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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ARMANDO GARCIA-AVILA, as an individual and on behalf of all others similarly situated, Plaintiff, v. ORANGE COUNTY ERECTORS, INC., a California Corporation; and DOES 1 through 100, Defendants.	Case No.: 30-2022-01284202-CU-OE-CXC [*Assigned for all purposes to the Honorable Melissa R. McCormick, Dept. CX104*] **DECLARATION OF SEAN M. BLAKELY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: August 15, 2024 Time: 2:00 p.m. Dept.: CX104 Reservation No.: 74261857 Complaint Filed: October 5, 2022 Trial Date: None Set

I, SEAN M. BLAKELY, declare as follows:

1. I am a Partner at Haines Law Group, APC, and counsel for the named Plaintiffs Armando Garcia-Avila and Roberto Rincon Lopez ("Plaintiffs") and the proposed Settlement Class in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2008 graduate of Southwestern Law School. I was admitted to the California State Bar in September 2009. From December 2010 to September 2011, I worked as a Law Clerk for Rose, Klein & Marias, a civil litigation firm in Long Beach, California. At Rose, Klein & Marias I assisted trial attorneys in employment and personal injury cases. From September 2011 to May 2016, I worked as an associate at the employment law firm of Mahoney Law Group, APC in Long Beach, California. The vast majority of my work at Mahoney Law Group, APC focused on representing employees in wage and hour class actions. My work at Mahoney Law Group, APC also included representing employees in individual claims for wrongful termination, harassment, discrimination, and retaliation. Although non-exhaustive, the types of work I performed at Mahoney Law Group, APC included: conducting client intakes, performing pre-filing research and analysis, drafting complaints, attending court hearings, corresponding with opposing counsel, drafting and responding to written discovery, preparing for and taking and defending depositions, analyzing payroll and timekeeping records and employee handbooks, opposing motions for summary judgment, as well as a variety of other motions such as motions for remand, demurrers and motions to dismiss, motions to strike, motions to compel, motions to quash, and motions for class certification, drafting mediation briefs, attending mediations, drafting long-form settlement agreements, drafting motions for preliminary and final settlement approval, and overseeing the notice process.

3. Since November 8, 2016, I have worked at my current firm, Haines Law Group, APC, where, in 2020, I became a Partner. I am currently responsible for managing over forty (40) active wage and hour class and representative actions in both state and federal court.

4. The following is a non-exhaustive list of wage and hour class actions in which I

have been appointed as class counsel and/or played a significant role in prosecuting the litigation, and which have received final approval: *Santimateo v. Sun Healthcare Group, Inc., et al,* Case No. BC471884, California Superior Court, Los Angeles County, Judge Jane L. Johnson presiding (granted final approval of settlement on behalf of employees at rehabilitation facility involving claims for unpaid wages and meal and rest period violations, and other claims, in which I was approved at an hourly rate of $325 for work performed in 2012-2013); *Teyuca v. Pacific Alliance Medical Center, Inc*., California Superior Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of settlement on behalf of healthcare workers for unpaid wages, meal and rest period violations, and other claims, in which I was approved at an hourly rate of $325 for work performed in 2012-2013); *Arteaga v. Command Center Security, Inc.,* Case No. BC480496, California Superior Court, Los Angeles County, Judge John Shepard Wiley, Jr. presiding (granting final approval of settlement on behalf of security guards involving claims for unpaid overtime, meal and rest period violations, and other claims, in which I was approved at an hourly rate of $425 for work performed in 2012-2015); *Casadine v. Maxim Healthcare Services, Inc*., Case No. CV 12-10078-DMG (CWx), United States District Court, Central District of California, Judge Dolly M. Gee presiding (granting final approval of settlement on behalf of home health care employees involving claims for unpaid wages and other claims, in which I was approved at an hourly rate of $425 for work performed in 2012-2015); *Guzman v. Andrew Lauren Interiors, Inc*., *et al*., Case No. BC567757, California Superior Court, Los Angeles County, Judge Elihu M. Berle presiding (granting final approval of settlement on behalf of construction workers involving claims for unpaid wages, meal and rest period violation, and other claims, in which I was approved at an hourly rate of $425 for work performed in 2014-2016); *Booker v. The Goodyear Tire and Rubber Company*, Case No. BC498399, California Superior Court, Los Angeles County, Judge Amy Hogue presiding (granting final approval of settlement on behalf of tire mechanics involving claims for unpaid wages, meal and rest period violations, and other claims, in which I was approved at an hourly rate of $425 for work performed in 2013-2015); *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, Los Angeles County, Judge John Shepard Wiley, Jr. presiding (granting final approval of settlement on behalf of IT support workers for overtime, meal and period, reimbursement, and related violations, approved at hourly rate of $475 for work performed in 2016 and 2017); *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt employees of a chemical manufacturing company involving claims for unpaid overtime and waiting time penalties); *Razon v. TTM Technologies, Inc., et al.*, Case No. 37-2016-00038326-CU-OE-CTL, California Superior Court, San Diego County, Judge Gregory W. Pollack presiding (granting final approval of settlement involving claims for unpaid overtime wages, wage statement violations, and meal period violations); *Blank v. Coty, Inc., et al.*, Case No. BC624850, California Superior Court, Los Angeles County, Judge Williams F. Highberger presiding (granting final approval of settlement involving claims for wage statement violations, meal period violations, and other claims); *Morales v. Caremeridian, LLC, et al.*, Case No. BC593191, California Superior Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of settlement on behalf of direct support professionals involving claims for unpaid wages, meal and rest period violations, wage statement violations, and other claims); *Aguilar v. Act Fulfillment, Inc.*, Case No. RIC1616643, California Superior Court, Riverside County, Judge Sharon J. Waters presiding (granting final approval of settlement on behalf of non-exempt factory workers involving claims for meal period violations); *Sandoval v. AMCOR Flexibles Inc.*, Case No. BC617499, California Superior Court, Los Angeles County, Judge Kenneth R. Freeman presiding (granting final approval of settlement on behalf of manufacturing employees involving claims for unpaid wages, meal period violations, rest period violations, and waiting time penalties); *Le v. GBW Railcar Services, L.L.C.*, Case No. RIC1612209, California Superior Court, Riverside County, Judge Sharon J. Waters presiding (granting final approval of settlement on behalf of non-exempt employees of a freight railcar manufacturer involving claims for unpaid overtime and minimum wages, meal period violations, and rest period violations); *Silva v. ADJ Products, LLC*, Case No. BC618581, California Superior Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of settlement involving claims for unpaid overtime and minimum wages, rest period violations, wage statement violations, and waiting time penalties); *Lira v. Discus Dental, LLC, et al.*, Case No. CIVDS1620402, California Superior Court, San Bernardino County, Judge David Cohn presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid minimum and overtime wages, meal and rest period violations, and other claims); *Gonzales v. PathPoint*, Case No. BC657147, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt direct support professionals involving claims for meal and rest period violations and other claims); *Duran v. PRADA USA CORP*., Case No. BC644319, California Superior Court, Los Angeles County, Judge Maren E. Nelson presiding (granting final approval of settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid overtime wages, meal and rest period violations, failure to reimburse for necessary expenditures, and other claims); *Banegas v. UPM, Inc*., Case No. BC644438, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid wages, meal and rest period violations, and other claims); *Palafox v. Pacific Line Clean-Up, Inc*., Case No. 30-2017-00921632-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for unpaid overtime wages, meal and rest period violations, and other claims); *Janet Arroyo v. AST Sportswear, Inc., dba Bayside Apparel Manufacturing, Inc*., Case No. 30-2017-00909663-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda Sanders presiding (granting final approval of settlement on behalf of non-exempt garment employees involving claims for unpaid minimum wages, meal and rest period violations, and other claims); *Carlos Garcia v. Fabrica International, Inc*., Case No. 30-2017-00949461-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid minimum and overtime wages, meal and rest period violations, and statutory penalties); *Jonathan Leon v. Piercey West, Inc*., Case No. BC656874, California Superior Court, Los Angeles County, Judge Amy D. Hogue presiding (granting final approval of settlement on behalf of non-exempt commissioned salespersons and other employees involving claims for unpaid wages, meal and rest period violations, unreimbursed business expenses, and other claims); and *Matthew Tovar, et al. v. Rentokil North America, Inc.*, Case No. BC676386, California Superior Court, Los Angeles County, Judge Daniel J. Buckley presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for unpaid overtime, meal and rest break violations, and other claims); *Seungmin Samantha Lee v. Infor (US) Inc.*, Case No. CGC-18-566393, California Superior Court, San Francisco County, Judge Ethan P. Schulman presiding (granting final approval of settlement on behalf of sales development representatives involving claims for unpaid overtime, meal and rest period violations, and penalty claims); *Tracy Aguilar, et al. v. Aero Port Services, Inc.*, Case No. BC659234, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for meal and rest period violations, and other claims); *Carlos Perez, et al. v. Moss Bros. Auto Group, Inc., et al.*, Case No. RIC1709905, California Superior Court, Riverside County, Judge Sunshine S. Sykes presiding (granting final approval of settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid wages, meal and rest period violations, other claims); and *Julio Alfaro v. Orange Automotive d/b/a Kia of Orange*, Case No. 30-2017-00945105-CU-OE-CXC, California Superior Court, Orange County, Judge Randall J. Sherman presiding (granting final approval settlement on behalf of non-exempt commissioned employees involving claims for unpaid wages, meal and rest period violations, unreimbursed business expenses, and penalty claims).

5. I have also moved to certify and have received an order certifying a class action in *Ontiveros v. Safelite Fulfillment, Inc., et al.*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations); and *Vazquez v. Kraft Heinz Foods Company,* Case No. 16-CV-02749-WQH (BLM), United States District Court, Southern District of California, Honorable William Q. Hayes, presiding (certifying unpaid wages classes, meal period classes, wage statement class, and waiting time penalty class).

6. In 2018-2023, Thomson Reuters recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of forty in Southern California each year.

7. As counsel for Plaintiffs and the proposed Settlement Class, I have been intimately involved in this case since its inception and I believe that the proposed Settlement is an excellent result for the Settlement Class.

8. In operation since 1975, Defendant Orange County Erectors, Inc. ("Orange County Erectors") is in the business of fabricating and erecting structural and miscellaneous steel buildings. Orange County Erectors operates out of a three-acre property located in Anaheim, California, where it fabricates steel for various contractors.

9. On October 5, 2022, Plaintiff Garcia-Avila filed a Class Action Complaint against Orange County Erectors in Orange County Superior Court, alleging causes of actions for: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement penalties; (6) waiting time penalties; and (7) unfair competition in violation of California Business & Professions Code § 17200 *et seq*. On October 5, 2022, Plaintiff Garcia-Avila sent his PAGA notice letter to the Labor & Workforce Development Agency ("LWDA"). Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff Garcia-Avila's October 5, 2022 LWDA Letter. Subsequently, on December 12, 2022, Plaintiff Garcia-Avila filed a First Amended Class and Representative Action Complaint ("FAC") adding a cause of action for civil penalties under the Private Attorneys' General Act of 2004, Labor Code Section 2698, *et seq*. As part of the Settlement, the Parties stipulated to the filing of Plaintiffs' Second Amended Class and Representative Action Complaint ("SAC"), which added Plaintiff Rincon Lopez as named representative and certain factual allegations pertaining to Plaintiff Rincon Lopez's employment. The operative SAC was filed on November 29, 2023.

10. In connection with mediation, Orange County Erectors produced timekeeping and payroll data for forty (40) randomly selected non-exempt employees (approximately 24% of all putative class members), including actual time-punches, which enabled Plaintiffs to conduct an

unpaid wage analysis. In addition, Orange County Erectors produced employee handbooks and various written meal and rest policies, as well as relevant data points such as the number of putative class members and the number of aggregate workweeks worked during the Class Period. Plaintiffs hired a labor economist with a Ph.D. in economics to assist Plaintiffs in analyzing and extrapolating the data produced to calculate Orange County Erectors' potential exposure for each of Plaintiffs' claims at issue. This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims, the chances of certification of Plaintiffs' claims, and Orange County Erectors' potential defenses.

11. On September 5, 2023, the Parties participated in a full-day mediation with Marc J. Feder, Esq., a highly experienced wage and hour class action mediator. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses. The Parties did not reach a settlement at mediation; however, the Parties continued their discussions with Mr. Feder over the following weeks. Mr. Feder issued a mediator's proposal for a class-wide settlement, which was ultimately accepted by all Parties. During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the Court. A true and correct copy of the Stipulation of Settlement is attached hereto as **Exhibit A.** The proposed Class Notice, Notice of Estimated Settlement Award, and Request for Exclusion Form are attached as **Exhibits 1, 2**, **and 3** respectively, to the Settlement Agreement.

12. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount:	$750,000.00
• Minus Court-approved attorneys' fees:	$250,000.00
• Minus Court-approved verified costs (up to):	$30,000.00
• Minus Court-approved Enhancement Payments:	$15,000.00
• Minus amount set aside as PAGA penalties:	$40,000.00
• Minus estimated Settlement Administration costs:	$9,000.00
Net Settlement Amount ("NSA"):	$406,000.00
• PLUS 25% "PAGA Amount" to Settlement Class:	$10,000.00
Total Amount Paid to Settlement Class members:	**$416,000.00**

13. Based on information from Orange County Erectors, there are approximately 165

Settlement Class members. Therefore, the average Settlement Award from the NSA is projected to be approximately $2,460.61. There are approximately 100 Aggrieved Employees who worked during the PAGA Period. Therefore, the average payment from the PAGA Amount is estimated to be approximately $100.00.

14. As an initial matter, Orange County Erectors argues that approximately 86 Settlement Class members signed valid and enforceable arbitration agreements with class action waivers. Setting aside any arguments as to the merits of Plaintiffs' claims, Orange County Erectors contends that absent settlement, Plaintiffs' proposed classes could be potentially narrowed due to the existence of arbitration agreements with class action waivers.

15. Plaintiffs allege that Orange County Erectors failed to provide compliant first meal periods to its non-exempt employees due to its scheduling meal periods after the fifth hour of work. Specifically, Plaintiffs allege that although its non-exempt shop employees started their shifts at 6:00 a.m., Orange County Erectors scheduled their meal periods from 12:00 p.m. – 12:30 p.m., which is after the completion of five hours of work. Plaintiffs also allege that Orange County Erectors did not record its employees' meal periods from the beginning of the Class Period through approximately June 2020. During this time period, Plaintiffs allege that Orange County Erectors automatically deducted thirty (30) minutes each workday for a purported compliant first meal period. During this time period, Plaintiffs' analysis revealed there were approximately 26,162 shifts in excess of 6.0 hours. Due to Orange County Erectors' scheduling policies/practices, Plaintiffs assumed a meal period violation on each of these 26,162 auto-deduct shifts. After June 2020, when Orange County Erectors began to record employee meal periods, Plaintiffs' analysis revealed approximately 40,653 non-compliant first meal periods. Therefore, Plaintiffs estimate there was a total of approximately 66,815 non-compliant first meal periods during the Class Period. Plaintiffs further calculated that the average hourly rate of pay for Settlement Class members during the Class Period at approximately $21.50. Therefore, Plaintiffs estimated total maximum damages for first meal period violations at approximately $1,436,523 (66,815 non-compliant first meal periods * $21.50 average meal period premium). However, Orange County Erectors argues that more than half of the Settlement Class members signed

arbitration agreements with class action waivers. Orange County Erectors also argues that it maintained compliant meal period practices throughout the Class Period and has always provided compliant meal periods in line with those policies. Orange County Erectors further contends that under *Brinker* it is only required to provide employees the opportunity to take meal periods, not ensure that they are taken. Orange County Erectors also maintains that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Furthermore, Orange County Erectors argues that Plaintiffs' meal period claim is not suited for class treatment, as individual inquiries would be needed as to which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and why a particular employee did not a take compliant meal period on a particular shift. Based on these defenses, Plaintiffs discounted the maximum amount by 45% for risk of non-certification and an additional 55% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately $355,539.

16. Furthermore, although employees often worked more than 10.0 hours in a workday, Plaintiffs contend that Orange County Erectors failed to provide second meal periods. Plaintiffs' analysis and extrapolation of the timekeeping data showed that during the Class Period there were approximately 25,543 shifts worked in excess of 10.0 hours that did not reflect a compliant second meal period. Therefore, Plaintiffs calculate Orange County Erectors' maximum exposure for second meal period violations at approximately $549,175 (25,543 non-compliant second meal periods * $21.50 average meal period premium). Orange Country Erectors argues that they provided employees the opportunity for second meal periods and that Settlement Class members voluntarily waived their second meal period on shifts in excess of 10.0 hours but less than 12.0 hours, as they are entitled to do under Labor Code § 512(a), so that they do not need to stay at work for an extra unpaid 30 minutes. Orange County Erectors further argue that Plaintiffs' second meal period exposure is grossly inflated as Plaintiffs already seek a meal period premium for first meal period violations on the majority of all shifts, and Plaintiffs cannot recover more than one meal period premium for each workday. In addition, as with first meal periods, Orange County Erectors argues this claim would not be certified as requiring individualized inquiries into

both the merits and damages. In light of these risks, Plaintiffs discounted the maximum amount that the class could potentially recover for second meal periods by 55% for a risk of non-certification, and an additional 65% for a risk of losing on the merits, or having exposure reduced due to Orange County Erectors' waiver argument, to arrive at an estimated exposure amount of approximately $86,495.

17. Plaintiffs allege that Orange County Erectors failed to authorize and permit all legally compliant off-duty rest periods. Specifically, Plaintiffs allege that on Friday shifts, Plaintiffs were provided one single combined 20-minute rest period at approximately 10:00 a.m. and were not authorized and permitted a second rest period in the afternoon after their meal period. Plaintiffs further contend that employees were not provided with a third rest period when they worked shifts in excess of 10.0 hours. Based on Plaintiff's expert's analysis of Orange County Erectors' timekeeping records, Plaintiffs estimate there were approximately 16,122 shifts in excess of 6.0 hours worked on Fridays during the Class Period. Plaintiffs' analysis further revealed there were approximately 25,569 shifts in excess of 10.0 hours, entitling employees to a third rest period. Therefore, Plaintiffs contend there are 41,691 rest period violations during the Class Period. Accordingly, Plaintiffs calculate Orange County Erectors' maximum potential exposure for rest period violations at approximately $896,357 (41,691 rest period violations * $21.50 average rest period premium). Orange County Erectors argues that it has always maintained and enforced lawful rest period policies/practices during the Class Period, and has, in fact, authorized and permitted all required rest periods to Settlement Class members. Additionally, Orange County Erectors maintains that any failure to take a rest period was the result of employee choice, rather than any policy or practice of Orange County Erectors. With respect to the Friday shifts, Orange County Erectors argues that its departure from the preferred rest period schedule was lawful because Settlement Class members overwhelmingly preferred to take one 20-minute rest period in the morning to be able to eat breakfast. Orange County Erectors also asserts this claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take a rest period, and the reasons why. These manageability concerns are especially present with respect to rest period claims, Orange County

Erectors argues, given that rest periods are not recorded. Given these defenses, Plaintiffs discounted this maximum amount by 60% for risk of non-certification, and an additional 65% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately $125,490.

18. Plaintiffs allege that Orange County Erectors utilized a timekeeping system that systematically underpaid wages to Settlement Class members. Plaintiffs allege that Orange County Erectors required Plaintiffs and other non-exempt employees to clock in and out using a system that records hours worked to the minute; however, Orange County Erectors only compensated employees for their scheduled hours of work, rather than for all hours on the clock. Plaintiffs' analysis and extrapolation of the timekeeping and payroll data reveals that Orange County Erectors underpaid employees by approximately 3,769 hours during the Class Period. Therefore, and treating these unpaid wages as potential overtime wages, Plaintiffs estimate Orange County Erectors' potential exposure at approximately $121,550 in unpaid wages (3,769 unpaid hrs * $32.25/hr avg. overtime rate). Orange County Erectors counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Orange County Erectors contends that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked. Moreover, Orange County Erectors contends that although Settlement Class members may have clocked-in prior to their scheduled start time, it was not possible for Settlement Class members to perform any compensable work prior to the scheduled start of shift. Finally, Orange County Erectors asserts that Plaintiffs would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to whether employees were in fact underpaid, or potentially overpaid, for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. Finally, Orange County Erectors asserts that more than half of the Settlement Class members signed arbitration agreements with class action waivers. Given these defenses, Plaintiffs discounted this maximum amount by 50% for risk of non-certification, and an additional 50% for a risk of being

unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately $30,388.

19. Plaintiffs allege that Orange County Erectors failed to pay all overtime wages owed by not including the value of all non-discretionary production bonuses into the "regular rate" of pay. During the Class Period, Plaintiffs allege that they and other non-exempt employees received non-discretionary production bonuses at least twice per year, which Plaintiffs allege were not included in the regular rate of pay when calculating overtime wages. Based Plaintiffs' review and extrapolation of the payroll records, Plaintiffs estimate the total underpayment of overtime wages due to the alleged regular rate calculations to be approximately $233,144. However, in addition to noting the arbitration agreements signed by more than half of Settlement Class members, Orange County Erectors argues that it properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Settlement Class members. Orange County Erectors also contends that the bonuses at issue are discretionary, as they are ostensibly "not guaranteed," and therefore do not need to be included in the regular rate of pay for overtime purposes. Orange County Erectors further argues that Settlement Class members received different types of bonuses throughout the Class Period, creating substantive differences among the Settlement Class members with respect to the incentives received, making class certification unlikely. In light of these defenses, Plaintiffs discounted the maximum exposure by 40% for the risk of non-certification, and an additional 50% for risk of losing on the merits, and/or not receiving the maximum amount sought, to arrive at an estimated exposure of approximately $69,943.

20. As a result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiffs allege that Orange County Erectors is liable for wage statement penalties. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. Utilizing the "initial" and "subsequent" violation rates resulted in a number greater than the $4,000 cap per employee. Plaintiffs, therefore, calculated potential wage statement exposure at approximately $400,000 (100 employees * $4,000 maximum penalty). Orange County Erectors argues any alleged wage

statement violations were not “knowing and intentional,” and Plaintiffs cannot show that they or other employees “suffer[ed] injury” due to the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties. Further, Orange County Erectors contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties. In light of these defenses, Plaintiffs discounted the maximum exposure by 50% for risk of non-certification, and by an additional 60% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately $80,000.

21. As a further result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiffs allege that Orange County Erectors failed to comply with its final pay obligations set forth in Labor Code §§ 201-203. Orange County Erectors’ records reflected approximately 60 former Settlement Class members separated from their employment and are therefore eligible for waiting time penalties. Based on an hourly rate of $21.50, Plaintiffs estimated the average waiting time penalty per former employee to be $5,160 ($21.50 * 8 hours per day * 30 days). Therefore, Plaintiffs calculated Orange County Erectors’ maximum exposure for potential waiting time penalties to be approximately $309,600 (60 separated employees * $5,160 average waiting time penalty). Orange County Erectors argues that it possesses strong, good-faith defenses to Plaintiffs’ underlying claims, thus precluding recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. Orange County Erectors further asserts that Plaintiffs’ waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Moreover, because the waiting time claim is derivative of Plaintiffs’ underlying wage claims, Plaintiffs would need to overcome these defenses, both as to class certification and on the merits, as to their underlying claims. To account for these defenses, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an additional 60% for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately $61,920.

22. As a result of the foregoing Labor Code violations, Plaintiffs allege that Orange County Erectors is liable for civil penalties under the PAGA. Plaintiffs estimated a maximum

total PAGA exposure at approximately $743,900 (7,439 “initial” violations * $100 “initial” penalty). Since Plaintiffs’ PAGA claim is derivative of Plaintiffs’ underlying wage claims, Orange County Erectors asserts the PAGA claim would fail with those claims. Orange County Erectors further maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Orange County Erectors liable for any of Plaintiffs’ claims. Therefore, Plaintiffs discounted the maximum figure by 70% for risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 80% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $44,634.

23. Using these estimated figures for each of the claims described above, Plaintiffs predicted that the potential recovery for the Settlement Class would be approximately $854,409. The proposed Settlement of $750,000 therefore represents approximately 87.8% of the reasonably forecasted recovery for the Settlement Class.

24. Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had significant formal discovery to complete had the matter not settled. This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. Even if Plaintiffs were to certify the classes, the Parties would incur considerably more attorneys’ fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying expense.

25. Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross Settlement Amount, which is currently estimated to be $250,000.00, and up to $30,000.00 in verified costs reimbursement. Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel has incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiffs’ claims, conducting legal research, conducting extensive informal discovery, analyzing Settlement Class members’ timekeeping and payroll records and other data and documents with the help of a retained expert, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement,

preparing this Motion, and otherwise litigating the case. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers, and attending the Final Approval hearing.

26. Plaintiffs will apply for Class Representative Enhancement Payments at the time of seeking final approval of the proposed class action settlement in the amount of $7,500 to each Plaintiff, for their service to the Settlement Class. As will be fully briefed at the time of final approval, Plaintiffs' requested Enhancement Payments are intended to recognize the time and effort Plaintiffs expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of Plaintiffs' claims, as well as the significant risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in this case, and the fact that Plaintiffs agreed to a general release of all claims subject to a waiver of Civil Code § 1542.

27. I have made a reasonable inquiry and am not aware of any other class, representative, or other collective actions in any other court that assert similar claims to those asserted in this action on behalf of a class or group of individuals who would also be members of the proposed Settlement Class.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 3, 2024, at El Segundo, California.

Sean Blakely

Sean M. Blakely

EXHIBIT A

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("Settlement Agreement") is reached by and between Plaintiffs Armando Garcia-Avila and Roberto Rincon Lopez ("Plaintiffs"), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Orange County Erectors, Inc. (hereinafter "Defendant"), on the other hand. Plaintiffs and Defendant are referred to herein collectively as the "Parties." Plaintiffs and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC ("Class Counsel"). Defendant is represented by Spender W. Waldron and Selwyn Chu of Fisher & Phillips LLP.

On October 5, 2022, Plaintiff Garcia-Avila filed a Class Action Complaint against Defendant in Orange County Superior Court, in the matter entitled *Armando Garcia-Avila v. Orange County Erectors, Inc.,* Case No. 30-2022-01284202-CU-OE-CXC (the "Action"). On December 12, 2022, Plaintiff Garcia-Avila filed a First Amended Class and Representative Action Complaint ("FAC"), adding a cause of action under the Private Attorneys General Act ("PAGA"). The FAC alleges the following causes of action: (i) minimum wage violations; (ii) failure to pay all overtime wages; (iii) meal period violations; (iv) rest period violations; (v) wage statement penalties; (vi) waiting time penalties; (vii) unfair competition; and (viii) civil penalties under the Private Attorneys General Act ("PAGA"). As a condition of the Settlement, the Parties stipulate to the filing of a Second Amended Class and Representative Action Complaint ("SAC"), adding Mr. Lopez as a named plaintiff and class representative.

Given the uncertainty of litigation, Plaintiffs and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiffs and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendant stipulate to the certification of the following Settlement Class:

> All current and former non-exempt employees who are not governed by a collective bargaining agreement and who worked for Defendant Orange County Erectors, Inc. in California from October 5, 2018 until the date of preliminary approval ("Class Period").

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved, does not become Final as defined below, or is terminated or materially modified without agreement of the parties, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiffs**. Upon the Effective Date (as defined below) and the complete funding of the Gross Settlement Amount (defined below), Plaintiffs and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant, and all of its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies,

subsidiaries, divisions, affiliates, predecessors, and successors (collectively the "Released Parties"), as follows:

A. Settlement Class members who do not opt out will release all claims, causes of action, and legal theories alleged or which could have been alleged based on the facts in the operative Second Amended Class and Representative Action Complaint ("SAC"), including: (a) failure to pay minimum wages; (b) failure to pay all overtime wages; (c) failure to provide all meal periods in accordance with California law; (d) failure to authorize and permit all rest periods in accordance with California law; (e) failure to furnish accurate and itemized wage statements; (f) failure to pay all wages owed upon separation of employment; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the SAC (collectively, the "Class Released Claims"). The period of the Class Released Claims shall extend to the limits of the Class Period.

B. **Release of PAGA Claims.** In addition, all Settlement Class members (regardless of whether they opt out) who worked for Defendant at any time from October 5, 2021 through the date of preliminary approval of the Settlement (the "PAGA Period") are "Aggrieved Employees" and shall release the Released Parties from all claims for civil penalties under PAGA arising during the PAGA Period as disclosed in Plaintiff's October 5, 2022 Notification Letter to the Labor and Workforce Development Agency ("LWDA") ("the PAGA Released Claims").

C. **Release by Plaintiffs.** Upon Defendant's complete funding of the Gross Settlement Amount, Plaintiffs have agreed to release, individually and in addition to the Class Released Claims and PAGA Released Claims described above, all claims, whether known or unknown, without exception, against the Released Parties. The Parties understand and agree that Plaintiffs are not, by way of this release, releasing any workers' compensation claims, unemployment insurance claims, nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiffs understand that this release includes unknown claims and that Plaintiffs are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

Specifically excluded from Plaintiffs' Released Claims are any claims that cannot be released as a matter of law, such as claims for workers' compensation benefits or unemployment benefits.

3. **Gross Settlement Amount.** As consideration and subject to the express condition precedent that this Settlement Agreement becomes Final (as defined below), Defendant agrees to pay a non-reversionary "Gross Settlement Amount" of Seven Hundred Fifty Thousand Dollars and Zero Cents ($750,000.00) in full and complete settlement of the Action, as follows:

A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.

B. The Settlement will become final and effective when: (a) the Court grants final approval of the Settlement (if no timely objections by or on behalf of Settlement Class members have been filed, or any timely objections have been withdrawn); or (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) any appeal that has been filed is finally resolved ("Effective Date"). The Gross Settlement Amount shall be deposited with the Settlement Administrator within fifteen (15) days of the Final Effective Date.

C. This is a non-reversionary settlement. The Gross Settlement Amount includes:

(1) All payments (including interest) to the Settlement Class;

(2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Nine Thousand Dollars and Zero Cents ($9,000.00);

(3) Up to Seven Thousand Five Hundred Dollars and Zero Cents each, for a total of Fifteen Thousand Dollars and Zero Cents ($15,000.00), for Plaintiffs' Class Representative Enhancement Payments in recognition of their contributions to the Action and their service to the Settlement Class. If Plaintiffs' request for their enhancement payment is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members;

(4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Thirty Thousand Dollars and Zero Cents ($30,000.00). If Class Counsel's request for attorneys' fees and/or reimbursement of litigation costs is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members; and

(5) Forty Thousand Dollars and Zero Cents ($40,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Thirty Thousand Dollars and Zero Cents ($30,000.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Ten Thousand Dollars and

Zero Cents ($10,000.00) will be payable to the Settlement Class as the "PAGA Amount."

D. Defendant's share of employer payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.

E. **Escalator Clause.** Defendant represents that that there were an estimated 16,995 total workweeks worked by the Settlement Class members during the Class Period. If the number of workweeks worked during the Class Period exceeds this figure by more than 10% (i.e., if there are 18,695 or more total workweeks), Defendant may elect to either: (a) increase the Gross Settlement Amount by the percentage in excess of 10% (i.e., if there was a 12% increase in the number of total workweeks, Defendant shall increase the Gross Settlement Amount by 2%); or (b) cut off the Class Period as of the date that there are 18,695 workweeks or less.

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Settlement Award") from the settlement. Settlement Awards will be determined and paid as follows:

A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiffs' Class Representative enhancement payments, the amount designated as PAGA civil penalties, and the Settlement Administrator's fees and expenses for administration. The remaining amount shall be known as the "Net Settlement Amount," or "NSA."

B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula:

i. <u>Payments to all participating Settlement Class members</u>: Ninety percent (90%) of the Net Settlement Amount will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate workweeks worked during the Class Period, and will be calculated by multiplying 90% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all participating Settlement Class members during the Class Period.

ii. <u>Waiting Time Amount</u>: Five Percent (5%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." Each participating Settlement Class member whose employment with Defendant ended at any time from October 5, 2019 to the date of preliminary approval, shall receive an equal, pro-rata share of the Waiting Time Amount. In other words, the Waiting Time Amount will be divided equally among all participating Settlement Class members whose employment with Defendant ended at any time from October 5, 2019 to the date of preliminary approval.

iii. Wage Statement Amount: Five percent (5%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time from October 5, 2021 to the date of preliminary approval shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the period from October 5, 2021 to the date of preliminary approval, and which will be calculated by multiplying 5% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of workweeks worked from October 5, 2021 to the date of preliminary approval, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the time period from October 5, 2021 to the date of preliminary approval.

iv. PAGA Amount: Each Settlement Class member who was employed by Defendant at any time during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement) shall receive a portion of the Ten Thousand Dollars and Zero Cents ($10,000.00) of the Gross Settlement Amount that has been designated as the "PAGA Amount" proportionate to the number of workweeks that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member's number of workweeks worked during the PAGA Period, and the denominator of which is the total number of workweeks worked by all Settlement Class members during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement).

C. Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for review and approval. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel. After Settlement Awards are mailed to Settlement Class members, the Settlement Administrator shall distribute the amounts approved for Class Counsel's attorneys' fees and litigation costs, Plaintiffs' Enhancement Payments, payment to the LWDA for its share of PAGA civil penalties, and settlement administration expenses.

D. For purposes of calculating applicable taxes and withholdings, each Settlement Award from the NSA shall be allocated as follows: 80% as penalties and interest; and 20% as wages. Any payment from the PAGA Amount shall be allocated as 100% penalties. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

E. Each member of the Settlement Class who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be distributed to the California Controller's Unclaimed Property Fund in the name of the Settlement Class member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384(b).

F. Neither Plaintiffs nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Gross Settlement Amount, which is currently estimated to be Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00), from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

6. **Class Representative Enhancement Payments.** Defendant will not object to a request for Class Representative Enhancement Payments of up to Fifteen Thousand Dollars and Zero Cents ($15,000.00), or Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to each Plaintiff, for their time and risk in prosecuting this case, and their service to the Settlement Class. These payments will be in addition to Plaintiffs' Settlement Awards as Settlement Class members and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiffs seeking permission to pay up to Nine Thousand Dollars and Zero Cents ($9,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendant's share of taxes payable on the wages, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all

participating Settlement Class members. The Settlement Administrator shall also give notice of final judgment by posting the final judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs shall apply to the Court for the entry of an Order:

A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;

B. Appointing Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;

C. Appointing Armando Garcia-Avila and Roberto Rincon Lopez as Class Representatives for the Settlement Class;

D. Approving Phoenix Settlement Administrators as Settlement Administrator;

E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;

F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice, Request for Exclusion Form, and Notice of Estimated Settlement Award), and directing the mailing of same in English and Spanish; and

G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

A. Within ten (10) business days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, and workweek information for each Settlement Class member employed during the Class Period (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format reasonably satisfactory to the Settlement Administrator.

B. Within ten (10) business days from receipt of the information provided for in Paragraph 9(A), the Settlement Administrator shall: (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

C. Requests for Exclusion. Any Settlement Class member who wishes to opt out of the settlement must complete and mail a Request for Exclusion Form to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline").

i. The Notice Packet shall state that a Settlement Class member who wishes to exclude themselves from the settlement must submit a Request for Exclusion Form by the Response Deadline. The Request for Exclusion Form must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the settlement. The date of the postmark on the Request for Exclusion Form shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement or have any right to object, appeal or comment thereon. Notwithstanding the foregoing, the PAGA settlement and release provisions will apply to all Aggrieved Employees, whether or not they exclude themselves from the class action settlement. Settlement Class members who were employed by Defendant at any time during the PAGA Period and submit a valid and timely Request for Exclusion shall still be entitled to their portion of the PAGA Amount described above, and will release the PAGA Release Claims, whether they submit a valid and timely Request for Exclusion or not.

ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the settlement or opt out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment.

D. Objections. Settlement Class members who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant’s counsel via e-mail, as well as file all such objections with the Court). Defendant’s counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant’s counsel and Class Counsel shall have ten (10) days from the date of service to the objections by the Settlement Administrator to file a response to the objections. All objections should contain the objecting Settlement Class member’s full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection. Settlement Class members may also appear at the final approval hearing to orally object, even if they have not submitted a written objection.

E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was used from Defendant's records in order to calculate the Settlement Award. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall initially determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. However, the Court shall have the right to review the Settlement Administrator's initial determination, and the Court shall make the final determination regarding the eligibility for and amount of any Settlement Award, and the Court's determination shall be binding upon the Settlement Class members and the Parties.

F. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;

B. Approving Plaintiffs' and Class Counsel's application for attorneys' fees and costs, Class Representative enhancement payments, LWDA payment, and settlement administration costs; and

C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the website of the Settlement Administrator.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Non-disclosure and Non-publication**. Plaintiffs and Class Counsel agree that they have not and will not publish the Settlement Agreement, except to Settlement Class members and as contractually required to effectuate the terms of the Settlement Agreement as set forth herein. Class Counsel shall not report the Settlement Agreement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiffs, the Settlement Class, or the settlement on their website, and shall not contact any reporters or media regarding the settlement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel.

13. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Spencer W. Waldron, Fisher & Phillips LLP, 2050 Main Street, Suite 1000, Irvine, CA 92614; swaldron@fisherphillips.com.

if to Plaintiffs: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com.

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations,

presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this settlement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

DATED: Feb 7, 2024

Orange County Erectors, Inc.

By: Steve Pennachio

Its: Vice President

DATED: 2-Feb-2024

Armando Garcia-Avila

By: Armando Garcia Avila

Armando Garcia Avila (Feb 2, 2024 16:48 PST)

Plaintiff and Settlement Class Representative

DATED:

Roberto Rincon Lopez

By:______________________________________

Plaintiff and Settlement Class Representative presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this settlement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

DATED: Orange County Erectors, Inc.

By:____________________________________

Its: ________________________________

DATED: Armando Garcia-Avila

By:____________________________________

Plaintiff and Settlement Class Representative

DATED: Dec 8, 2023 Roberto Rincon Lopez

Roberto (Dec 8, 2023 11:30 PST)

By:____________________________________

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: 02/07/24

FISHER & PHILLIPS LLP

By: Spencer Waldron

Spencer W. Waldron
Selwyn Chu
Attorneys for Defendant

DATED: 02/02/2024

HAINES LAW GROUP, APC

By: Sean Blakely

Paul K. Haines
Sean M. Blakely
Alexandra R. McIntosh
Attorneys for Plaintiffs

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ARMANDO GARCIA-AVILA, on behalf of himself and all others similarly situated, Plaintiff, vs. ORANGE COUNTY ERECTORS, INC., a California Corporation; and DOES 1 through 100, Defendants.	Case No. 30-2022-01284202-CU-OE-CXC **NOTICE OF PENDENCY OF CLASS AND PAGA ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees who are not governed by a collective bargaining agreement and who worked for Defendant Orange County Erectors, Inc. in California between October 5, 2018 and <<PRELIM APPROVAL DATE>>. Collectively, these employees will be referred to as "Settlement Class members."

PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING SENT IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT

Why should you read this notice?

The Orange County Superior Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in the case of *Armando Garcia-Avila, et al. v. Orange County Erectors, Inc.*, Orange County Superior Court Case No. 30-2022-01284202-CU-OE-CXC (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant Orange Count Erectors, Inc.'s ("Orange County Erectors") records show that you were employed at Orange County Erectors in California as a non-exempt employee in California, and not governed by a collective bargaining agreement, between October 5, 2018 and <<PRELIM APPROVAL DATE>> (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiffs Armando Garcia-Avila and Roberto Rincon Lopez ("Plaintiffs") brought this Action against Orange County Erectors, seeking to assert claims on behalf of a class of current and former non-exempt employees who were not governed by a collective bargaining agreement and who worked for Orange County Erectors in California during the Class Period. Plaintiffs are known as the "Class Representatives," and their attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

Plaintiffs allege that Orange County Erectors failed to pay Settlement Class members for all minimum and overtime wages and failed to provide required meal and rest periods to Settlement Class members. The Action also alleges that as a result of these alleged violations, Orange County Erectors failed to provide Settlement

Class members with accurate and complete wage statements and failed to timely pay all final wages at the time of separation of employment. As a further result of the alleged violations, Plaintiffs allege that Orange County Erectors engaged in unfair business practices and is liable for civil penalties under the Labor Code Private Attorneys General Act ("PAGA").

Orange County Erectors denies all liability to Settlement Class members, denies the factual and legal allegations in the case, and believes that it has valid defenses to Plaintiffs' claims. Orange County Erectors has entered into the Settlement solely for the purposes of resolving this dispute and has agreed to settle the case as part of a compromise with Plaintiffs. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Orange County Erectors, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiffs' claims. However, to avoid additional expense, inconvenience, and interference with its business operations, the Parties concluded that it is in its best interests and the interests of Settlement Class members to settle the Action on the terms summarized in this Notice. After Orange County Erectors provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the parties.

The Class Representatives and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Orange County Erectors, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Orange County Erectors, your decision about whether to participate in the Settlement will not affect your employment. California law and Orange County Erectors' policy strictly prohibit unlawful retaliation. Orange County Erectors will not take any adverse employment action against or otherwise retaliate, or discriminate, against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiffs/Settlement Class members:	Attorneys for Defendant Orange County Erectors, Inc.:
HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Joel M. Gordon jgordon@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	**FISHER & PHILLIPS, LLP** Spencer W. Waldron swaldron@fisherphillips.com Selwyn Chu schu@fisherphillips.com 2050 Main Street, Suite 1000 Irvine, California 92614 Tel.: (949) 851-2424 fisherphillips.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who are not governed by a collective bargaining agreement and who worked for Orange County Erectors in California between October 5, 2018 and <<PRELIM APPROVAL DATE>>. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Orange County Erectors as described below.

Orange County Erectors has agreed to pay $750,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including payments to Settlement Class members, requested attorneys' fees and expenses, settlement administration costs, the amount designated as PAGA civil penalties, and the Class Representatives' Enhancement Payments.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to $9,000.00 from the Gross Settlement Amount to pay the settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is currently estimated to be $250,000.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to $30,000.00 for verified costs Class Counsel incurred in connection with the Action.

Enhancement Payments to Class Representatives. Class Counsel will ask the Court to award enhancement payments in the amount of $7,500 each, for a total of $15,000, to the Class Representatives to compensate them for their service and extra work provided on behalf of the Settlement Class members.

PAGA Payment to State of California. $30,000.00 will be paid to the California Labor & Workforce Development Agency ("LWDA"), representing 75% of the $40,000.00 the parties have agreed to allocate to the settlement of Plaintiffs' claims on behalf of Aggrieved Employees under the PAGA. The remaining $10,000.00 will be payable to Aggrieved Employees as the "PAGA Amount," as described below.

Calculation of Settlement Class Members' Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately $406,000.00 and will be divided as follows:

(i) Payments to All Participating Settlement Class Members: Ninety percent (90%) of the NSA will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate Workweeks worked during the Class Period, and will be calculated by multiplying 90% of the NSA by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.

(ii) Waiting Time Amount: Five Percent (5%) of the NSA shall be designated as the "Waiting Time Amount." Each participating Settlement Class member whose employment with Orange County Erectors ended at any time from October 5, 2019 through <<PRELIM APPROVAL DATE>>, shall receive an equal, pro-rata share of the Waiting Time Amount. In other words, the Waiting Time Amount will be divided equally among all participating Settlement Class members whose employment with Orange County Erectors ended at any time from October 5, 2019 through <<PRELIM APPROVAL DATE>>.

(iii) Wage Statement Amount: Five percent (5%) of the NSA shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Orange County Erectors at any time from October 5, 2021 through <<PRELIM APPROVAL DATE>> shall receive a portion of the Wage Statement Amount proportionate to the number of Workweeks that he or she worked during the period from October 5, 2021 through <<PRELIM APPROVAL DATE>>, and which will be calculated by multiplying 5% of the NSA by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked from October 5, 2021 through <<PRELIM APPROVAL DATE>>, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members during the time period from October 5, 2021 through <<PRELIM APPROVAL DATE>>.

(iv) <u>PAGA Amount</u>: In addition to the Net Settlement Amount, the $10,000 PAGA Amount will be allocated as follows: Each Settlement Class member who was employed by Orange County Erectors at any time from October 5, 2021 through <<PRELIM APPROVAL DATE>> ("PAGA Period") (including those who submit a valid and timely Request for Exclusion from the class action settlement) is an "Aggrieved Employee" and shall receive a portion of the PAGA Amount proportionate to the number of workweeks worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Aggrieved Employee's gross number of workweeks worked during the PAGA Period, and the denominator of which is the total number of workweeks worked by all Aggrieved Employees (including those who submit a valid and timely Request for Exclusion from the class action settlement) during the PAGA Period.

<u>Payments to Settlement Class Members</u>. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion. Settlement checks will be valid for 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be distributed to the California Controller's Unclaimed Property Fund in the name of the Settlement Class member.

<u>Allocation and Taxes</u>. For purposes of calculating applicable taxes and withholdings, each Settlement Award from the NSA shall be allocated as follows: 80% as penalties and interest; and 20% as wages. Any payment from the PAGA Amount shall be allocated as 100% penalties. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the individual settlement payments. The Settlement Administrator, Orange County Erectors and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

<u>Release</u>: If the Court approves the Settlement, and upon the complete funding of the Gross Settlement Amount, Plaintiffs and every member of the Settlement Class members (except those who opt out) will fully release and discharge Orange County Erectors, and all of its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, and successors (collectively the "Released Parties"), as follows: Settlement Class members who do not opt out will release all claims, causes of action, and legal theories alleged or which could have been alleged based on the facts in the operative Second Amended Class and Representative Action Complaint ("SAC"), including: (a) failure to pay minimum wages; (b) failure to pay all overtime wages; (c) failure to provide all meal periods in accordance with California law; (d) failure to authorize and permit all rest periods in accordance with California law; (e) failure to furnish accurate and itemized wage statements; (f) failure to pay all wages owed upon separation of employment; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the SAC (collectively, the "Class Released Claims"). The period of the Class Released Claims shall extend to the limits of the Class Period.

In addition, all Settlement Class members (regardless of whether they opt out) who worked for Orange County Erectors at any time during the PAGA Period are "Aggrieved Employees" and shall release the Released Parties from all claims for civil penalties under PAGA arising during the PAGA Period as disclosed in Plaintiff Garcia-Avila's October 5, 2022 Notification Letter to the Labor and Workforce Development Agency ("LWDA") ("the PAGA Released Claims").

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period, the proportionate number of workweeks you worked from October 5, 2021 through <<PRELIM APPROVAL DATE>>, and whether you separated your employment at any time from October 5, 2019 through <<PRELIM APPROVAL DATE>>, as stated in the accompanying Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Estimated Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, the proportionate number of workweeks you worked from October 5, 2021 through <<PRELIM APPROVAL DATE>>, and whether you separated your employment at any time from October 5, 2019 through <<PRELIM APPROVAL DATE>>. The information contained in Orange County Erector's records regarding each of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator shall initially determine the eligibility for, and the amounts of, any Settlement Awards. However, the Court shall have the right to review the Settlement Administrator's initial determination, and the Court shall make the final determination regarding the eligibility for and amount of any Settlement Award, and the Court's determination shall be binding upon the Settlement Class members and the Parties.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written Request for Exclusion Form postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, a statement that you wish to be excluded from the Settlement, and your signature. A Request for Exclusion Form is included with this Notice.

Send the Request for Exclusion Form directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the class action Settlement, and shall receive no benefits from the class action Settlement. However, all Aggrieved Employees who worked for Orange County Erectors during the PAGA Period, including those who opt out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Amount. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you should mail a written objection to the Settlement Administrator. Your written objection should include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections should be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department CX-104 of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, 92701. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Armando Garcia-Avila, et al. v. Orange County Erectors, Inc.*, Orange County Superior Court Case No. 30-2022-01284202-CU-OE-CXC. You do not need to object in writing to be heard at the Final Approval Hearing.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department CX-104 of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, 92701. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Enhancement Payments to the Class Representatives. The Final Approval Hearing may be postponed without further notice to the Settlement Class. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. **You are <u>not</u> required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, 92701, during regular court hours. You may also visit the Orange County Superior Court website at www.occourts.org to inspect the Court's files by going to the "Case Access" tab under "Online Services," selecting "Civil Case & Document Access," and entering the case number information for this case, which is Case No. 30-2022-01284202-CU-OE-CXC. <u>You may also contact Class Counsel using the contact information listed above for more information</u>.

You may also access key documents from the case, including the operative complaint, the Settlement Agreement, this Class Notice, as well as the order granting preliminary approval at the Settlement Administrator's website at <<SETTLEMENT ADMINISTRATOR WEBSITE>>.

<u>PLEASE DO NOT CALL OR WRITE THE COURT, ORANGE COUNTY ERECTORS, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS</u>

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

EXHIBIT 2

NOTICE OF ESTIMATED SETTLEMENT AWARD

ARMANDO GARCIA-AVILA v. ORANGE COUNTY ERECTORS, INC.
ORANGE COUNTY SUPERIOR COURT CASE NO. 30-2022-01284202-CU-OE-CXC

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

____
(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

____
Former Names (if any)

____
New Street Address

____
City State Zip Code

(III) Information Used to Calculate Your Settlement Award:

According to Defendant Orange County Erectors, Inc.'s ("Orange County Erectors") records:

(a) you worked for Orange County Erectors in California as a non-exempt employee, not subject to a collective bargaining agreement, from____ until ____;

(b) you worked ____ workweeks as a non-exempt employee for Orange County Erectors in California between October 5, 2018 and [PRELIMINARY APPROVAL DATE];

(c) you worked ____ workweeks as a non-exempt employee for Orange County Erectors in California between October 5, 2021 and [PRELIMINARY APPROVAL DATE]; and

(d) your employment with Orange County Erectors <<DID/DID NOT>> end between October 5, 2019 and [PRELIMINARY APPROVAL DATE].

Based on the above, your Individual Settlement Award is estimated at **$________**.

(IV) If you disagree with items (a), (b), (c), and/or (d) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

____
____
____
____
____
____

If you dispute the above information from Orange County Erectors' records, Orange County Erectors' records will control unless you are able to provide documentation that establishes otherwise, and that Orange County Erectors' records are mistaken. If there is a dispute about whether Orange County Erectors' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved as described in the "Notice of Pendency of Class and PAGA Action and Proposed Settlement" that accompanies this Form.

ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.

Signature: ____________________________ **Date: ________________**

EXHIBIT 3

<u>REQUEST FOR EXCLUSION FORM</u>

Armando Garcia-Avila, et al. v. Orange County Erectors, Inc.
Orange County Superior Court
Case No. 30-2022-01284202-CU-OE-CXC

IF YOU *<u>DO NOT</u>* WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST *<u>COMPLETE</u>*, *<u>SIGN</u>* AND *<u>MAIL</u>* THIS FORM, POSTMARKED ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:

PHOENIX SETTLEMENT ADMINISTRATORS ***ARMANDO GARCIA-AVILA V. ORANGE COUNTY ERECTORS, INC.*** **SETTLEMENT ADMINISTRATOR** **ADDRESS** **ADDRESS** **PHONE** **FAX**

DO <u>NOT</u> SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I ***<u>do not</u>*** want to be included in the Settlement of the lawsuit entitled *Armando Garcia-Avila, et al. v. Orange County Erectors, Inc.*, Orange County Superior Court Case No. 30-2022-01284202-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *ARMANDO GARCIA-AVILA V. ORANGE COUNTY ERECTORS, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT. HOWEVER, I MAY STILL BE ENTITLED TO RECEIVE A PORTION OF THE SETTLEMENT OF THE CLAIMS BROUGHT PURSUANT TO THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA") AS DESCRIBED IN THE ACCOMPANYING NOTICE OF PENDENCY OF CLASS AND PAGA ACTION AND PROPOSED SETTLEMENT.

____
Name Telephone Number

____
Address

____
Date Signature

Last Four Digits of Social Security Number: ______________

EXHIBIT B

October 5, 2022

VIA LWDA WEBSITE

Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: *Armando Garcia-Avila v. Orange County Erectors, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Armando Garcia-Avila in claims arising from his employment with Orange County Erectors, Inc., and Does 1 through 100 (collectively, "Defendants"). Mr. Garcia-Avila is an "aggrieved employee" as defined by Labor Code § 2698, *et seq*. due to Defendants' numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated.

Mr. Garcia-Avila was employed by Defendants as a non-exempt employee from approximately January 2021 until approximately July 29, 2022. Defendants are in the business of fabricating and erecting structural and miscellaneous steel buildings in Southern California. Mr. Garcia-Avila was typically scheduled to work a shift from 6:00 a.m. to 4:30 p.m., Mondays through Thursday; Fridays from 6:00 a.m. to 2:30 p.m.; and Saturdays from 6:00 a.m. to 12:00 p.m.; however, Mr. Garcia-Avila regularly worked hours beyond his scheduled hours due to work demands. The "aggrieved employees" whom Mr. Garcia-Avila seeks to represent include all non-exempt employees who have worked for Defendants in California at any time from one year prior to the date of this letter through the present.

During Mr. Garcia-Avila's employment with Defendants, upon information and belief, Defendants utilized a timekeeping system which resulted in Mr. Garcia-Avila and other aggrieved employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, although Mr. Garcia-Avila and other aggrieved employees recorded their hours worked using a timeclock machine that recorded their hours worked to the minute, Defendants regularly, systematically, and impermissibly rounded, shaved, or otherwise altered the time worked by Mr. Garcia-Avila and other aggrieved employees in Defendants' favor, such that the time shaving/rounding practice utilized by Defendants was not even-handed over time and would round and shave in Defendants' favor such that Mr. Garcia-Avila and other aggrieved employees were routinely underpaid for their time worked. Defendants' timekeeping policies/practices were not even handed and have resulted in Mr. Garcia-Avila and other aggrieved employees not being compensated for all hours worked. Further, on occasions when Mr. Garcia-Avila worked over eight hours in a workday and/or forty hours in a workweek, Defendants' timekeeping policies/practices deprived him of additional overtime wages earned. Due to Defendants' timekeeping policies/practices that fail to compensate for all hours worked, Plaintiff and other aggrieved employees were not compensated for all required minimum and overtime wages.

Defendants also failed to provide Mr. Garcia-Avila and other aggrieved employees with all legally compliant meal periods due to Defendants' meal period policies/practices, which have resulted in late (commencing after the fifth hour of work), short (less than 30 minutes), and missed meal periods. Specifically, although Mr. Garcia-Avila and other aggrieved employees' shift started at 6:00 a.m., Mr. Garcia-Avila and other aggrieved employees were regularly provided a meal period at 12:00 p.m. each workday, which is after the completion of five hours of work. In addition, Defendants failed to provide Mr. Garcia-Avila and other aggrieved employees with second meal periods on shifts over 10.0 hours. During at least a portion of the relevant time period, Defendants did not require Mr. Garcia-Avila and other aggrieved employees to record their meal periods. Instead, upon information and belief, Defendants automatically deducted 30-minutes from the total hours worked for each shift worked regardless of whether the employee took a full 30-minute compliant meal period. On those occasions when Mr. Garcia-Avila was not provided with all legally-required meal periods to which he was entitled, Defendants failed to compensate Mr. Garcia-Avila with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants maintained no payroll code or other mechanism for paying meal period premiums under Labor Code § 226.7 in the event a legally compliant meal period was not provided to Mr. Garcia-Avila and other aggrieved employees.

Defendants have also failed to authorize and permit all required rest periods for Mr. Garcia-Avila and other aggrieved employees. Specifically, Mr. Garcia-Avila was not always authorized and permitted to take separate rest periods throughout the workday. On Friday shifts, Mr. Garcia-Avila and other aggrieved employees were provided one single 20-minute combined rest period at approximately 10:00 a.m. and were not authorized and permitted a second rest period in the afternoon after their meal period, in violation of California law. See *Rodriguez v. E.M.E., Inc.,* 246 Cal.App.4th 1027 (2016) (holding that in a shift with a single meal period, the preferred schedule requires the provision of a rest period in the middle of each "work period" before and after the meal break, and that "a departure from the preferred schedule is permissible only when the departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate a material burden that would be imposed on the employer by implementing the preferred schedule."). Furthermore, despite working shifts in excess of 10.0 hours, Mr. Garcia-Avila was not authorized and permitted to take a third rest period, due to Defendants' rest period policies/practices, which fail to authorize and permit all legally-required rest periods. Despite failing to authorize and permit Mr. Garcia-Avila and other aggrieved employees to take all rest periods to which they are entitled, upon information and belief, during at least a portion of the relevant time period, Defendants maintained no mechanism for the payment of rest period premium payments as required by Labor Code § 226.7 and did not pay Mr. Garcia-Avila and other aggrieved employees any rest period premiums.

During Mr. Garcia-Avila's employment with Defendants, Mr. Garcia-Avila worked over 8.0 hours per workday and/or more than 40.0 hours per workweek, but upon information and belief, did not receive overtime compensation equal to one and one-half times his regular rate of pay for working overtime hours. Specifically, Defendants paid Mr. Garcia-Avila and other aggrieved employees non-discretionary incentive pay, including but not limited to, bonus payments, and/or other forms of pay that are not excludable from an employee's "regular rate" of pay (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). However, Defendants failed to properly calculate Mr. Garcia-Avila and other aggrieved employees' regular rates of pay as a result of their receipt of Incentive Pay, thereby miscalculating and underpaying the overtime wages owed to them.

As a result of Defendants' failure to compensate Mr. Garcia-Avila and other aggrieved employees for all minimum wages, overtime wages, and all meal and rest period premium wages, Defendants maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage statements. As a further result of Defendants' failure to compensate Mr. Garcia-Avila and other aggrieved employees for all minimum wages, overtime wages, and all meal and rest period premium wages, Defendants failed to pay Mr. Garcia-Avila and other aggrieved employees all wages owed at the time of their separation of employment with Defendants.

<u>Minimum Wage Violations</u>

Defendants were, and are, required to pay Mr. Garcia-Avila and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked. *See* Labor Code §§ 204, 558, 1194, 1194(a), 1194.2(a), 1197, 1198 and 1182, Wage Order 1, § 4. As alleged above, Defendants maintained, and continue to maintain, timekeeping policies/practices and pay policies/practices that regularly, systematically, and impermissibly fail to compensate Mr. Garcia-Avila and other aggrieved employees, at least the minimum wage for all hours worked. As a result of these policies/practices, Mr. Garcia-Avila and other aggrieved employees have been, and continue to be, deprived of all required minimum wages.

<u>Overtime Violations</u>

Defendants were, and are, required to properly pay Mr. Garcia-Avila and other aggrieved employees' overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 204, 210, 216, 510, 1194, and 1198; Wage Order 1, § 3. Wage Order 1, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of eight hours per workday and/or in excess of forty hours of work in the workweek. Wage Order 1, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. As described herein, Defendants caused Mr. Garcia-Avila and other aggrieved employees to work overtime and/or double-time hours but did not compensate Mr. Garcia-Avila and other aggrieved employees at one and one-half times (or two times) their regular rate of pay for such hours.

Meal Period Violations

As alleged above, Defendants failed, and continue to fail, to provide Mr. Garcia-Avila and other aggrieved employees with all required and compliant meal periods, due to Defendants' meal period policies/practices that fail to provide legally compliant meal periods, to Mr. Garcia-Avila and other aggrieved employees. *See* Labor Code §§ 204, 210, 226.7, and 512; Wage Order 1, § 11. As a result, Mr. Garcia-Avila and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with…[an] order of the Industrial Welfare Commission…the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided."). As alleged above, Defendants have also failed to pay them the premium wages to which aggrieved employees are legally entitled. In addition, as noted above, Defendants have failed to properly record meal periods due to their auto-deduct policies/practices.

Rest Period Violations

Due to its unlawful rest period policies and/or practices, Defendants have failed to authorize and permit Mr. Garcia-Avila and other aggrieved employees to take all required rest periods to which they are legally entitled. Wage Order 1, § 12 and California Labor Code §§ 226.7 and 516. Despite Defendants' violations, Defendants have not paid an additional hour of premium pay to Mr. Garcia-Avila and other aggrieved employees at their respective regular rates of compensation for each violation in accordance with Labor Code section 226.7. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.").

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Garcia-Avila and other aggrieved employees with complete and accurate wage statements with respect to, among other things, their total gross wages earned, total net wages earned, total hours worked, and amount of paid sick leave time available, in violation of Labor Code §§ 226 *et seq.*; Wage Order 1, § 7. As a result of Defendants' failure to pay all minimum and overtime wages and failure to pay all required meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Garcia-Avila and other aggrieved employees in violation of Labor Code § 226. Defendants' failure to comply with its wage statement obligations was knowing and intentional, and Mr. Garcia-Avila and other aggrieved employees have suffered injury as a result.

Failure to Timely Pay Final Wages

Defendants were, and are, also required to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment, pursuant to Labor Code sections 201-203. Defendants failed to timely pay Mr. Garcia-Avila and other aggrieved employees all final wages due to them at the time of their separation including, among other things, all overtime and minimum wages owed, and all meal and rest period premium wages. Further, Mr. Garcia-Avila is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay aggrieved employees all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Mr. Garcia-Avila and other aggrieved employees all earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due.

Mr. Garcia-Avila is informed and believes, and based thereon alleges, that the violations alleged herein are continuing to the present. As an "aggrieved employee," Mr. Garcia-Avila will initiate a civil action on behalf of himself, the State of California, and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. As alleged herein, and based on Mr. Garcia-Avila's own investigation and on information and belief, Defendants have committed the following Labor Code violations:

a. Defendants have violated Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Garcia-Avila and other aggrieved employees at least the statutory minimum wage for all hours worked;

b. Defendants have violated Labor Code §§ 204, 210, 510, 558, 1194, and 1198; by failing to pay Mr. Garcia-Avila and other aggrieved employees all overtime and/or double-time compensation earned;

c. Defendants have violated Labor Code §§ 226.7, 512, 558 and 1198 by failing to provide all legally required meal periods and by failing to pay meal period premiums to Mr. Garcia-Avila and other aggrieved employees;

d. Defendants have violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit all legally required rest periods and by failing to pay rest period premiums to Mr. Garcia-Avila and other aggrieved employees;

e. Defendants have violated Labor Code § 226, *et seq.*, by failing to furnish Mr. Garcia-Avila and other aggrieved employees with accurate and complete itemized wage statements;

f. Defendants have violated Labor Code §§ 201-203 by failing to pay Mr. Garcia-Avila and other aggrieved former employees all wages due at the end of their employment;

g. Defendants violated Labor Code § 204 by failing to pay Mr. Garcia-Avila and other aggrieved employees all wages earned at least twice during each calendar month; and

h. Defendants violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Garcia-Avila and other aggrieved employees.

Pursuant to Labor Code section 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

____
Paul K. Haines

cc: Orange County Erectors, Inc., c/o California Registered Corporate Agent (individual) Steve W. Pennachio (Agent for Service of Process) (via certified mail)

PROOF OF ACCEPTANCE
(ELECTRONIC)

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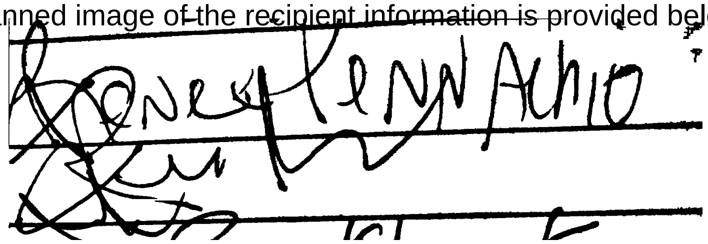

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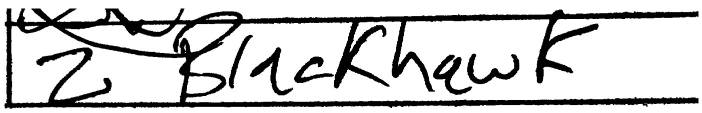

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