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Attorneys for Plaintiff LUKE KOEHLER, on behalf of himself and other aggrieved employees

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

LUKE KOEHLER, an individual; on behalf
of himself and other aggrieved employees

Plaintiff,

v.

SEA POINTE CONSTRUCTION AND
DEVELOPMENT, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

) CASE NO. 30-2022-01297787-CU-OE-CXC
)
) [Assigned for all purposes to the Hon. Melissa
) R. McCormick, Dept. CX-104]
)

) **SUPPLEMENTAL DECLARATION OF**
) **AARON A. BARTZ IN SUPPORT OF**
) **MOTION TO APPROVE PAGA**
) **SETTLEMENT**

) Date: June 20, 2024
) Time: 2 p.m.
) Dept.: CX-104

1 **SUPPLEMENTAL DECLARATION OF AARON A. BARTZ**

2 I, Aaron A. Bartz, declare and state as follows:

3 1. I am an attorney at law, duly licensed to practice before all of the Courts of the
4 State of California, and I am the owner of Bartz Law Group, APC, attorneys for Plaintiff Luke
5 Koehler (“Plaintiff”).

6 2. I have personal knowledge of the following facts, and if called upon to do so, I
7 could and would competently testify as to their truth and veracity under oath. Below I respond to
8 the Court’s comments and questions raised at the February 22, 2024 hearing, with headings
9 corresponding to the Court’s prior ruling. A true and correct copy of this Court’s prior ruling is
10 attached hereto as **Exhibit A**.

11 **Settlement of Plaintiff’s and Other Employees’ Wage and Related Claims**

12 3. The Court requested additional information related to the individual settlements of
13 Plaintiff and other former employees James Backes and Juan Ortega, in the total amount of
14 \$90,000. Plaintiff Mr. Koehler is receiving a \$65,000 settlement in exchange for his release of
15 wage and other known and unknown claims, including any and all claims related to his
16 termination. Mr. Koehler had strong wage claims, and we believe Mr. Koehler also had valid
17 retaliation and wrongful termination claims because he complained about Defendant Sea Pointe
18 Construction and Development, Inc.’s (“Defendant”) wage practices. Mr. Koehler also worked
19 at Defendant for the vast majority of the four-year statutory period for wage claim recovery, so
20 his settlement is amply justified.

21 4. Former employees Mr. Backes and Mr. Ortega worked for Defendant for less than
22 the full statute of limitations governing wage claims, and did not ever file lawsuits against
23 Defendant. Mr. Backes and Mr. Ortega are receiving \$12,500 each for a full and complete
24 release of their wage and other known and unknown claims.

25 **Responses to the Court’s Comments and Questions as to the Settlement**

26 5. The PAGA Settlement Agreement (“Agreement”) includes amounts for attorneys’
27 costs and administrative expenses in an amount “not to exceed” a certain amount. A true and
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1 correct copy of the Agreement is attached hereto as **Exhibit B**. For instance, the Agreement
2 provides that the attorneys' costs are allowed up to \$7,000, and the settlement administrator
3 expenses are allowed up to \$5,000. Thus, the Agreement deducts those "not to exceed" amounts
4 from the Gross Settlement Amount to equal the Net Settlement Amount. Plaintiff's attorney's
5 costs, as well as the settlement administrator expenses, are less than the "not to exceed" amounts.
6 Thus, the actual amounts as identified in the motion and below are slightly different than as
7 provided in the Agreement. The correct breakdown of payouts from the Gross Settlement
8 Amount of **\$135,000** is provided below:

- 9 a. Individual PAGA Payments to Aggrieved Employees: \$20,164.50;
- 10 b. LWDA PAGA Payment to the LWDA: \$60,493.50;
- 11 c. PAGA Counsel Fees Payment: \$45,000;
- 12 d. PAGA Counsel Litigation Expenses Payment: \$6,592;
- 13 e. Administration Expenses: \$2,750.

14 6. With respect to the cy pres recipient, Bet Tzedek Legal Services ("Bet Tzedek"), I
15 have inquired with Plaintiff and everyone in my law firm and Defendant's counsel, and no one
16 involved with this case has any interest in Bet Tzedek, or its governance. We believe Bet
17 Tzedek is an appropriate cy pres recipient because that organization assists workers and other
18 disadvantaged persons with legal services in Southern California.

19 7. The Court also identified the Release as being problematic, in that it contains
20 extra words and/or is missing words. As such, the parties have amended the Agreement to
21 clarify the Release, and the Release applies only to PAGA penalties that were or reasonably
22 could have been alleged in the lawsuit based on the facts alleged in the operative complaint and
23 PAGA notice. Attached as **Exhibit C** is a true and correct copy of the parties' Amendment to
24 the Settlement Agreement, with new additions shown in bold, and deletions shown in strike-
25 through, for easy reference.

26 8. In addition to the changes identified by the Court with respect to the Settlement
27 Agreement, the parties also amended the PAGA period so that it has a definite end date of
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1 February 22, 2024 (section 1.19), which caps the number of PAGA periods at no more than
2 1,570, such that there was no longer the need for an escalator clause or certain other language in
3 the Agreement. This change was justified because the parties contemplated an approval within 4
4 months of executing the Agreement, and the release now is now more limited in time than it
5 otherwise would be. Moreover, in exchange, the parties further amended the definition of
6 Effective Date in paragraph 1.9, such that the settlement approval date becomes the effective
7 date if there are no objections or opt outs prior to settlement approval, which means it is likely
8 the aggrieved employees and the LWDA will receive their payouts sooner. The parties further
9 amended section 4.3.1, such that there is now a period of time in which aggrieved employees
10 may dispute the pay periods worked as set forth in the Notice of Settlement.

11 8. Based on a Net Settlement Amount to the Aggrieved Employees of \$20,164.50,
12 the estimated high and low payments to the aggrieved employees are \$766.16 and \$12.36,
13 respectively, with the average being \$443.18. Moreover, the approximate PAGA penalties to be
14 paid to Plaintiff are \$234.79.

15 9. The parties have amended the Notice of Settlement to allow aggrieved employees
16 the ability to dispute the number of pay periods they worked, and prepared a Settlement
17 Information Sheet, allowing the aggrieved employees to dispute their pay periods worked, if
18 necessary. Attached collectively as **Exhibit D** are true and correct copies of the Notice of
19 Settlement and Settlement Information Sheet that will be sent to the aggrieved employees.

20 10. Nestor Mejia is a paralegal that works for Bartz Law Group, APC. Mr. Mejia has
21 an AA from West Los Angeles College in Business Administration, and has many years of
22 experience working on employment and wage and hour matters, including PAGA and complex
23 class actions, for my firm and others within California.

24 11. We are no longer seeking the certified mail costs identified in this Court's prior
25 ruling. Attached as **Exhibit E** are the revised costs that my firm is seeking to prosecute this
26 action.

1 **Responses to the Court's Comments and Questions as to the Notice**

2 12. The Notice of Settlement to aggrieved employees has been revised in accordance
3 with the Court's requirements, including as indicated above allowing for aggrieved employees to
4 dispute their pay periods. The Notice further provides an explanation of PAGA, describes the
5 factual allegations of the operative complaint, describes the scope of the released claims, states
6 the gross settlement amount, net settlement amount, and the portions allocated to the LWDA and
7 the aggrieved employees, explains how the individual payments will be calculated, describes the
8 recipient's responsibility for any taxes payable on the amount received, and notifies aggrieved
9 employees that they cannot opt out of the settlement, and that they will be bound by the release
10 even if they do not cash their checks. The Notice further advised the aggrieved employees not
11 to contact the Court with any questions. (See **Exhibit D** Notice of Settlement to aggrieved
12 employees). We have not redlined the Notice of Settlement because, based on the Court's prior
13 comments, there have been wholesale changes to it, such that we do not believe a redline version
14 would be helpful to the Court's review.

15 13. With respect to translating the Notice, based on information learned from the
16 Plaintiff and defense counsel, there does not appear to be any basis to provide anything other
17 than a Spanish translation. The Spanish translation is a certified translation, of the Notice of
18 Settlement and Settlement Information Sheet, a true and correct copy of which is attached hereto
19 as **Exhibit F**.

20 **Responses to the Court's Comments and Questions as to the Order and Judgment**

21 14. Concurrently with the other supplemental papers, Plaintiff also has addressed this
22 Court's comments with respect to the Proposed Judgment, by: (1) styling it as a Proposed Order
23 and Judgment; (2) removing counsel's information from the caption page of the Proposed Order
24 and Judgment; (3) providing that the Court finds the settlement to be fair to those affected,
25 reasonable and adequate; (4) including the gross settlement amount, the net settlement amount,
26 and a description of each allocation of the consideration; (5) describing all consideration being
27 received by the plaintiff, including individual and PAGA claims; (6) explaining how the amount
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1 payable to each aggrieved employee will be calculated; (7) describing all consideration being
2 received by the aggrieved employees; (8) including a statement that the amount of consideration
3 will be subject to the 75%/25% allocation required by Labor Code section 2699(i); (9) including
4 the amounts sought for settlement administration fees and costs; and (10) stating that the court
5 approves the appointment of the third-party settlement administrator and orders the settlement
6 administrator to effectuate the settlement in accordance with the settlement agreement and any
7 amendments thereto. *See* concurrently filed Proposed Order and Judgment.

8 15. The parties propose March 6, 2025 at 9:00 a.m., for the Final Accounting
9 Hearing, and Plaintiff's counsel will submit a final administrator's report at least 9 court days
10 before the hearing addressing the status of the settlement administration, including actual
11 amounts paid to the aggrieved employees and the other amounts distributed under the settlement,
12 including any uncashed checks.

13 16. The settlement agreement and the amendment, along with the Notice of
14 Settlement and Settlement Information Sheet (including the English version and Spanish
15 translation) are attached to the Proposed Order and Judgment as exhibits.

16 17. My office provided the supplemental brief, my supplemental declaration, and
17 other supplemental papers filed in support of the motion for PAGA settlement approval to the
18 LWDA via uploading the documents the California DIR/LWDA's website on the same date as
19 the filing of those supplemental documents with the Court.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed on June 5, 2024, at Irvine, California.

22 //Aaron A. Bartz//
23 Aaron A. Bartz
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EXHIBIT A

Aaron A. Bartz, Esq. (SBN 198722)
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Attorneys for Plaintiff LUKE KOEHLER, on behalf of himself and other aggrieved employees

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

LUKE KOEHLER, on behalf of himself and
other aggrieved employees,

Plaintiffs,

vs.

SEA POINTE CONSTRUCTION AND
DEVELOPMENT, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 30-2022-01297787-CU-OE-CXC

[Assigned for All Purposes to:
The Hon. Melissa R. McCormick, Dept.
CX104]

**NOTICE OF RULING RE PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Next Hearing Date:

Date: June 20, 2024
Time: 2:00 p.m.
Dept: CX104

Action Filed: December 19, 2022
Trial Date: None Set

1 **TO THE COURT AND ALL PARTIES OF RECORD:**

2 On February 22, 2024, at 2:00 p.m., the Court held a regularly scheduled hearing
3 regarding Plaintiff's Motion to Approve PAGA Settlement, the Honorable Melissa R.
4 McCormick, presiding, in Department CX104 of the Superior Court of the State of California,
5 County of Orange. The Court issued a Tentative Ruling attached as Exhibit 1, which became the
6 Order of the Court.

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9 Dated: February 23, 2024

BARTZ LAW GROUP, APC

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11 By: /s/ Aaron A. Bartz
12 Aaron A. Bartz
13 Attorneys for Plaintiff LUKE KOEHLER and
14 all other aggrieved employees
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EXHIBIT 1

**LAW & MOTION CALENDAR
TENTATIVE RULINGS**

February 22, 2024

**Judge Melissa R. McCormick
Dept. CX104**

Department CX104 hears law and motion on Thursdays at 2:00 p.m.

Court reporters: Official court reporters typically are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth on the court's website at www.occourts.org.

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 9:00 a.m. the day of the hearing. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted.

Submitting on tentative rulings: If all parties intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5304. Please do not call the department unless all parties submit on the tentative ruling. If all parties submit on the tentative ruling and so advise the court, the tentative ruling will become the court's final ruling and the prevailing party shall give notice of the ruling.

Appearances and public access: Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

Photographing, filming, recording and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also might make a different order. See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442 n.1.

3	Koehler v. Sea Pointe Construction and Development, Inc.	<u>Plaintiff Luke Koehler's Motion for Approval of PAGA Settlement</u> "Because an aggrieved employee's action under the Labor Code Private Attorneys General Act of 2004 functions as a substitute

	2022-01297787	for an action brought by the government itself, a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government.” <i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969, 986. PAGA settlements are subject to trial court review “to determine whether [they are] fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” <i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5th 56, 77. The court has reviewed and considered the papers filed in support of plaintiff’s motion for approval of a \$135,000 PAGA settlement. The court has the following questions and comments: 1. Plaintiff’s brief states that plaintiff and two other former employees “will be receiving a total amount of \$90,000 to settle their individual wage claims against Defendant.” Brief (ROA 36) at 1 n.1. What amount is each individual receiving? Did the two other former employees file lawsuits against defendant? What are the individual claims to be released by plaintiff? <u>As to the settlement:</u> 2. The amount of PAGA penalties to be paid differs in the settlement agreement (Bartz Decl. (ROA 37) Ex. 1 (¶ 3.2.3), on the one hand, and the motion (Brief (ROA 36) at 1:13) and Bartz Declaration (ROA 37, ¶ 6), on the other. The parties should address this discrepancy in their supplemental filings, including amending the settlement agreement if necessary. 3. The settlement agreement (Bartz Decl. (ROA 37) Ex. 1 (¶ 4.3.3) states that any uncashed funds will be distributed to Bet Tzedek Legal Services. Counsel must provide a declaration demonstrating the propriety of the cy pres recipient. The parties and their counsel must submit declarations stating whether they have an interest in the cy pres recipient, including in its governance. 4. The Release by Aggrieved Employees (Bartz Decl. (ROA 37) Ex. 1 (¶ 5.2) appears to contain extra words and/or to be missing words (“all claims any PAGA claims”). In addition, the release must be tailored to the claims for PAGA penalties that were or reasonably could have been asserted in the lawsuit based on the facts alleged in the operative complaint and PAGA notice letter. 5. Counsel should provide the estimated high and low payments to the aggrieved employees, and the expected amount to be received by plaintiff.
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		6. Will the aggrieved employees be able to dispute the number of pay periods? If so, the settlement agreement (and the notice) should be amended to address the procedure for disputes. 7. Plaintiff's counsel's invoice (Bartz Decl. (ROA 37) Ex. 5) states Nestor Mejia worked on the matter. Counsel must provide information regarding this individual's title, qualifications and experience. 8. Plaintiff seeks \$7.85 in certified mail postage costs. Plaintiff should provide legal authority for an award of postage costs. <u>As to the notice:</u> 9. The notice should be revised consistent with the above. 10. The notice must (i) provide an explanation of PAGA; (ii) describe the factual allegations of the operative complaint; (iii) describe the scope of the released claims; (iv) state the gross settlement amount, net settlement amount, and the portions allocated to the LWDA and the aggrieved employees; (v) explain how the individual payments will be calculated; (vi) describe the recipient's responsibility for any taxes payable on the amount received; and (vii) notify the aggrieved employees that they cannot opt out of the settlement and that, even if they do not cash their checks, they will be bound by the release. 11. The settlement administrator's bid (Bartz Decl. (ROA 37) Ex. 7) states that a language translation will be prepared, and the Bartz Declaration states the notice will be sent in English and Spanish. The notice (in English and Spanish) should be attached to the proposed order and judgment as an exhibit. The translation must be a certified translation. Should the notice be translated into any other languages? 12. The notice should advise the aggrieved employees not to contact the court with questions. <u>As to the proposed order and judgment:</u> 13. The proposed judgment should be styled as a proposed order and judgment. 14. The counsel information should be removed from the caption page of the proposed order and judgment. 15. The proposed order and judgment should state that the court finds the settlement to be fair to those affected, reasonable and adequate.
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		16. The proposed order and judgment should include the gross settlement amount, the net settlement amount, and a description of each allocation of the consideration. 17. The proposed order and judgment should describe all consideration being received by plaintiff, including for plaintiff's individual claims and PAGA claims. 18. The proposed order and judgment should include an explanation of how the amount payable to each aggrieved employee will be calculated. 19. The proposed order and judgment should describe all consideration being received by the aggrieved employees. 20. The proposed order and judgment should include a statement that the amount of consideration will be subject to the 75%/25% allocation required by Labor Code section 2699(i). 21. The proposed order and judgment should include the amounts sought for settlement administration fees and costs. 22. The proposed order and judgment should state that the court approves the appointment of the third-party settlement administrator and orders the settlement administrator to effectuate the settlement in accordance with the settlement agreement and any amendments thereto. 23. The parties should propose a date for the final accounting hearing. Should the motion for approval be granted, the court will hold a final accounting hearing on a Thursday at 9:00 a.m. Counsel shall submit a final administrator's report at least 9 court days before the hearing addressing the status of the settlement administration, including the actual amounts paid to the aggrieved employees and the other amounts distributed under the settlement, including any uncashed checks. 24. The settlement agreement and any amendments thereto and the notice (in English and any other languages) should be attached to the proposed order and judgment as exhibits. The hearing on plaintiff's motion for approval is continued to <u>June 20, 2024 at 2:00 p.m.</u> in Department CX104 to permit the parties to address and respond to the above issues. See also Department CX104 Guidelines for Approval of Class Action Settlements and PAGA Settlements (www.occourts.org). A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. If required, an amendment to the settlement agreement shall be submitted, rather than an "amended settlement agreement," to streamline the court's review of the documents. The parties
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		shall provide redlined copies of any revised documents (e.g., revised settlement agreement, revised notice, revised proposed order). Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental brief and any amended settlement documents, and file a proof of service.

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On February 23, 2024, I served true copies of the foregoing documents described as: **NOTICE OF RULING RE PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT** on the interested parties in this action, addressed as follows:

Via Online Submission

() BY U.S. MAIL: The documents were placed in sealed, addressed envelopes on the above date and placed for collection and mailing at my place of business. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Newport Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 23, 2024.

/s/ Chandler Nelson /s/
Chandler Nelson

EXHIBIT B

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Luke Koehler (“Plaintiff”) and Defendant Sea Pointe Construction and Development, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant filed on December 21, 2022, Case No. 30-2022-01297787-CU-OE-CXC and pending in Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” means Phoenix Settlement Administrators (“Phoenix”), 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 in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means a person employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved 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 Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Orange.
- 1.8. “Defense Counsel” means Littler Mendelson, P.C.
- 1.9. “Effective Date” means the date by which this Agreement is approved by the Court and that approval becomes final. The approval becomes final when the later of the following events occur: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the settlement approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the settlement approval has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal,

writ, or other appellate proceeding has upheld the settlement approval with no right by any appellant or objector to pursue further remedies or relief. In this regard, it is the intention of the Parties that the settlement shall not become effective until the Court's approval of the settlement is completely final, and no further recourse exists by an appellant or objector who seeks to contest the settlement. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay the Gross Settlement Amount.

- 1.10. "Gross Settlement Amount" means \$135,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. 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, and the Administrator's Expenses Payment.
- 1.11. "Individual PAGA Payment" means the Aggrieved Employees' pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods each Aggrieved Employee worked during the PAGA Period.
- 1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to the LWDA as the LWDA PAGA Payment and to Aggrieved Employees as Individual PAGA Payments.
- 1.16. "PAGA Counsel" means Bartz Law Group APC, the attorneys representing the Plaintiff in the Action.
- 1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.19. "PAGA Period" means the period from October 13, 2021 to the date of the PAGA settlement approval.
- 1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).

- 1.21. "PAGA Notice" means Plaintiff's October 13, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.
- 1.23. "Plaintiff" means Luke Koehler, the named plaintiff in the Action.
- 1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. "Released Parties" means: Defendant and any of its past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as well as each of their past, present, and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant
- 1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28. "Defendant" means Defendant Sea Pointe Construction and Development, Inc.

2. RECITALS.

- 2.1. On October 13, 2022, Plaintiff gave written notice to Defendant and the LWDA by sending the PAGA Notice pursuant to Labor Code section 2699.3. subd.(a).
- 2.2. On December 21, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for Civil Penalties Under the Private Attorneys General Act. The Complaint is the operative complaint in the Action (the "Operative Complaint"). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.3. After filing the Complaint, the Parties engaged in substantive settlement discussions, and Defendant produced informal discovery to Plaintiff, including the total number of Aggrieved Employees and pay periods during the PAGA Period, as well as hundreds of pages of time and payroll records, and Defendant's policies and procedures, including employee handbooks, and policies relating to payment of wages, clocking in and out, meal periods, rest periods, reimbursement policies, and similar wage policies, from October 2021 to the present.

- 2.4. On September 5, 2023, the Parties attended Mediation before prominent wage and hour mediator Laurie Saldana. After a full day of negotiations, and arms-length bargaining, the Parties were able to reach a settlement in this Action.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$135,000 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadlines stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 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:
- 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of one-third, which is \$45,000, and PAGA Counsel Litigation Expenses Payment of not more than \$7,000. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. 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. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fees Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$5,000 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 \$5,000, the Administrator will allocate the remainder to the Net Settlement Amount.
- 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$79,000 to be paid from the Gross Settlement Amount, with 75% (\$59,250)

allocated to the LWDA PAGA Payment and 25% (\$19,750) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$19,750) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. 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. Aggrieved Employee Pay Periods. Based on a review of its records shared ahead of the mediation, Defendant estimates there are 42 Aggrieved Employees who worked a total of 1,310 PAGA Pay Periods in the aggregate for the time period between October 13, 2021 and August 16, 2023.

4.2. Aggrieved Employee Data. Within 5 days after the latter of 1) the Effective Date, and 2) the date the Settlement Administrator provides Defendant with instructions to securely transmit the Aggrieved Employee Data to the Administrator, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved 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 Aggrieved Employee Data. The Aggrieved Employee Data shall not be shared with PAGA Counsel.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 10 days after the latter of 1) Effective Date, and 2) the date the Settlement Administrator provides Defendant with wire instructions for depositing the Gross Settlement Amount and verbally verifies the authenticity of those wire instructions with Defendant by a telephone call prior to the transfer, initiated by Defendant using the Settlement Administrator's telephone number published on its known website.

4.3.1 Payments from the Gross Settlement Amount. Within 10 days after Defendant 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 Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment.

4.3.2 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved 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.

4.3.3 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 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 Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.3.3. For any Aggrieved 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 Bet Tzedek Legal Services.

4.3.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts, allegations and/or claims pled for PAGA penalties contained in the Operative Complaint and the PAGA Notice, including claims for penalties under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged, specifically California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, 2802,

2698, et seq. ("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, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims any PAGA claims which reasonably could have been alleged under the facts, allegations, and/or claims pled for PAGA penalties based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including claims for penalties under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged, specifically California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, 2802, 2698 et seq.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. Plaintiff agrees to prepare and file an application or motion for approval of this Settlement.

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to

serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents and all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator.

- 6.2 Responsibilities of Defense Counsel. Defendant agrees to not oppose the motion for PAGA approval to the extent it comports with this Agreement and associated paperwork for the motion has been provided to Defendant at least seven (7) calendar days prior to filing it with the Court.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix to serve as the Administrator and verified that, as a condition of appointment, Phoenix 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 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 ("QSF") under US 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. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendant estimates that, between October 13, 2021 and October 30, 2023, there are an estimated 1,427 PAGA Pay Periods. In the event that the actual PAGA Pay Periods are more than 10% greater than the number of represented PAGA Pay Periods (i.e. if there are more than 1,570 PAGA Pay Periods), the Gross Settlement Amount shall increase in proportion to the increase in PAGA Pay Periods (i.e. if the number of PAGA Pay Periods is 12% greater than 1,427, the Gross Settlement Amount shall increase by 2%).

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 as are permitted by law.

- 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, 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.

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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant'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, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and 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 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.
- 10.4 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.
- 10.5 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant 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 CFR Part 10, as amended) or otherwise.
- 10.6 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.
- 10.7 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.8 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.
- 10.9 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.
- 10.10 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

10.11 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of information derived from or related to the Aggrieved Employee Data provided to PAGA Counsel by Defendant or the Settlement Administrator 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 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff and PAGA Counsel shall destroy all paper and electronic versions of any information derived from the Aggrieved Employee Data received from Defendant or the Settlement Administrator unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of such information. Nothing in this paragraph shall entitle Plaintiff to receive or review the Aggrieved Employee Data sent by Defendant to the Settlement Administrator pursuant to paragraph 4.2 of this Agreement.

10.12 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.

10.13 Calendar Days. Unless otherwise noted, all reference 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.

10.14 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:

Bartz Law Group APC
c/o Aaron A. Bartz
5151 California Ave., Suite 100
Irvine, CA 92617
aaron@bartzlawgroup.com

To Defendant:

Littler Mendelson, P.C.
c/o Andrew H. Woo
5200 North Palm Avenue, Suite 302
Fresno, CA 93704
awoo@littler.com

- 10.15 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.
- 10.16 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 that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.
- 10.17 Plaintiff represents that he has complied with any and all prefiling requirements for the PAGA claims released by this Agreement, including but not limited to providing notice to the California Labor and Workforce Development Agency as required by California Labor Code section 2699.3. Plaintiff further agrees to provide any and all notices to the California Labor and Workforce Development Agency required to effectuate this Agreement, including the notice required by California Labor Code section 2699 subdivision (l)(2).
- 10.18 Confidentiality of Settlement. Plaintiff and PAGA Counsel will not make any public disclosure of this Agreement or the settlement effectuated by this Agreement until after the filing of the motion for approval of the Settlement. Plaintiff and PAGA Counsel represent that they have not made any such disclosure. PAGA Counsel will take all steps necessary to ensure that Plaintiff is aware of, and will encourage him to adhere to, the restriction against any public disclosure of the settlement or this Agreement until after the Settlement is approved by the Court. Thereafter, PAGA Counsel and Plaintiff agree not to publicize the terms of this Settlement with the media, including, but not limited to, any newspaper, journal, magazine, website, social media and/or online reporter of settlements or on any website. Nothing in this Agreement prevents Plaintiff from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Plaintiff has reason to believe is unlawful. Nothing in this Agreement shall be construed to waive Plaintiff's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of Defendant, or on the part of the agents or employees of Defendant, when Plaintiff has been required or requested to attend such a proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the legislature.

“PLAINTIFF”

10/20/2023
Dated: _____, 2023

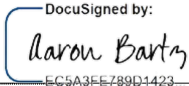
DocuSigned by:

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Luke Koehler

Dated: 10-20-2023
_____, 2023

“PLAINTIFF’S COUNSEL”

BARTZ LAW GROUP, APC

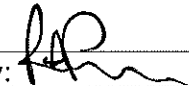
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Aaron Bartz, Attorneys for Plaintiff

Dated: Oct 13th, 2023

“DEFENDANT”

Sea Point Construction and Development,
Inc.

By: 

Its: PRESIDENT

Dated: 10/30/2023
_____, 2023

“DEFENSE COUNSEL”

LITTLER MENDELSON, P.C.



Andrew Woo, Attorneys for Defendant

EXHIBIT C

AMENDMENT TO PAGA SETTLEMENT AGREEMENT

This Amendment to the PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Luke Koehler (“Plaintiff”) and Defendant Sea Pointe Construction and Development, Inc. (“Defendant”), parties to the original Agreement, and by their respective counsel.

It is agreed by all parties to the Agreement the following amendments shall be made to the original Agreement, with new additions shown in bold, and deletions shown in strike-through:

1. Section 1.9 of the Agreement is hereby amended as follows:

1.9 “Effective Date” means the date by which this Agreement is approved by the Court and that approval becomes final. The approval becomes final when the later of the following events occur: (a) **the Agreement is approved by the Court and no person or entity has attempted to opt out or object to the settlement,** or (b) **the Agreement is approved by the Court and one or more persons or entities have opted out or objected to the settlement and (i)** the period for filing any appeal, writ, or other appellate proceeding opposing the settlement approval has elapsed without any appeal, writ, or other proceeding having been filed; ~~(b) (ii)~~ **(i)** any appeal, writ, or other appellate proceeding opposing the settlement approval has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or ~~(c) (iii)~~ **(ii)** any appeal, writ, or other appellate proceeding has upheld the settlement approval with no right by any appellant or objector to pursue further remedies or relief. In this regard, it is the intention of the Parties that the settlement shall not become effective until the Court’s approval of the settlement is completely final, and no further recourse exists by an appellant or objector who seeks to contest the settlement. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay the Gross Settlement Amount. **For the avoidance of doubt, in the event that there are no objections or attempts to opt out as of the date the Agreement is approved by the Court, the Effective Date is the date the Court approves the Agreement.**

2. Section 1.10 of the Agreement is hereby amended as follows:

1.10. “Gross Settlement Amount” means \$135,000.00 which is the total amount Defendant agrees to pay under the Settlement ~~except as provided in Paragraph 8 below.~~ 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, and the Administrator’s Expenses Payment.

3. Section 1.19 of the Agreement is hereby amended as follows:

1.19 “PAGA Period” means the period from October 13, 2021 to **February 22, 2024.** ~~the date of the PAGA settlement approval.~~

4. Section 3.1 of the Agreement is hereby amended as follows:

3.1. Gross Settlement Amount. ~~Except as otherwise provided by Paragraph 8 below,~~ Defendant promises to pay \$135,000 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadlines stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

5. Section 4.3.1 of the Agreement is hereby amended as follows:

4.3.1 **Notice of Settlement and** Payments from the Gross Settlement Amount. Within 10 days after Defendant funds the Gross Settlement Amount, the Administrator will **send a Notice of Settlement to all Aggrieved Employees, providing each Aggrieved Employee with 20 days in which to dispute their Individual PAGA Payment (“Dispute Period”). In the event of a dispute by an Aggrieved Employee, the Settlement Administrator, after consultation with Plaintiff’s and Defendant’s counsel, will make the final determination on the validity of the dispute. Within 15 days after the Dispute Period,** the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment.

6. Section 4.3.3 of the Agreement is hereby amended as follows:

4.3.3 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose **Notice of Settlement and/or** checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned **Notice of Settlement and/or** check the Administrator must re-mail **the Notice of Settlement and/or** checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver **the Notice of Settlement and/or** checks to Aggrieved Employees whose re-mailed **Notice of Settlement and/or** checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

7. Section 5.2 of the Agreement is hereby amended as follows:

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from ~~all claims~~ any PAGA claims which **were or** reasonably could have been alleged under the facts, allegations, and/or claims ~~pled~~ for PAGA penalties ~~based on the PAGA Period facts~~ stated in the Operative Complaint and the PAGA Notice, including claims for penalties under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged, specifically California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3,

226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, 2802, **and** 2698 et seq.

8. Section 8 of the Agreement is hereby deleted in its entirety.
9. All other sections, terms, and conditions of the original Agreement shall remain unchanged, and in full force and effect.

“PLAINTIFF”

Dated: 5/31/2024, 2024

DocuSigned by:

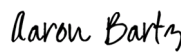
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Luke Koehler

“PLAINTIFF’S COUNSEL”

BARTZ LAW GROUP, APC

Dated: 5/30/2024, 2024

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Aaron Bartz, Attorneys for Plaintiff

“DEFENDANT”

Sea Pointe Construction and
Development, Inc.

Dated: _____, 2024

By: _____
Its: _____

“DEFENSE COUNSEL”

LITTLER MENDELSON, P.C.

Dated: June 5, 2024

DocuSigned by:

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Andrew Woo, Attorneys for Defendant

226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, 2802, **and** 2698 et seq.

8. Section 8 of the Agreement is hereby deleted in its entirety.
9. All other sections, terms, and conditions of the original Agreement shall remain unchanged, and in full force and effect.

“PLAINTIFF”

Dated: _____, 2024

Luke Koehler

“PLAINTIFF’S COUNSEL”

BARTZ LAW GROUP, APC

Dated: _____, 2024

Aaron Bartz, Attorneys for Plaintiff

“DEFENDANT”

Sea Pointe Construction and
Development, Inc.

Dated: June 5th, 2024

Andrew Shore

By: Andrew Shore

Its: President

“DEFENSE COUNSEL”

LITTLER MENDELSON, P.C.

Dated: _____, 2024

Andrew Woo, Attorneys for Defendant

EXHIBIT D

NOTICE OF SETTLEMENT

To: *All current and former non-exempt employees of Sea Pointe Construction and Development, Inc. from October 13, 2021 to February 22, 2024.*

PLEASE READ THIS NOTICE CAREFULLY

ACCORDING TO SEA POINT CONSTRUCTION AND DEVELOPMENT, INC., YOU QUALIFY TO RECEIVE MONEY IN CONNECTION WITH A LEGAL SETTLEMENT. TO ENSURE THAT YOUR PAYMENT IS ACCURATELY CALCULATED, READ THE ENCLOSED SETTLEMENT INFORMATION SHEET AND CONFIRM THAT THE INFORMATION ABOUT YOURSELF AND YOUR EMPLOYMENT WITH SEA POINTE CONSTRUCTION AND DEVELOPMENT, INC. IS CORRECT. IF IT IS CORRECT, YOU DO NOT NEED TO DO ANYTHING; YOU WILL RECEIVE YOUR SHARE OF THE SETTLEMENT. IF THE SETTLEMENT INFORMATION IS INCORRECT, RETURN IT IN ACCORDANCE WITH THE INSTRUCTIONS IN THIS NOTICE.

WHAT IS THIS NOTICE ABOUT?

A settlement (the “Settlement”) has been reached between Plaintiff Luke Koehler (“Plaintiff”) and Defendant Sea Pointe Construction and Development, Inc. (“Defendant”), in the action pending in the Court brought on behalf of the following individuals (the “Aggrieved Employees”):

All current and former non-exempt employees of Defendant in California at any time during the period from October 13, 2021 to February 22, 2024.

WHAT IS THIS LAWSUIT ABOUT?

On December 19, 2022, Plaintiff brought an action entitled “*Koehler v. Sea Pointe Construction and Development, Inc.*”, inclusive (the “Action”), pending before Superior Court of the State of California, for the County of Orange (the “Court”), designated as Case No. 30-2022-01297787.

In the Action, Plaintiff alleged that Defendant failed to properly pay all wages due to Defendant’s employees in California during the period of October 13, 2021 and February 22, 2024, in violation of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, and 2802 of the California Labor Code. Plaintiff sued for civil penalties under the California Labor Private Attorneys General Act (“PAGA”), Cal. Lab. Code § 2698 *et seq.* Under PAGA any recovery of civil penalties is shared between the Labor and Workforce Development Agency (LWDA), which gets 75% of the penalties recovered, and the Aggrieved Employees, who get 25% of the penalties recovered.

Defendant denied and continues to deny all of Plaintiff’s material allegations. Specifically, Defendant contends that it complied with the requirements of the Labor Code and that civil penalties are not recoverable.

After good-faith negotiations in which both sides recognized the substantial risk of an uncertain outcome, Plaintiff and Defendant agreed to settle in the Action pursuant to the terms and conditions of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that Plaintiff’s claims in the

Action has merit or that it has any liability to Plaintiff or the group of individuals he seeks to represent on that claim. On the contrary, Defendant denies any and all such liability.

WHO IS INCLUDED IN THIS SETTLEMENT?

You are included in the Settlement if you fall within the following definition:

All current and former non-exempt employees Sea Pointe Construction and Development, Inc. at any time during period from October 13, 2021, to February 22, 2024.

You are receiving this notice because the Defendant's records indicate that you are one of the Aggrieved Employees.

WHAT WILL I RECEIVE FROM THE SETTLEMENT?

1. **Settlement Amount.** The Gross Settlement Amount is \$135,000. After deducting attorneys' fees, costs, and settlement administration expenses, the Net Settlement Amount is \$80,658. Pursuant to PAGA, 75% of the Net Settlement Amount will go to the LWDA. The remaining 25% of the Net Settlement Amount will be distributed to the Aggrieved Employees in proportion to the number of pay periods that they were an employee of Sea Pointe Construction and Development, Inc.
2. **Payment of Settlement.** It is estimated that the settlement amounts awarded by the Court will be paid on [REDACTED], 2024. Checks for Settlement Shares must be cashed within 180 days after they are issued, or else the funds will go a third party non-profit organization Bet Tzedek Legal Services.
3. **Dispute of Aggrieved Employee Information.** If you dispute the validity of any of the information shown on your enclosed Settlement Information Sheet, including the number of pay periods used to calculate your individual settlement amount, you must report your dispute to the Settlement Administrator to resolve the matter. In order to do so, you must return the enclosed Settlement Information Sheet to the Settlement Administrator by the deadline of [REDACTED], 2024, informing the Settlement Administrator of the fact of the dispute and the basis for your contention that different information is correct for you (including any documentary evidence that you have to support your contention). In the event of such a dispute, Defendant will review payroll and personnel records to verify the correct information. Defendant's records will have a rebuttable presumption of correctness. After consultation with you, Defendant's and Plaintiff's counsel, the Settlement Administrator will make a final determination.
4. **Aggrieved Employee Release.** The Settlement approved by the Court includes a release by Aggrieved Employees of any PAGA claims which were or reasonably could have been alleged under the facts, allegations, and/or claims for PAGA penalties stated in the Operative Complaint and the PAGA Notice, including claims for penalties under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged, specifically California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, 2802, and 2698 et seq. (the Released "Claims").

WHAT ARE MY RIGHTS AS AN AGGRIEVED EMPLOYEE?

1. **Participating in Settlement.** You are one of the Aggrieved Employees, and therefore, you will be bound by the terms of the Settlement and any final judgment that may be entered by the Court and you will be deemed to have released the PAGA claims against Defendant and the other released parties described above. You cannot opt out of the Settlement and, even if you do not cash your settlement check, you will be bound by the above Release. You will be responsible for the payment of any taxes payable on the settlement amount received. As an Aggrieved Employee, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and expenses.
2. **Settlement Information Sheet.** The enclosed Settlement Information Sheet provides the information which your share of the settlement will be calculated and an estimate of your settlement share. If the information in the Settlement Information Sheet (including your mailing address) is correct, you need not return the form. If the information contained in the Settlement Information Sheet is not correct, correct the information on the sheet and return it to the Settlement Administrator. If you believe information (other than your name, mailing address, and the last four digits of your Social Security Number) is incorrect, state on the Settlement Information Sheet what you contend is the correct information and also include any documentation you have to support that contention. The Settlement Information Sheet must be completed and returned to the Settlement Administrator postmarked by no later than [REDACTED], 2024. It is your obligation to keep the Settlement Administrator informed of any changes in your mailing address until your settlement share is received. Failing to provide the Settlement Administrator with any changes of your mailing address may prevent you from receiving your settlement share.
3. **The Settlement Administrator's Address.** If applicable, send your corrected Settlement Information Sheet to the Settlement Administrators at the following address.

Koehler v. Sea Pointe Construction and Development, Inc.
c/o Phoenix Class Action Administration
P.O. Box 7208
Orange, CA 92863
(800) 523-5773

GETTING MORE INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which will be on file with the Clerk of the Court. The pleadings and other records in this litigation including the Settlement Agreement, may be examined at the Office of the Clerk of the Court, Superior Court of California, County of Orange, 700 Civic Center Drive West, Santa Ana, California 92701, during the Clerk's normal business hours; or you may contact Plaintiff's counsel as follows: Aaron Bartz, Bartz Law Group, APC, 5151 California Ave., Suite 100, Irvine, California 92617, (949) 504-4413.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS
SETTLEMENT OR THE SETTLEMENT ADMINISTRATION PROCESS. YOU MAY,
HOWEVER, CALL PLAINTIFF'S COUNSEL AS LISTED ABOVE.**

BY ORDER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

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

LUKE KOEHLER, on behalf himself and other
aggrieved employees,

Plaintiffs,

v.

SEA POINTE CONSTRUCTION AND
DEVELOPMENT, INC., a California
corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 30-2022-01297787-CU-OE-CXC

SETTLEMENT INFORMATION SHEET

I. WHY DID I GET THIS INFORMATION SHEET?

You are receiving this information sheet because you are an aggrieved employee in “*Koehler v. Sea Pointe Construction and Development, Inc.*”, inclusive (the “Action”), pending before Superior Court of the State of California, for the County of Orange (the “Court”), designated as Case No. 30-2022-01297787. A settlement (the “Settlement”) has been reached between Plaintiff Luke Koehler (“Plaintiff”) and Defendant Sea Pointe Construction and Development, Inc. (“Defendant”), in the action pending in the Court brought on behalf of the following individuals (the “Aggrieved Employees”):

All current and former non-exempt employees of Defendant in California at any time during the period from October 13, 2021 to February 22, 2024.

If this information is accurate, do not return this sheet.

If the information below is not correct, provide the corrected information, sign and date this sheet (at the bottom of the page), and send it by mail, no later than 20 days from mailing of the Notice, to the Settlement Administrator at the following address:

Phoenix Class Action Administration
[Address]

II. PERSONAL INFORMATION

Name:

Address:

Address:

Number of Individual Pay Periods:

This is the number of pay periods during which you performed work as a non-exempt hourly employee for Defendant between October 13, 2021 and February 22, 2024.

If any of the information shown above is not correct, please indicate the correct information below.

If you are disputing your pay periods, state what you believe to be the correct number of pay periods and attach any documentation that supports your contention. Do not include any pay periods before October 13, 2021, or any pay periods after February 22, 2024.

Corrected name:

Corrected mailing address:

Corrected last four digits of Social Security number (you are **not** required to provide your entire SSN):

Corrected number of pay periods:

Signature

Date

EXHIBIT E

Activities Export

06/01/2024

1:43 PM

Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
05/20/2024	\$	Filing fees re Supplemental Motion for Approval of PAGA Settlement (anticipated). ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$100.00	-	\$100.00
04/22/2024	\$	Document access fees from OCSC. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$13.66	-	\$13.66
02/23/2024	\$	Notice of Ruling filing fee. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Chandler Nelson	1.00	\$17.20	-	\$17.20
11/09/2023	\$	One Legal Filing re Status Joint Report Confirmation #29387224 ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$15.20	-	\$15.20
11/09/2023	\$	One Legal re Motion to Approve PAGA settlement Confirmation #29386510 ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$75.20	-	\$75.20
09/13/2023	\$	JT Calcs - Expert Witness Fees. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$900.00	-	\$900.00
09/09/2023	\$	Document access fees from OCSC. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$7.50	-	\$7.50
08/23/2023	\$	Mediation Fees - Mediation	00030-Koehler	Aaron Bartz	1.00	\$3,500.00	-	\$3,500.00
							\$0.00 0.00h	\$6,592.07 0.00h

Activities Export

06/01/2024

1:43 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		Central. ● Unbilled	Koehler v Sea Pointe Construction Development, Inc.					
07/13/2023	\$	One Legal Joint Status Report filingConfirmation #28729821 ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$12.95	-	\$12.95
04/14/2023	\$	One Legal Notice of Posting Jury Fees ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$165.20	-	\$165.20
03/16/2023	\$	One Legal filing of CMS Confirmation #28120063 ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$12.95	-	\$12.95
03/10/2023	\$	One Legal Filing Confirmation #28090399 - Joint Status Report ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$12.95	-	\$12.95
01/20/2023	\$	One Legal POS sub service filing Confirmation #27837028 ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$15.20	-	\$15.20
01/12/2023	\$	Nationwide legal Process of Service ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$204.56	-	\$204.56
01/02/2023	\$	One Legal Filing fees. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development,	Nestor Mejia	1.00	\$14.75	-	\$14.75
							\$0.00 0.00h	\$6,592.07 0.00h

Activities Export

06/01/2024
1:43 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
			Inc.					
12/21/2022	\$	Filing Fees re PAGA Complaint. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$1,449.75	-	\$1,449.75
10/13/2022	\$	PAGA Filing Fee. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$75.00	-	\$75.00
							\$0.00 0.00h	\$6,592.07 0.00h

EXHIBIT F

NOTIFICACIÓN DE ACUERDO

Para: *Todos los empleados actuales y anteriores no exentos de Sea Pointe Construction and Development, Inc. desde el 13 de octubre de 2021 hasta el 22 de febrero de 2024.*

LEA ATENTAMENTE ESTE AVISO

DE ACUERDO CON SEA POINT CONSTRUCTION AND DEVELOPMENT, INC., USTED REÚNE LOS REQUISITOS PARA RECIBIR DINERO EN RELACIÓN CON UN ACUERDO LEGAL. PARA ASEGURARSE DE QUE SU PAGO SE CALCULE CON EXACTITUD, LEA LA HOJA DE INFORMACIÓN SOBRE EL ACUERDO ADJUNTA Y CONFIRME QUE LA INFORMACIÓN SOBRE USTED Y SU EMPLEO EN SEA POINT CONSTRUCTION AND DEVELOPMENT, INC. ES CORRECTA. SI ES CORRECTA, NO NECESITA HACER NADA; RECIBIRÁ SU PARTE DE LA LIQUIDACIÓN. SI LA INFORMACIÓN DE LA LIQUIDACIÓN ES INCORRECTA, DEVUÉLVALA DE ACUERDO CON LAS INSTRUCCIONES DE ESTE AVISO.

¿DE QUÉ TRATA ESTE AVISO?

Se ha llegado a un acuerdo (el “Acuerdo”) entre el demandante Luke Koehler (“Demandante”) y el demandado Sea Pointe Construction and Development, Inc. (“Demandado”), en la acción pendiente ante el Tribunal interpuesta en nombre de las siguientes personas (los “Empleados Agraviados”):

Todos los empleados actuales y anteriores no exentos del Demandado en California en cualquier momento durante el período comprendido entre el 13 de octubre de 2021 y el 22 de febrero de 2024.

¿DE QUÉ SE TRATA ESTA DEMANDA?

El 19 de diciembre de 2022, el Demandante interpuso una demanda titulada “*Koehler v. Sea Pointe Construction and Development, Inc.*”, inclusive (la “Acción”), pendiente ante el Tribunal Superior del Estado de California, para el Condado de Orange (el “Tribunal”), designado como Caso No. 30-2022-01297787.

En la Demanda, el Demandante alegó que el Demandado no pagó adecuadamente todos los salarios adeudados a los empleados del Demandado en California durante el período comprendido entre el 13 de octubre de 2021 y el 22 de febrero de 2024, en violación de las secciones 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5 y 2802 del Código Laboral de California. El Demandante interpuso una demanda para obtener sanciones civiles en virtud de la Ley Laboral de Abogados Generales Privados de California (“PAGA”), Código Laboral de California § 2698 et seq. En virtud de la PAGA, toda recuperación de sanciones civiles se reparte entre la Agencia de Trabajo y Desarrollo de la Mano de Obra (LWDA), que obtiene el 75% de las sanciones recuperadas, y los Empleados Agraviados, que obtienen el 25% de las sanciones recuperadas.

El Demandado negó y continúa negando todas las alegaciones materiales del Demandante. Específicamente, el Demandado sostiene que cumplió con los requisitos del Código Laboral y que las sanciones civiles no son recuperables.

Tras negociaciones de buena fe en las que ambas partes reconocieron el riesgo sustancial de un resultado incierto, el Demandante y el Demandado llegaron a un acuerdo en la Demanda de conformidad con los términos y condiciones del Acuerdo.

El Acuerdo representa un compromiso y un arreglo de reclamaciones muy disputadas. Nada en el Acuerdo pretende ser o será interpretado como una admisión por parte del Demandado de que las reclamaciones del Demandante en la Acción tienen mérito o que tiene alguna responsabilidad ante el Demandante o el grupo de individuos que pretende representar en dicha reclamación. Por el contrario, el Demandado niega toda y cualquier responsabilidad de ese tipo.

¿QUIÉN ESTÁ INCLUIDO EN ESTE ACUERDO?

Usted está incluido en el Acuerdo si entra dentro de la siguiente definición:

Todos los empleados actuales y anteriores no exentos Sea Pointe Construction and Development, Inc. en cualquier momento durante el período comprendido entre el 13 de octubre de 2021 y el 22 de febrero de 2024.

Usted recibe esta notificación porque los registros del Demandado indican que usted es uno de los Empleados Agraviados.

¿QUÉ RECIBIRÉ DEL ACUERDO?

1. **Importe de la liquidación.** El importe bruto de liquidación asciende a \$135,000. Después de deducir los honorarios de los abogados, los costos y los gastos de administración del acuerdo, el monto neto de liquidación es de \$80,658. De conformidad con PAGA, el 75% del importe neto de liquidación se destinará a la LWDA. El 25% restante del monto neto de liquidación se distribuirá entre los Empleados Agraviados en proporción al número de períodos de pago en que fueron empleados de Sea Pointe Construction and Development, Inc.
2. **Pago de la liquidación.** Se estima que los importes de liquidación concedidos por el Tribunal se pagarán el [REDACTED], 2024. Los cheques de las acciones de liquidación deben cobrarse en los 180 días siguientes a su emisión, o de lo contrario los fondos irán a parar a una tercera organización sin ánimo de lucro Bet Tzedek Legal Services.
3. **Información del Empleado Agraviado.** Si impugna la validez de cualquiera de los datos que figuran en la Hoja de información de la liquidación adjunta, incluido el número de períodos de pago utilizados para calcular el importe de su liquidación individual, debe comunicar su impugnación al Administrador del acuerdo para que resuelva la cuestión. Para ello, debe devolver la Hoja de Información de la liquidación adjunta al Administrador del Acuerdo antes de la fecha límite de [REDACTED], 2024, informando al Administrador del Acuerdo del hecho de la disputa y la base de su argumento de que la información diferente es correcta para usted (incluyendo cualquier prueba documental que tenga para apoyar su argumento). En caso de tal disputa, el Demandado revisará los registros de nóminas y de personal para verificar la información correcta. Los registros del Demandado tendrán una presunción refutable de corrección. Después de consultar con usted, los abogados del Demandado y del Demandante, el Administrador del Acuerdo tomará una determinación final.
4. **Liberación del Empleado Agraviado.** El Acuerdo aprobado por el Tribunal incluye una exoneración por parte de los Empleados Agraviados de cualquier reclamación PAGA que se haya alegado o que razonablemente podría haberse alegado en virtud de los hechos, alegaciones y/o reclamaciones de sanciones PAGA expuestos en la Denuncia Operativa y en la Notificación PAGA, incluidas las reclamaciones de sanciones en virtud del Código Laboral de California y de las Órdenes Salariales de la Comisión de Bienestar Industrial de California que se alegaron,

específicamente los §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, 2802 y 2698 et seq. del Código Laboral de California. (las “Reclamaciones” Liberadas).

¿CUÁLES SON MIS DERECHOS COMO EMPLEADO AGRAVIADO?

1. **Participar en la liquidación.** Usted es uno de los Empleados Agraviados y, por lo tanto, estará obligado por los términos del Acuerdo y por cualquier sentencia definitiva que pueda dictar el Tribunal y se considerará que ha liberado las reclamaciones PAGA contra el Demandado y las otras partes liberadas descritas anteriormente. Usted no puede optar por no participar en el Acuerdo y, aunque no cobre su cheque de la liquidación, estará obligado por la Exoneración arriba mencionada. Usted será responsable del pago de cualquier impuesto pagadero sobre el importe del acuerdo recibido. Como Empleado Agraviado, usted no será responsable del pago de los honorarios de los abogados ni del reembolso de los gastos del litigio, a menos que contrate a su propio abogado, en cuyo caso usted será responsable de sus propios honorarios y gastos.
2. **Hoja de información sobre la liquidación.** La Hoja de información sobre la liquidación adjunta proporciona la información con la que se calculará su parte de la liquidación y una estimación de su parte de la liquidación. Si la información que figura en la Hoja de información sobre la liquidación (incluida su dirección postal) es correcta, no es necesario que devuelva el formulario. Si la información contenida en la Hoja de Información sobre la Liquidación no es correcta, corrija la información de la hoja y devuélvala al Administrador de la Liquidación. Si cree que la información (aparte de su nombre, dirección postal y los cuatro últimos dígitos de su número de la Seguridad Social) es incorrecta, indique en la Hoja de información sobre la liquidación cuál es la información que considera correcta e incluya también cualquier documentación que tenga para respaldar dicha afirmación. La Hoja de información sobre la liquidación debe llenarse y devolverse al Administrador del Acuerdo con matasellos no posterior a , 2024. Es su obligación mantener informado al Administrador del Acuerdo de cualquier cambio en su dirección postal hasta que reciba su parte del acuerdo. No comunicar al Administrador del Acuerdo cualquier cambio de su dirección postal puede impedirle recibir su parte del acuerdo.
3. **Dirección del Administrador del Acuerdo.** Si procede, envíe su Hoja de información sobre la liquidación corregida a los Administradores de la Liquidación a la siguiente dirección.

Koehler v. Sea Pointe Construction and Development, Inc.
c/o Phoenix Class Action Administration
Apartado postal 7208
Orange, CA 92863
(800) 523-5773

OBTENER MÁS INFORMACIÓN

Lo anterior es un resumen de los términos básicos del acuerdo. Para conocer los términos y condiciones precisos del Acuerdo, se le remite al Acuerdo de Conciliación detallado, que estará archivado en la Secretaría del Tribunal. Los alegatos y otros expedientes de este litigio, incluido el Acuerdo de Conciliación, pueden examinarse en la Oficina del Secretario del Tribunal, Tribunal Superior de California, Condado de Orange, 700 Civic Center Drive West, Santa Ana, California 92701, durante el horario normal de trabajo del Secretario; o puede ponerse en contacto con el abogado del Demandante de

la siguiente manera: Aaron Bartz, Bartz Law Group, APC, 5151 California Ave., Suite 100, Irvine, California 92617, (949) 504-4413.

POR FAVOR, NO SE PONGA EN CONTACTO CON EL TRIBUNAL PARA OBTENER INFORMACIÓN RELATIVA A ESTE ACUERDO O AL PROCESO DE ADMINISTRACIÓN DEL MISMO. SIN EMBARGO, PUEDE LLAMAR AL ABOGADO DEL DEMANDANTE QUE SE INDICA MÁS ARRIBA.

POR ORDEN DEL TRIBUNAL SUPERIOR DEL ESTADO DE CALIFORNIA

TRIBUNAL SUPERIOR DEL ESTADO DE CALIFORNIA
PARA EL CONDADO DE ORANGE

LUKE KOEHLER, en su nombre y en el de
otros empleados perjudicados,

Demandantes,

v.

SEA POINTE CONSTRUCTION AND
DEVELOPMENT, INC., una corporación de
California; incluyendo a los 100 NN

Demandados.

CASO NO. 30-2022-01297787-CU-OE-CXC

HOJA INFORMATIVA DE LIQUIDACIÓN

I. ¿POR QUÉ HE RECIBIDO ESTA HOJA INFORMATIVA?

Usted recibe esta hoja informativa porque es un empleado agraviado en “*Koehler v. Sea Pointe Construction and Development, Inc.*”, *inclusive* (la “Acción”), pendiente ante el Tribunal Superior del Estado de California, para el Condado de Orange (el “Tribunal”), designado como Caso No. 30-2022-01297787. Se ha alcanzado un acuerdo (el “Acuerdo”) entre el demandante Luke Koehler (“Demandante”) y el demandado Sea Pointe Construction and Development, Inc. (“Demandado”), en la acción pendiente ante el Tribunal interpuesta en nombre de las siguientes personas (los “Empleados Agraviados”):

Todos los empleados actuales y anteriores no exentos del Demandado en California en cualquier momento durante el período comprendido entre el 13 de octubre de 2021 y el 22 de febrero de 2024.

Si esta información es correcta, no devuelva esta hoja.

Si la información que figura a continuación no es correcta, proporcione la información corregida, firme y feche esta hoja (en la parte inferior de la página) y envíela por correo, a más tardar 20 días después del envío de la Notificación, al Administrador del Acuerdo a la siguiente dirección:

Phoenix Class Action Administration
[Dirección]

II. INFORMACIÓN PERSONAL

Nombre:

Dirección:

Dirección:

Número de períodos de pago individuales:

Este es el número de periodos de pago durante los cuales realizó trabajo como empleado por horas no exento para el Demandado entre el 13 de octubre de 2021 y el 22 de febrero de 2024.

Si alguno de los datos mostrados anteriormente no es correcto, por favor indique la información correcta a continuación.

Si impugna los periodos de pago, indique el número de periodos de pago que considera correcto y adjunte la documentación que respalde su afirmación. No incluya ningún periodo de pago anterior al 13 de octubre de 2021 ni ningún periodo de pago posterior al 22 de febrero de 2024.

Nombre corregido:

Dirección postal corregida:

Corrección de las cuatro últimas cifras del número de la Seguridad Social (**no** está obligado a facilitar el número de la Seguridad Social completo):

Número corregido de períodos de pago:

Firma

Fecha