proceeding to approve the Settlement, and/or interpret or enforce this Settlement Agreement. The
26 stipulation for class certification as part of this Settlement Agreement is for settlement purposes
27 only and if, for any reason the settlement is not approved, the stipulation will be of no force or
28 effect.

91. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing via email and United States mail and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Settlement Class Members and Allegedly Aggrieved Employees:

Mehrdad Bokhour <i>mehrdad@bokhourlaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (310) 975-1493; Fax: (310) 675-0861	Joshua Falakassa <i>josh@falakassalaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (818) 456-6168; Fax: (888) 505-0868
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To Defendants:

Steven A. Groode sgroode@littler.com LITTLER MENDELSON, P.C. 1255 Treat Boulevard, Suite 600 Walnut Creek, California 94597 Telephone: 925.932.2468 Fax No.: 925.946.9809	Nathaniel H. Jenkins njenkins@littler.com LITTLER MENDELSON, P.C. 500 Capitol Mall, Suite 2000 Sacramento, California 95814 Telephone: 916.830.7200 Fax No.: 916.561.0828
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92. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendants expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

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

1 94. Modification. This Settlement Agreement may not be changed, altered, or
2 modified except in writing, signed by the Parties hereto, and approved by the Court. This
3 Settlement Agreement may not be discharged except by performance in accordance with its terms
4 or by writing signed by all of the Parties hereto.

5 95. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
6 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
7 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
8 Plaintiff and Defendants agree to seek the help of the mediator identified in this Agreement to
9 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
10 bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other
11 proceeding instituted by any person or entity other than Plaintiff or Defendant.

12 96. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
13 dismissal pursuant to the terms of this Agreement, pursuant to Code of Civil Procedure Section
14 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all
15 Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this
16 Agreement.

17 97. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this
18 Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in
19 a court of law.

20 98. Choice of Law. This Settlement Agreement shall be governed by and construed,
21 enforced, and administered in accordance with the laws of the State of California, without regard
22 to its conflicts-of-law rules.

23 99. Integration Clause. This Settlement Agreement contains the entire agreement
24 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
25 or contemporaneous agreements, understandings, representations, and statements, whether oral
26 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
27 hereunder may be waived except in writing.

28 100. Binding On Assigns. This Settlement Agreement shall be binding upon and inure

1 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
2 successors, and assigns.

3 101. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
4 because the members of the Settlement Class are numerous, it is impossible or impractical to have
5 each Final Settlement Class Member execute this Settlement Agreement. The Notice will advise
6 all Settlement Class Members of the binding nature of the releases provided herein and such shall
7 have the same force and effect as if this Settlement Agreement were executed by each Final
8 Settlement Class Member.

9 102. Counterparts. This Settlement Agreement may be executed in counterparts, and
10 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
11 deemed an original, and, when taken together with other signed counterparts, shall constitute one
12 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
13 Electronic signatures shall have the same force and effect as an original.

14 103. Publicity. Plaintiff and Class Counsel agree that they will not issue any press
15 releases, initiate any contact with the press, respond to any press inquiry, post any new material
16 on any internet websites, or have any communication with the press about the Lawsuit, and/or the
17 fact, amount, or terms of the Settlement. Plaintiff and Class Counsel will not initiate any contact
18 with the Class Members or anyone else about the Settlement, except that: (a) Class Counsel, if
19 contacted by a Class Member, may respond that a settlement has been reached and that the details
20 will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by
21 a Settlement Class Member or Aggrieved Employee, may respond only that the Settlement Class
22 Member or Aggrieved Employee should contact Class Counsel. Nothing in this paragraph shall
23 prevent Class Counsel and Plaintiff from undertaking all required submissions to the LWDA as
24 required by the PAGA statute in connection with this Settlement. Class Counsel and Plaintiff
25 will also provide Defendant's Counsel with a copy of the papers submitted to the LWDA, either
26 prior to or on the same day as the submission to the LWDA.

27 [signatures on the following pages]
28

APPROVAL AND EXECUTION BY PARTIES:

2/7/2024

Dated: February __, 2024

CLASS REPRESENTATIVE:

DocuSigned by:
Kayla C. Smart
B28D12C38DBB40B...

Kayla Smart

Dated: February __, 2024

DEFENDANT:
SEFNCO COMMUNICATIONS, INC.

By:
Its:

Dated: February __, 2024

DEFENDANT:
MASTEC SERVICES COMPANY, INC.

By:
Its:

1 **APPROVAL AND EXECUTION BY PARTIES:**

2

3 Dated: February __, 2024

CLASS REPRESENTATIVE:

4

5

6

7

Kayla Smart

8 Dated: February 2, 2024

DEFENDANT:

SEFNCO COMMUNICATIONS, INC.

9

10

11

12


By: Virginia Pagliery
Its: Associate General Counsel

13

Dated: February 2, 2024

DEFENDANT:

MASTEC SERVICES COMPANY, INC.

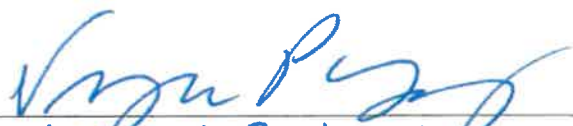
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By: VIRGINIA Pagliery
Its: Associate General Counsel

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APPROVED AS TO FORM:

2/5/2024

Dated: February __, 2024

CLASS COUNSEL

FALAKASSA LAW, P.C.

DocuSigned by:

Joshua Falakassa

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Joshua Falakassa
Attorneys for Plaintiff,
Kayla Smart

2/6/2024

Dated: February __, 2024

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

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Mehrdad Bokhour
Attorneys for Plaintiff,
Kayla Smart

Dated: February __, 2024

DEFENDANTS' COUNSEL:

LITTLER MENDELSON, PC

Steven A. Groode
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1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL**

3 Dated: February __, 2024

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6 Joshua Falakassa
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