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

WILLIAM CAMPOS; individually, and on
behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;
JUANITA HERNANDEZ; individually, and
on behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

vs.

MOTIVE ENERGY, INC., a California
corporation; MOTIVE ENERGY
TELECOMMUNICATIONS GROUP, INC.,
a California corporation; ADVANCED
CHARGING TECHNOLOGIES, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 30-2016-00828352-CU-OE-CXC

Honorable William D. Cluster
Department CX104

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
EDWIN AIWAZIAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Joint Supplemental Brief In Support of Motion
for Preliminary Approval of Class Action
Settlement; and [Revised Proposed] Order filed
concurrently herewith]

Date: October 19, 2018
Time: 9:00 a.m.
Department: CX104

Complaint Filed: January 5, 2016
FAC Filed: September 22, 2016
SAC Filed: December 6, 2016
Jury Trial Date: None Set

SUPPLEMENTAL DECLARATION OF EDWIN AIWAZIAN

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2 1. I am an attorney licensed to practice law in the State of California. I am a member
3 of Lawyers for Justice, PC, attorneys of record for Plaintiffs William Campos and Juanita
4 Hernandez ("Plaintiffs") and the proposed Class. The facts set forth in this declaration are within
5 my personal knowledge or based on information and belief, and if called as a witness, I could
6 and would competently testify thereto.

7 2. On July 27, 2018, Plaintiffs filed their Motion for Preliminary Approval of Class
8 Action Settlement ("Motion for Preliminary Approval") and supporting documents seeking
9 approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Original
10 Settlement Agreement") reached by Plaintiffs and Defendants Motive Energy, Inc. Motive
11 Energy Communications Group, Inc., Advanced Charging Technologies, Inc. ("Defendants")
12 (collectively referred to with Plaintiffs, as "Parties").

13 3. On August 24, 2018, the Court entered a Minute Order which adopted its tentative
14 ruling issued on August 23, 2018, raising several points of inquiry and instructing the Parties to
15 submit further briefing in support of Plaintiffs' Motion for Preliminary Approval ("August 24,
16 2018 Minute Order"). A true and correct copy of the August 24, 2018 Minute Order is attached
17 hereto as "**EXHIBIT A**".

18 4. To address the Court's points of inquiry and to provide clarification, the Parties
19 met and conferred, negotiated, and executed an Amendment No. 1 to Joint Stipulation of Class
20 Action and PAGA Settlement and Release ("Amendment No. 1") on September 21, 2018, a true
21 and correct copy of which is attached hereto as "**EXHIBIT B**." A redline version of the
22 Amendment No. 1, showing how the original terms of the Original Settlement Agreement have
23 been revised, is attached hereto as "**EXHIBIT C**." Together, the Original Settlement Agreement
24 and Amendment No. 1 are hereinafter referred to as the "Settlement," "Agreement," or
25 "Settlement Agreement."

26 5. Based on the Court's guidance, the Parties have also prepared, and now present for
27 the Court's consideration and approval, the [Revised] Notice of Class Action Settlement
28 ("Revised Class Notice") which is attached to Amendment No. 1 as "Exhibit 1." The Revised

1 Class Notice is also attached as "Exhibit A" to the concurrently-filed [Revised Proposed] Order
2 Granting Preliminary Approval of Class Action Settlement ("Revised Proposed Preliminary
3 Approval Order"). A redline version of the Revised Class Notice showing how the original
4 document was revised, is attached hereto as "**EXHIBIT D.**" The Parties have also prepared, and
5 now present for the Court's consideration and approval, the Opt Out Form, attached to
6 Amendment No. 1 as "Exhibit 2" and as "Exhibit B" to the concurrently-filed Revised Proposed
7 Preliminary Approval Order.

8 **SUFFICIENCY OF THE CLASS NOTICE**

9 6. Based on information provided by Defendants and Plaintiffs' and Class Counsel's
10 experience and investigations, Defendants are forklift battery and telecommunications
11 companies. The Parties have no reason to believe that all Class Members do not read and write
12 either English and/or Spanish proficiently. The Parties have amended the Original Settlement
13 Agreement to provide that the Revised Class Notice will be sent to Class Members in English
14 and Spanish.

15 **REASONABLE ESTIMATE OF THE POTENTIAL VALUE OF THE CLAIMS**

16 7. Plaintiffs' action alleges that Defendants have violated the California Labor Code
17 and California Business and Professions Code by engaging in a uniform policy and systematic
18 scheme of wage abuse against Plaintiffs and the putative class members, including *inter alia*,
19 failing to properly compensate for overtime and minimum wages, failing to provide compliant
20 meal and rest periods and associated premium pay, failing to timely pay wages and associated
21 waiting-time penalties, failing to provide compliant wage statements, failing to maintain requisite
22 payroll records, and failing to reimburse necessary business expenses. Plaintiffs further contend
23 that Defendants thereby engaged in unfair business practices and that their conduct gives rise to
24 penalties under the Private Attorneys General Act. For example, Plaintiffs claimed that they and
25 the other putative class members were regularly required to perform job duties, off-the-clock,
26 during meal and rest periods, and before clocking-in and after clocking-out of work.

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8. The operative complaint asserts claims for: (1) failing to properly pay overtime wages (Cal. Lab. Code §§ 510 and 1198); (2) failing to provide compliant meal periods and associated premiums (Cal. Lab. Code §§ 226.7 and 512(a)); (3) failing to provide compliant rest periods and associated premiums (Cal. Lab. Code § 226.7); (4) failing to pay minimum wages (Cal. Lab. Code §§ 1194, 1197, and 1197.1); (5) failing to timely pay wages upon termination of employment (Cal. Lab. Code §§ 201 and 202); (6) failing to timely pay wages during employment (Cal. Lab. Code § 204); (7) failing to provide compliant wage statements (Cal. Lab. Code § 226(a)); (8) failing to keep requisite payroll records (Cal. Lab. Code § 1174(d)); (9) failing to reimburse necessary business expenses (Cal. Lab. Code §§ 2800 and 2802); (10) engaging in unfair business practices (Cal. Bus. & Prof. §§ 17200, *et seq.*); and (11) recovery of penalties under the California Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2696, *et seq.*). The merits of the principle claims are addressed separately below.

9. Based on data provided by Defendants, the total number of putative class members during the period from approximately January 5, 2012 to January 5, 2018 (“relevant time period”) was estimated to be four hundred eight-four (484) individuals, who worked a total of approximately forty-seven thousand one hundred thirty (47,130) weeks, and had an estimated average hourly rate of pay of twenty-one dollars and sixty-nine cents (\$21.69).

10. As set forth in the Declaration of Edwin Aiwarzian in Support of Plaintiff’s Motion for Preliminary Approval filed on July 27, 2018 (“Declaration of Edwin Aiwarzian”), and discussed in the Motion for Preliminary Approval, both sides had the opportunity to interview witnesses, conducted formal and informal discovery, informally exchanged information and class-wide data, and conducted an investigation into the facts of the case.

A. Failure to Pay Overtime and Minimum Wages

11. Plaintiffs alleged causes of action for failure to pay overtime and minimum wages. Plaintiffs contended that Defendants’ uniform policies, practices, and procedures required its non-exempt and hourly-paid employees to perform work during meal and rest periods and before clocking-in and after clocking-out. For example, Plaintiffs contended that Defendants’ policies, practices, and procedures required Plaintiffs and putative class members to work off-the-clock in

1 order to complete their daily tasks (including but not limited to, answering phone calls, text
2 messages, and emails and loading and unloading trucks), and that Defendants failed to properly
3 calculate the regular rate for purposes of paying overtime by, *inter alia*, not considering non-
4 discretionary bonuses, incentives, commissions, and shift differentials. Plaintiffs contended that
5 Defendants failed to properly compensate Plaintiffs and the putative class members at the correct
6 applicable minimum, regular, or overtime rates for their work, and that Defendants failed to
7 compensate them for all of the hours they worked. For example, Plaintiffs contended that
8 Defendants had a policy of compensating Plaintiffs and putative class members based on their
9 scheduled shifts rather than their recorded hours worked.

10 12. California Labor Code section 510 provides that when an employee works more
11 than eight (8) hours in any workday or more than forty (40) hours in any workweek, the employer
12 must pay the employee at least one and one-half times the employee's regular rate of pay for all
13 overtime hours worked. If an employee works more than twelve (12) hours in one day, the
14 employer must pay the employee no less than twice his or her regular rate of pay. California
15 Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage
16 Order(s) provide that it is unlawful to employ persons without compensating them at a rate of
17 pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
18 number of hours worked by the person on a daily or weekly basis.

19 13. California Labor Code section 1197 provides that it is unlawful to pay employees
20 at a rate less than the minimum wage. California Labor Code sections 1194, 1194.2, 1197, and
21 1197.1 provide that an employee may seek to recover unlawfully unpaid wages by court action,
22 as well as liquidated damages in an amount equal to the wages unlawfully not paid and interest
23 thereon. California Labor Code section 1197.1 provides for civil penalties, which may only be
24 recovered by the Labor Commissioner during a one-year statute of limitations period.

25 14. Defendants contended, *inter alia*, that their overtime policies and practices comply
26 with the law, and that their non-exempt and hourly-paid employees are paid over the California
27 minimum wage for all hours worked. Defendants contended that they had compliant policies
28 regarding payment of overtime. Defendants also contended that they had properly included non-

1 discretionary bonuses, incentives, commissions, and shift differentials when calculating the
2 regular rate for purposes of paying overtime wages. Defendants also produced wage statements
3 reflecting one-and-a-half and double time overtime compensation to many of the putative class
4 members. Defendants further contended that all employees were required to record all time
5 worked and were given the opportunity to make any necessary timecard revisions or changes,
6 and that Defendants were not aware that any work had been performed off-the-clock. Defendants
7 also argued that individual liability issues predominate, including: (a) whether each employee
8 worked off-the-clock; (b) whether Defendants knew or should have known about each
9 employee's off-the-clock work; (c) whether each employee worked in excess of 8 hours in a day
10 and 40 hours in a week; and (d) whether Defendants knew or should have known that each
11 putative class member performed overtime work. Defendants also contended that the putative
12 class members were employed across three different entities (Motive Energy, Inc., Motive
13 Energy Telecommunications Group, Inc., and Advanced Charging Technologies, Inc.), held
14 several different job titles (Defendants contended that the putative class members held 64 distinct
15 job titles), worked at several different facilities or settings, and performed different job duties.
16 Defendants assert that these circumstances would raise highly individualized questions of fact
17 and would pose challenges to certification and the merits of the claims for overtime and minimum
18 wages. Finally, Defendants contended that many putative class members were subject to an
19 arbitration agreement.

20 15. Class Counsel considered information obtained through investigations and
21 obtained from Plaintiffs and other putative class members, as well as class data provided by
22 Defendants, and created damages/valuation models prior to the mediation. Based thereon, it was
23 estimated that, if it could be proven that Defendants failed to pay one (1) hour of overtime wages
24 per workweek during the relevant time period, the maximum value of this claim was
25 \$1,533,610.20 (47,130 workweeks x 1 hour of overtime wages x overtime hourly rate of \$32.54,
26 which is based on the average hourly rate of \$21.69). It was also estimated that, if it could be
27 proven that Defendant failed to pay one (1) hour of minimum wages per workweek during the
28 relevant time period, the maximum value of this claim was \$1,022,249.70 (47,130 workweeks x

1 1 hour of minimum wages x average hourly rate of \$21.69).

2 16. However, this assumes an exposure based on the case having been certified and
3 Plaintiffs having proved all elements of the overtime and minimum wage claims, despite the risks
4 and expenses associated with obtaining and maintaining class certification and establishing
5 liability. Plaintiffs faced the risk of the Court finding that individualized issues predominate,
6 such that the action is not suitable for class treatment. While Class Counsel disagreed with
7 Defendants' arguments and factual contentions, Class Counsel recognized the realities of the case
8 and took into consideration applicable case law, risks, and expense associated with obtaining and
9 maintaining class certification and establishing liability, and other risks to recovery. Taking into
10 account these attendant risks and discounting fifty percent (50%) for them, the realistic value of
11 the overtime wage claim was estimated to be \$766,805.10 and the realistic value of the minimum
12 wage claim was estimated to be \$511,124.85.

13 **B. Failure to Provide Compliant Meal Periods and Associated Premiums**

14 17. Plaintiffs' theory of liability was also based on Defendants' failure to provide
15 timely, full, and/or uninterrupted meal periods. Plaintiffs contended, *inter alia*, that Defendants'
16 policies, practices, and procedures required employees to perform job duties during their meal
17 periods, and prevented them from receiving compliant meal periods. Plaintiffs further contended
18 that Defendants failed to pay meal period premiums for missed, late, short, or interrupted meal
19 periods.

20 18. Under California law, an employer must provide an employee with uninterrupted
21 meal periods of not less than thirty (30) minutes before the employee works more than five (5)
22 hours, except that if the total work period per day of the employee is no more than six (6) hours,
23 the meal period may be waived by mutual consent of both the employer and employee. Cal. Lab.
24 Code § 512(a). A second meal period of not less than thirty (30) minutes is required if an
25 employee works more than ten (10) hours per day, except that if the total hours worked is no
26 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
27 employer and employee only if the first meal period was not waived. *Id.* An "on-duty" meal
28 period is illegal unless "the nature of the work prevents an employee from being relieved of all

1 duty and when by written agreement between the parties an on-the-job paid meal period is agreed
2 to.” IWC Wage Orders 1 through 15, § 11; IWC Wage Order 16, § 10. An employer must pay
3 each employee to whom it fails to “provide” a meal period one hour of wages at his or her regular
4 rate of pay “for each work day that the meal or rest period is not provided.” Cal. Lab. Code §
5 226.7(b).

6 19. Defendants contended that they had practices, policies, and procedures to provide
7 meal periods every workday to their employees that fully complied with California law.
8 Defendant further contended that they provided paid thirty-minute meal periods for all putative
9 class members. To the extent that putative class members failed to take their meal periods or
10 took a short or late meal period, Defendants contended that they did so voluntarily and that all
11 applicable meal periods were still provided to them. Thus, Defendants argued that they did not
12 act unlawfully to deprive putative class members of meal periods. Defendants also contended
13 that there were multiple individual issues that would pose challenges to certification, including
14 and not limited to, (a) whether any meal periods were non-compliant and (b) why they were non-
15 compliant. Defendants also contended that the putative class members were employed across
16 three different entities, held several different job titles, worked in or at several different facilities
17 or settings, and performed many different job duties and that as a result, there was variation to
18 the circumstances that could allegedly cause the employees to be deprived of the opportunity to
19 take legally-compliant, duty-free meal periods, and that this variation in circumstances raised
20 highly individualized questions of fact. Defendants also produced what it contended was
21 evidence of meal period premiums paid to many putative class members.

22 20. Class Counsel considered information obtained through investigations and
23 obtained from Plaintiffs and other putative class members, as well as class data provided by
24 Defendants, and created damages/valuation models prior to the mediation. Based thereon, it was
25 estimated that, if it could be proven that one (1) meal period premium is due for every workweek
26 during the relevant time period, the maximum value of this claim was \$1,022,249.70 (47,130
27 workweeks x 1 meal period premium x average hourly rate of \$21.69).

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21. Class Counsel also considered the risk of further litigating the case, including the significant additional costs that will be incurred by both sides if the case does not settle, as litigating a class action through class certification, trial, and/or appeals is very expensive. Moreover, litigating meal period claims is inherently difficult as an employer's records, as is the case here, do not usually indicate when a meal period is interrupted. While Class Counsel disagreed with Defendants' arguments and factual contentions, Class Counsel recognized the realities of the case, applicable case law, risks and expenses of obtaining and maintaining class certification and establishing liability, and other risks to recovery. Taking into account these attendant risks and discounting fifty percent (50%) for them, the realistic value of the meal period claim was estimated to be \$5,111,24.85.

C. Failure to Provide Compliant Rest Periods and Associated Premiums

22. Plaintiffs' theory of liability was also based on Defendants' failure to provide their employees with timely, full, and/or uninterrupted rest periods. Plaintiffs contended that Defendants' employment policies, practices, and procedures forced employees to perform job duties during their rest periods and prevented them from regularly receiving compliant rest periods.

23. California law requires an employer to provide rest periods to all employees at the rate of ten (10) minutes every four hours of work or major fraction thereof. Cal. Lab. Code § 226.7. When an employer fails to provide a compliant rest period, the employer is required to either provide another rest period or pay one (1) additional hour of pay at the regular rate of pay for each work day that the rest period is not provided. See Cal. Lab. Code § 226.7(b); *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 271-272.

24. Defendants contended that they had methods, policies, and procedures to provide all applicable rest periods every workday to its non-exempt and hourly-paid employees that fully complied with California laws. Defendants produced what they contended was a facially-compliant rest period policy. Defendants contended that they provided all putative class members with two (2) paid rest periods a day. Defendants further argued that the reasons why a putative class member failed to receive a compliant rest period raised individual issues that could not be

1 certified.

2 25. Class Counsel considered information obtained through investigations and
3 obtained from Plaintiffs and other putative class members, as well as class data provided by
4 Defendants, and created damages/valuation models prior to the mediation. Based thereon, it was
5 estimated that, if it could be proven that one (1) rest period premium is due for every workweek
6 during the relevant time period, the maximum value of this claim was \$1,022,249.70 (47,130
7 workweeks x 1 rest period premium x average hourly rate of \$21.69).

8 26. Class Counsel also considered the risk of further litigating the case, as well as
9 significant additional costs that will be incurred by both sides if the case does not settle, as
10 litigating a class action through class certification, trial, and/or appeals is very expensive.
11 Moreover, litigating rest period claims is inherently difficult as an employer's records, as is the
12 case here, do not usually indicate when a rest period is short, late, interrupted or missed entirely.
13 While Class Counsel disagreed with Defendants' arguments and factual contentions, Class
14 Counsel recognized the realities of the case and took into consideration applicable case law, the
15 costs and expenses of further litigation and obtaining and maintaining class certification, and
16 other risks to recovery. Taking into account these attendant risks and discounting fifty percent
17 (50%) for them, the realistic value of the rest period claim was estimated to be \$5,111,24.85.

18 **D. Waiting-Time Penalties for Failure to Timely Provide Wages During Employment**
19 **and Upon Termination**

20 27. California Labor Code section 204 provides that wages earned by any person in
21 any employment between the 1st and 15th days, inclusive, of any calendar month, other than
22 those wages due upon termination of an employee, are due and payable between the 16th and the
23 26th day of the month during which the labor was performed. Further, all wages earned by any
24 person in any employment between the 16th and the last day, inclusive, of any calendar month,
25 are due and payable between the 1st and the 10th day of the following month.

26 28. Plaintiffs alleged that Defendants intentionally and willfully failed to pay Plaintiffs
27 and the putative class members all wages due to them while they were employed by Defendants,
28 within the time period permissible under California law. These wages included, but were not

1 limited to, overtime, regular, and minimum wages, and meal and rest break premium wages.
2 However, arguably, this provision of the California Labor Code only states requirements and
3 does not provide for private relief for failure to comply with the requirements stated therein.
4 Instead, redress may be pursued for the failure to pay wages and interest thereon (which is
5 discussed herein with respect to the claims for unpaid minimum and overtime wages).

6 29. California Labor Code sections 201 and 202 provide that if an employer discharges
7 an employee, the wages earned and unpaid at the time of discharge are due and payable
8 immediately. If an employee quits his or her employment, his or her wages shall become due
9 and payable not later than seventy-two (72) hours of quitting, unless the employee has given
10 seventy-two (72) hours of notice of his or her intention to quit, in which case the employee is
11 entitled to his or her wages at the time of quitting.

12 30. California Labor Code section 203 provides that if an employer fails to pay an
13 employee all wages due at termination or within seventy-two (72) hours of resignation, in
14 accordance with sections 201 and 202, then that employee's wages shall continue as a penalty
15 until paid for a period of up to thirty (30) days from the date they were due. California Labor
16 Code section 203 further provides that the statute of limitations to recover the penalty is the same
17 as the statute of limitations for recovery of the unpaid wages from which the penalties arise, i.e.
18 three years.

19 31. Plaintiffs alleged that Defendants intentionally and willfully failed to pay Plaintiffs
20 and the other putative class members all wages due to them upon termination, within the time
21 period permissible under California law. For example, Plaintiffs alleged that Defendants' non-
22 exempt and hourly-paid employees are entitled to unpaid wages arising from, *inter alia*, off-the-
23 clock work, failure to pay overtime wages, and non-compliant meal and rest periods, thereby
24 triggering waiting-time penalties under California Labor Code section 203. This also meant the
25 claim was derivative of the other underlying Labor Code Claims.

26 32. Based on information and data provided by Defendants, it was estimated that
27 approximately two hundred ninety-three (293) putative class members had been terminated
28 during the time period commencing from January 5, 2012. If these individuals were not timely

1 paid all wages due to them upon termination, the maximum value of waiting-time penalties
2 (calculated at daily pay at the average hourly rate, for an average work day of 8 hours) were
3 estimated to be \$1,525,240.80 (293 individuals x [30 days x average hourly of \$21.69 x 8 hours]),
4 or approximately \$5,205.60 per individual. However, this presumes that Plaintiffs would prevail
5 on the underlying California Labor Code claims, which is necessary to show that Defendants
6 failed to timely pay wages that were due to the putative class members upon termination.

7 33. Defendants were adamant that no waiting time penalties should be awarded.
8 Defendants pointed out that waiting time penalties are derivative of each and every other
9 underlying cause of action, and contended that it paid the terminated employees all wages due
10 and owing. Moreover, Defendants emphasized that, under California Labor Code section 203,
11 employers are only obligated to pay waiting time penalties if they “willfully” fail to pay wages
12 due and owing at the time of termination or resignation. As Title 8, California Code of
13 Regulations, section 13520 states,

14 A willful failure to pay wages within the meaning of Labor Code
15 Section 203 occurs when an employer intentionally fails to pay
16 wages to an employee when those wages are due. However, a good
17 faith dispute that any wages are due will preclude imposition of
18 waiting time penalties under Section 203.

19 A “good faith dispute” that any wages are due occurs when an
20 employer presents a defense, based in law or fact, which, if
21 successful, would preclude any recovery on the part of the employee.
22 The fact that a defense is ultimately unsuccessful will not preclude a
23 finding that a good faith dispute did exist. Defenses presented which,
24 under all the circumstances, are unsupported by any evidence, are
25 unreasonable, or are presented in bad faith, will preclude a finding of
26 a “good faith dispute.”

27 34. Accordingly, in assessing the likely recovery of waiting time penalties, Class
28 Counsel took into consideration the chances of prevailing on each of the underlying causes of
action, as well as the additional hurdles of prevailing on the claim for waiting-time penalties,
including the derivative nature of the claims and inherent difficulty in proving the “willful” prong
of section 203, applicable case law, cost and expenses of further litigation and obtaining and
maintaining class certification, and risks to recovery. Taking into account these attendant risks
and discounting seventy-five percent (75%) for them, the realistic value of the waiting-time
penalties claim was estimated to be \$381,310.20.

1 **E. Wage Statement Violations**

2 35. Plaintiffs also alleged a cause of action under California Labor Code section 226(a).
3 That section states that an employer must provide an accurate and itemized wage statement twice
4 a month or each time wages are paid, whichever is the more frequent. Failure to do so entitles
5 employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
6 period in which a violation occurs and one hundred dollars (\$100) for each violation in a
7 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000).
8 See Cal. Lab. Code § 226(e). Arguably, actual damages may be sought, under a three-year statute
9 of limitations, or, statutory penalties may be sought under a one-year statute of limitations period.

10 36. Based on data provided by Defendants, at the time of mediation, it was estimated
11 that approximately three hundred seventy-eight (378) putative class members worked during the
12 one-year statutory limitations period (i.e., from January 5, 2015), and that these putative class
13 members worked a total of fourteen thousand one hundred eighty-one (14,181) pay periods.
14 Assuming that an injurious wage statement could be proven for each of these putative class
15 members for each of these pay periods, the maximum value of this claim was estimated to be
16 \$1,399,200 ([378 initial violations x \$50 initial violation penalty] + [(14,181 – 378) subsequent
17 violations x \$100 subsequent violation penalty]).

18 37. Defendants contended that Plaintiffs and putative class members suffered no actual
19 injury from the alleged wage statement violations. Defendants also contended that this cause of
20 action is entirely derivative of the foregoing causes of action. In other words, Plaintiffs would
21 have to prove, for example, that off-the-clock work occurred, that overtime was worked, that all
22 hours of work had not been properly recorded and compensated, and/or that non-compliant meal
23 and rest periods occurred and that Defendants did not pay premiums, etc., to demonstrate that the
24 wage statements were inaccurate. Defendants further contended, *inter alia*, that if off-the-clock
25 and/or overtime work occurred and was not reflected in the wage statements, it was because the
26 work was hidden from Defendants. When assessing the value of this claim, Class Counsel
27 considered these factors, the derivative nature of this cause of action, the chances of prevailing
28 on each of the underlying causes of action, applicable case law, costs and expenses of further

litigation and obtaining and maintaining class certification, and risks to recovery. Taking into account these attendant risks and discounting seventy-five percent (75%), the realistic value of the wage statement claim was estimated to be \$349,800.

F. Failure to Maintain Requisite Payroll Records

38. Plaintiffs alleged that Defendants had intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily by, and the wages paid to, Plaintiffs and the putative class members. Plaintiffs also alleged that Defendants' intentional and willful failure to keep accurate payroll records violated the statutorily-protected right to accurate and complete payrolls records, and that Plaintiffs and the putative class members have suffered injury and damage as a result.

39. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records must be kept in accordance with rules established for this purpose by the Labor Commissioner, but in any case, shall be kept on file for not less than three years. Under California Labor Code section 1174.5, a willful violation of the employer's recordkeeping obligations set forth in Labor Code 1174(d) is subject to a civil penalty of \$500. Arguably, this civil penalty would only be recoverable by the Labor Commissioner, however, Plaintiffs assert a cause of action under PAGA. Therefore, the value of this claim is considered as a part of the valuation of the PAGA claim contained in paragraphs 52-62 herein.

40. Defendants contended that Plaintiffs and putative class members suffered no actual injury or damage from the alleged recordkeeping violations. Moreover, Defendants challenged certification of the recordkeeping issue on the basis that individual liability issues predominated, including (a) whether each putative class member's payroll records were not maintained properly, and (b) whether Defendants' alleged failure to keep requisite payroll records was "willful." Like the wage statement violations, this cause of action is entirely derivative of the causes of action for failure to pay overtime, minimum, and failure to provide compliant meal or rest periods.

1 41. However, the valuation of this claim assumed that Plaintiffs would be able to prove
2 that all hours of work had not been recorded and compensated properly and accurately, that non-
3 compliant meal and rest breaks did occur, but Defendants did not provide premium pay for them,
4 etc., in order to demonstrate that Defendants failed to maintain accurate and complete payroll
5 records.

6 42. As such, when assessing the value of this claim, Class Counsel took the foregoing
7 factors into account, as well as Defendants' defenses and contentions, the derivative nature of
8 this cause of action, the chances of prevailing on the other causes of action, the inherent difficulty
9 in proving the "willful" prong of California Labor Code section 1174.5, applicable case law, costs
10 and expenses of further litigation and certification, and risks to recovery and applied appropriate
11 discounts for settlement purposes.

12 **G. Unreimbursed Business Expenses**

13 43. Plaintiffs contended that Defendants had failed to reimburse Plaintiffs and the other
14 putative class members for necessary business expenses, including but not limited to, costs
15 associated with purchasing and maintaining clothing, tools for use at work, and protective gear,
16 as well as cost associated with use of personal cell phone for work purposes.

17 44. California Labor Code section 2802 requires an employer to indemnify its
18 employees for all necessary expenditures made by the employee in direct consequence of the
19 discharge of his or her duties, or of his or her obedience to the directions of the employer.

20 45. Defendants contended that they had a policy and practice of reimbursing employees
21 for necessary business-related expenses. Defendants also contended that, with respect to the
22 alleged expenses for which Plaintiffs and the other putative class members never requested
23 reimbursement from Defendants, Defendants did not know and had no reason to know that they
24 incurred the alleged business-related expenses. Defendants further contended that the reason for
25 why a putative class member undertook certain expenses, while not others, and failed to receive
26 reimbursement for certain expenses while not others, would raise individual issues that could not
27 be certified.

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46. Defendants also contended that the California Labor Code only requires reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the course of performing work—and argued that distinguishing a necessary expense from an unnecessary one would require individualized inquiry. See, Cal. Lab. Code section 2802; *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Furthermore, whether or not an expense was necessary, would depend, in part, on the reasonableness of the employee’s choice, and whether or not an expense was incurred, would have to be established by way of extensive individual factual inquiry and/or statistical evidence. *Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137.

47. By Plaintiffs’ calculation, if Plaintiffs proved that Defendants willfully failed to reimburse necessary business-related expenses for each of the four hundred eighty-four (484) putative class members in the amount of \$3 per workweek during the relevant time period, the maximum value of this claim was estimated to be \$141,390 (47,130 workweeks x \$3 business expenses). Class Counsel also took into consideration the additional costs attendant to, and risk of, establishing that expenses were incurred and that the nature of the expenses were such that Defendants were required to reimburse them. While Class Counsel disagreed with Defendants’ arguments and factual contentions, Class Counsel considered the realities of the case, as well as the risks and expenses of further litigation and obtaining and maintaining class certification, and other risks to recovery. Taking into account these attendant risks and discounting fifty percent (50%) for them, the realistic value of this claim was estimated to be \$70,695.

H. Unfair Business Practices

48. Plaintiffs pleaded this cause of action in order to augment his other causes of action and aid in their prosecution. California’s Unfair Competition Law, Business and Professions sections 17200, *et seq.* (“UCL”) prohibits any “unlawful, unfair or fraudulent business practices.” A violation of the UCL may be predicated on the violation of any state or federal law, including the California Labor Code.

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1 49. Arguably, California Business and Professions Code section 17208 extends the
2 statute of limitations on Plaintiffs' other claims, which qualify as unfair business practices, to
3 four (4) years.

4 50. Plaintiffs' theory of relief is that each of Defendants' alleged violations of the
5 California Labor Code (for which other causes of action were asserted) constitutes business
6 practices that are either unlawful (i.e., is forbidden by law) and/or unfair (i.e., harm to victim
7 outweighs any benefit). In order to prevail on the UCL cause of action, Plaintiffs would have to
8 prove that Defendants violated the predicate provisions of California law, and that the violations
9 constitute unlawful and/or unfair business acts and practices in violation of California Business
10 and Professions Code sections 17200, *et seq.* Plaintiffs would have to prove that Defendants'
11 conduct throughout the time period at issue has been unfair, unlawful, harmful, and injurious to
12 Plaintiffs and the putative class members. With respect to the UCL's standing requirement,
13 Plaintiffs would also have to prove that he has suffered an economic injury as a result of
14 Defendants' conduct.

15 51. As discussed above, Defendants vigorously challenged the likelihood of Plaintiffs'
16 success in establishing that any of the provisions of the California Labor Code, on which the UCL
17 claim is predicated, were violated and that such violations were injurious. Throughout this
18 litigation, Defendants also relentlessly challenged Plaintiffs' standing and adequacy to assert
19 class claims, and contended there were individualized issues that would pose challenges to
20 certification. When assessing the likelihood of prevailing on this cause of action, Class Counsel
21 considered all of the above, Defendants' factual contentions and legal arguments, the chances of
22 prevailing on the other causes of action, costs and expenses of further litigation and certification,
23 and risks to recovery, and applied appropriate discounts for settlement purposes. Class Counsel
24 also took into account that claims brought under the UCL are equitable actions for injunctive or
25 restitutionary relief, and such relief is limited to returning to the Plaintiffs and putative class
26 members monies unlawfully withheld, such as unpaid wages and premiums, which Plaintiffs
27 were also attempting to recover through the California Labor Code claims, the UCL claim was
28 used as a tool to aid in obtaining said relief.

1 **I. PAGA Penalties**

2 52. Under the PAGA, as amended, California Labor Code sections 2698, *et seq.*, civil
3 penalties that may be assessed and collected by the California Labor and Workforce Development
4 Agency ("LWDA"), for a violation of the California Labor Code, may, as an alternative, be
5 recovered by an aggrieved employee plaintiff. If a California Labor Code provision that is
6 alleged to be violated specifically provides for a civil penalty, said civil penalty is recoverable by
7 the aggrieved employee plaintiff. Additionally, the PAGA statute establishes a civil penalty that
8 is recoverable by an aggrieved employee plaintiff, for violation of provisions of the California
9 Labor Code which do not otherwise specifically provide for a civil penalty, as follows: one
10 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
11 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
12 violation. Pursuant to California Labor Code section 2699(i), seventy-five percent (75%) of the
13 penalties recovered are to be allocated to the LWDA, with the remaining twenty-five percent
14 (25%) allocated to the aggrieved employees. The statute of limitations period applicable to such
15 penalties is one year prior to the filing of the complaint. Cal. Civ. Proc. Code § 340.

16 53. Defendants contended that violations of multiple provisions of the California Labor
17 Code do not give rise to cumulative penalties, but that instead, the initial violation penalty and
18 subsequent violation penalty provided by the PAGA statute, should only apply once per pay
19 period, if at all, rather than cumulatively for each separate California Labor Code provision that
20 is, arguably, violated during a pay period.

21 54. Defendants also contended that an important feature of the PAGA statute is that,
22 when determining whether or not to assess a penalty, the court exercises the same discretion that
23 the LWDA has, and may reduce the penalties to be assessed against the employer pursuant to
24 California Labor Code section 2699(e)(1)-(2). As such, Defendants contended that, with respect
25 to a PAGA claim, the Court was unlikely to assess cumulative penalties for the maximum number
26 of possible, separate California Labor Code violations, because it would be unjust, arbitrary,
27 oppressive, and/or confiscatory, especially where certain conduct may be regulated by multiple
28 provisions of the California Labor Code that are interrelated and work in tandem.

1 55. Defendants also maintained and continues to maintain that they had legally-
2 compliant employment policies and practices throughout the statutory period. Defendants denied
3 and continues to deny that they ever violated any provision of the California Labor Code and
4 argued, that, even if, *arguendo*, such violations occurred, Defendants would not be treated as
5 having engaged in subsequent violations giving rise to heightened penalties. In other words,
6 Defendants argued that heightened civil penalties for subsequent violations would not be assessed
7 unless it could be shown that Defendants had notice that it was violating the law, e.g. because it
8 had been cited by a labor agency or adjudged by a court to have done so. See, e.g., *Amaral v.*
9 *Cintas Corp. No. 2* (2008) 163 Cal.4th 1157, 1209. Defendants argued that they would be able to
10 show a lack of willfulness in the violations, such that the alleged California Labor Code violations
11 would not be considered “willful.” Defendants contended that, at best, even if a violation giving
12 rise to a penalty was shown for each pay period, only the lower civil penalty associated with
13 initial violations would apply.

14 56. Importantly, to prevail on the PAGA claim, Defendants contended that some courts
15 have required plaintiffs to show at the outset that they have suffered injury, in order to establish
16 standing, and that Plaintiffs would also have to prove all requisite elements to prove violations
17 of the underlying California Labor Code provisions, in order to show that Defendants’ conduct
18 gave rise to penalties. The overtime and meal and rest period allegations are fundamental to this
19 action; however, for the reasons discussed above, there were substantial challenges to showing
20 liability and exposure for these claims. Defendants argued that Plaintiffs would not be able to
21 establish violations of the underlying California Labor Code provisions and the fundamental
22 allegations regarding overtime and meal and rest periods. Defendants also contended that
23 multiple individualized issues vitiated the manageability of representative adjudication of PAGA
24 penalties.

25 57. Defendants would also likely seek bifurcation of discovery and/or trial of the
26 PAGA claim – at the time, multiple courts had taken such an approach.

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28 ///

1 58. Defendants also maintained that, in addition to their strong arguments against the
2 underlying claims, taking the current unsettled state of law, it would be unjust to award the
3 maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials
4 and/or assessment of penalties under the PAGA statute, and there is no clearly-established
5 methodology for the valuation and/or assessment of PAGA penalties.

6 59. Defendants also contended that, before a PAGA claim could be tried, under existing
7 law, the court of law would have to be satisfied that the adjudication of the PAGA claim, based
8 on a theory of uniform wage and hour practices relating to a large group of aggrieved employees,
9 is sufficiently “manageable” so as not to interfere with Defendants’ right to due process.
10 Defendants alleged that the putative class members were employed across three different entities,
11 held many different job titles, worked in or at several different facilities and settings, and
12 performed many different job duties. Defendants contended that there was variation as to the
13 circumstances that could allegedly cause the employees to work overtime or to be deprived of
14 the opportunity to take legally-compliant, duty-free meal and/or rest periods. Defendants further
15 contended that these issues presented challenges not only to liability, but challenges to Plaintiffs’
16 ability to show that a PAGA claim could be efficiently and manageably adjudicated without
17 abridging Defendants’ due process rights.

18 60. Defendants pointed to case law that held that, given the derivative nature of a
19 PAGA claim, it would stand or fall based on the claims from which it derives, and the success of
20 showing, *inter alia*, off-the-clock work, failure to properly pay wages, failure to reimburse for
21 expenses, etc. Defendants also pointed to case law demonstrating that courts have attributed little
22 separate value to PAGA claims, for example, allowing them to be resolved for \$0 where the other
23 underlying California Labor Code claims are being resolved. See, e.g. *Matter of Nordstrom*
24 *Commission Cases* (2010) 186 Cal.App.4th 576, 588-590 (No abuse of discretion by the trial
25 court in approving the allocation of \$0 toward PAGA penalties, where PAGA claim is resolved
26 as a part of an overall resolution of the underlying California Labor Code violations); *Franco v.*
27 *Ruiz Food Prods, Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801,
28 at *14 (Approving allocation of \$10,000, out of the settlement of \$2.5 million, toward the

1 settlement of the PAGA claim); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) No.1:10-
2 CV-0324-AWI-SKO, 2012 WL 5364575, at *3 (Approving the allocation of \$10,000, out of the
3 settlement of \$3.7 million, toward the settlement of the PAGA claim); *Chu v. Wells Fargo*
4 *Investments, LLC* (N.D. Cal. Feb. 16, 2011) No. C 05-4526 MHP, C 0647924 MHP, 2011 WL
5 672645, at *1 (Approving the allocation of \$10,000, out of the settlement of \$6.9 million, toward
6 the settlement of the PAGA claim); *Jack v. Hartford Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 3:09-
7 cv-1683—MMA (JMA), 2011 WL 4899942, at *18 (Approving the allocation of \$3,000, out of
8 the settlement of \$1.2 million, toward the settlement of the PAGA claim); *Schiller v. David's*
9 *Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14 (Approving the allocation of
10 \$10,000, out of the settlement of \$518,245, toward settlement of the PAGA claim).

11 61. Assuming that a court would be satisfied that the PAGA claim was susceptible to
12 being efficiently tried and adjudicated on a representative basis, and assuming that it could be
13 shown that civil penalties in the amount of \$500 are owed for each of the three hundred seventy-
14 eight (378) aggrieved employees who were estimated to have worked during the one-year
15 statutory period (i.e., from January 5, 2015), the maximum amount of PAGA penalties at issue,
16 which the Court could determine whether or not to assess and whether or not to reduce, were
17 estimated to be approximately \$189,000 (378 individuals x \$500 civil penalties).

18 62. Class Counsel recognized the realities of Defendants' arguments, evidence and
19 information obtained through investigations as well as from Defendants, the current state of the
20 law, the costs of continued litigation, and other risks to recovery. Taking into account these
21 attendant risks and discounting seventy-five percent (75%) for them, a more realistic assessment
22 of the value of the PAGA claim was estimated to be \$47,250.

23 **J. Summary**

24 63. The foregoing discussion confirms that the amount of the Settlement is adequate in
25 light of the merits of this case, Plaintiffs' allegations and causes of action, the evidence at issue
26 with respect to those allegations and causes of action, and legal and factual arguments and
27 circumstances which pose challenges to monetary recovery. The conclusion to be drawn from
28 the foregoing analysis is that neither class certification, liability, nor the ability to recover

monetary relief on a class-wide is clear-cut, which is why the Parties elected to settle this matter. Class Counsel applied appropriate discounts in light of the defenses asserted, information and evidence obtained, and circumstances in this case, which posed risks to certification of a class and monetary recovery. This Settlement, like most others, is the product of compromise.

64. The Parties settled this case for a Maximum Settlement Amount of \$750,000. The maximum potential value of Plaintiffs' claims was estimated to be \$7,855,190.10. Taking into account the realities of the case, applicable case law, the risks and expense associated with obtaining and maintaining class certification and establishing liability, and other risks to recovery, the realistic value of Plaintiffs' claims was estimated to be \$3,149,234.85. The valuation of the case is shown broken down by claim below:

Principle Claims	Estimated Maximum Value	Estimated Realistic Value	Proportionate Allocation of the Maximum Settlement Amount based on the Estimated Realistic Value
1. Failure to Pay Overtime Wages	\$1,533,610.20	\$766,805.10	\$182,617
2. Failure to Pay Minimum Wages	\$1,022,249.70	\$511,124.85	\$121,725.96
3. Failure to Provide Compliant Meal Periods and Associated Premiums	\$1,022,249.70	\$511,124.85	\$121,725.96
4. Failure to Provide Compliant Rest Periods and Associated Premiums	\$1,022,249.70	\$511,124.85	\$121,725.96
5. Waiting Time Penalties for Failure to Timely Provide Wages During Employment and Upon Termination	\$1,525,240.80	\$381,310.20	\$90,810.20
6. Wage Statement Violations	\$1,399,200	\$349,800	\$83,305.95
7. Unreimbursed Business Expenses	\$141,390	\$70,695	\$16,836.23
8. Unfair Business Practices	(see items 1, 2, 3, 4, and 7)		
9. Private Attorneys General Act Penalties	\$189,000	\$47,250	\$11,252.73

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1 65. Class Counsel submits that the Settlement presented for preliminary approval is
2 within a reasonable range of recoveries for this type of litigation, and is fair, reasonable, adequate,
3 and in the best interest of the Class, given the inherent cost and risks of further litigation and the
4 risks associated with class certification, and the fact that the claims were highly disputed.

5 **ESTIMATED LIABILITY OF EACH DEFENDANT**

6 66. Plaintiffs alleged that Defendants are joint employers and are therefore jointly and
7 severally liable. A joint employer relationship exists if any one of the following three factors is
8 present: (1) "to exercise control over... wages, hours or working conditions," (2) "to suffer or
9 permit to work," or (3) "to engage, thereby creating a common law employment relationship."
10 *Martinez v. Combs* (2010) 49 Cal.4th 35, 47; see also, *Ochoa v. McDonald's Corp.* (N.D. Cal.
11 2015) 133 F.Supp.3d 1228, 1233. Plaintiffs allege that Defendants are all owned by the same
12 individual or entity, exercise control over the wages, hours, and working conditions of all putative
13 class members during the relevant time period, permit each putative class member to work, and
14 engage each putative class member in a common law employment relationship. Further,
15 Plaintiffs allege that Defendants apply a uniform set of policies, practices, and procedures to all
16 putative class members during the relevant time period, and are listed as the legal name of the
17 hiring employer on forms provided to putative class members.

18 67. Based on information provided by Defendants, the number of putative class
19 members is currently estimated to be five hundred (500) individuals, of which Defendants
20 contend one hundred nine (109) individuals were employed by Motive Energy, Inc., three
21 hundred sixty (360) individuals were employed by Motive Energy Communications Group, Inc.,
22 and thirty-one (31) individuals were employed by Advanced Charging Technologies, Inc.
23 Assuming that workweeks and other relevant data points are proportionate to the number of
24 individuals employed by each Defendant, each Defendant's liability is estimated to the nearest
25 dollar as follows:

26 ///

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Principle Claims	Motive Energy, Inc.		Motive Energy Communications Group, Inc.		Advanced Charging Technologies, Inc.	
	Estimated Realistic Value	Proportionate Maximum Settlement Amount	Estimated Realistic Value	Proportionate Maximum Settlement Amount	Estimated Realistic Value	Proportionate Maximum Settlement Amount
1. Failure to Pay Overtime Wages	\$167,164	\$39,811	\$552,100	\$131,484	\$47,542	\$11,322
2. Failure to Pay Minimum Wages	\$111,425	\$26,536	\$368,010	\$87,643	\$31,690	\$7,547
3. Failure to Provide Compliant Meal Periods and Associated Premiums	\$111,425	\$26,536	\$368,010	\$87,643	\$31,690	\$7,547
4. Failure to Provide Compliant Rest Periods and Associated Premiums	\$111,425	\$26,536	\$368,010	\$87,643	\$31,690	\$7,547
5. Waiting Time Penalties for Failure to Timely Provide Wages During Employment and Upon Termination	\$83,126	\$19,797	\$274,543	\$65,383	\$23,641	\$5,630
6. Wage Statement Violations	\$76,256	\$18,161	\$251,856	\$59,980	\$21,688	\$5,165
7. Unreimbursed Business Expenses	\$15,412	\$3,670	\$50,900	\$12,122	\$4,383	\$1,044
8. Unfair Business Practices	(see items 1, 2, 3, 4, and 7)					
9. Private Attorneys General Act Penalties	\$10,301	\$2,453	\$34,020	\$8,102	\$2,930	\$698

68. Having provided the additional information requested by the Court, the Court is respectfully requested to grant preliminary approval of the Settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 21st day of September 2018, at Glendale, California.


Edwin Aiwanian

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 08/24/2018

TIME: 09:00:00 AM

DEPT: CX104

JUDICIAL OFFICER PRESIDING: William Claster

CLERK: Gus Hernandez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Barbara Allen

CASE NO: **30-2016-00828352-CU-OE-CXC** CASE INIT.DATE: 01/05/2016

CASE TITLE: **Campos vs. Motive Energy, Inc.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 72858846

EVENT TYPE: Motion for Approval of Class Settlement

MOVING PARTY: Jaunita Hernandez, William Campos

CAUSAL DOCUMENT/DATE FILED: Motion - Other for Preliminary Approval of Class Action,
07/27/2018

APPEARANCES

Plaintiffs Willaim Campos and Juanita Hernandez's Motion for Preliminary Approval of Class Action Settlement

There are no appearances by any party.

Tentative Ruling posted on the Internet .

All parties telephonically submit on the Court's tentative ruling.

The Court confirms the tentative ruling as follows:

The hearing on the motion for preliminary approval of class action settlement is CONTINUED to September 28, 2018 at 9:00 a.m. in Department CX104 to permit the parties to respond to the following items of concern. (Please note department change from CX102 to CX104, and update all future papers and notices accordingly.) Any supplemental briefing shall be filed on or before September 14, 2018. If a revised Settlement Agreement and/or proposed Class Notice is submitted, a redline version showing all changes, deletions and additions shall be submitted as well.

As to the Settlement:

1. There is insufficient evidence from which this Court can make a finding that the settlement is fair, adequate and reasonable. Plaintiff Counsel's declaration submitted with the motion is conclusory as to this issue, without any analysis of plaintiffs' valuation of each of the causes of action based on the documents and testimony, including the maximum and realistic liability on the part of each of the

defendants as to each claim, what amount of the settlement was allocated to each claim, and why the settlement is reasonable.

2. The following last two sentences of the release in section 60 of the settlement agreement, and the second paragraph of the release language in the proposed class notice, appear to impermissibly broaden the release to potential claims not tied to the facts alleged in the Second Amended Complaint and are vague and ambiguous as drafted:

"Upon the Effective Date, Settlement Class Members acknowledge and are deemed to acknowledge that they may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of the Action, Settlement Agreement and/or the Released Claims and which, if known or suspected at the time of executing the Settlement Agreement, may have materially affected this release. Nevertheless, the Settlement Class waive any right, claim, or cause of action that might arise as a result of such different or additional claims or facts."

What does this language add to the release which already provides that all claims, whether known or unknown, that were alleged or could have been alleged based on the factual allegations in the operative complaint are released?

3. Include an opt-out form, and revise the class notice at Section V accordingly. How long will class members have after notice to opt out? The Proposed Order at section 12 indicates it is 30 days from mailing of the class notice. This is insufficient. The time period should not be less than 45-60 days.

4. Will a worksheet be provided to class members showing how their workweek calculations were determined? How long will class members have to dispute workweek calculations? It should be the same deadline for opting out and objecting.

5. Preliminary approval should not be viewed as any indication the court is inclined to approve the requested amounts for attorney's fees, litigation expenses and plaintiffs' enhancement awards. At final approval please submit billing records for fees and costs. The Court will not be inclined to award an amount of fees and costs greater than the amounts stated in the class notice.

6. At final approval, the Administrator is to provide a high and low for individual settlement payments, along with the Plaintiffs' net individual payout.

As to the Class Notice:

7. Should the class notice be translated in any other language?

8. Correct Section VII to indicate the final fairness hearing will be in Department CX104, not CX102.

9. Delete this sentence in Section VII: "If you are objecting, you must comply with the requirements set forth in Section VI, above in order to have your objection heard by the Court." The Court will not prohibit class members from appearing and being heard at the final fairness hearing.

10. Change the address of the court in Section VIII to the Complex Civil Division.

11. The font size in the actual Notice may not be smaller than the font size in this proposed Notice provided to the Court.

12. With respect to uncashed settlement checks, the Court finds that distributing uncashed funds to the DIR Unpaid Wage Fund, in the name and for the benefit of the individual class member, would better serve the interests of the class than the currently proposed distribution of uncashed checks.

As to the Proposed Order:

13. Change the Department to CX104 in the first paragraph and section 13.

14. Include the actual time period within which class members must object in section 15.

Court orders clerk to give notice.

EXHIBIT B

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Attorneys for Defendants

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

WILLIAM CAMPOS; individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;
JUANITA HERNANDEZ; individually, and
on behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

vs.

MOTIVE ENERGY, INC., a California
corporation; MOTIVE ENERGY
TELECOMMUNICATIONS GROUP, INC.,
a California corporation; ADVANCED
CHARGING TECHNOLOGIES, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 30-2016-00828352-CU-OE-CXC

Honorable William D. Claster
Department CX104

CLASS ACTION

**AMENDMENT NO. 1 TO JOINT
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT AND RELEASE**

Complaint Filed: January 5, 2016
FAC Filed: September 22, 2016
SAC Filed: December 6, 2016
Trial Date: None Set

1 Plaintiffs William Campos and Juanita Hernandez ("Plaintiffs" or "Class Representatives"), on
2 behalf of themselves, other members of the general public similarly situated and other aggrieved
3 employees pursuant to the California Private Attorneys General Act, and Defendants Motive
4 Energy, Inc., Motive Energy Telecommunications Group, Inc., and Advanced Charging
5 Technologies, Inc. ("Defendants"), pursuant to Paragraph 72 of the Joint Stipulation of Class Action
6 and PAGA Settlement and Release entered into on or about July 10, 2018 ("Agreement"), hereby
7 agree to **amend and supplant** the Agreement to the extent stated herein., and the amendments
8 stated herein are incorporated in the Agreement by this reference:

9
10 **A. Paragraph 10 of the Agreement is hereby amended to state as follows:**

11 "Workweeks" means the number of weeks that a Class Member was employed
12 by Defendants in an hourly-paid or non-exempt position in California during the
13 Class Period, which shall be calculated by using the start and termination dates
14 of each individual Class Members' employment with Defendants in an hourly-
15 paid or non-exempt position in California, excluding any period during which
16 the Class Member was on a leave of absence, employed by Defendants outside
17 of California, and/or classified by Defendants as an exempt employee.

18
19 **B. Paragraph 33 of the Agreement is hereby amended to state as follows:**

20 Within fifteen (15) business days after the Settlement Administrator receives the
21 Class Information from Defendants, the Settlement Administrator will mail the
22 Revised Notice of Class Action Settlement ("Class Notice"), in substantially the
23 form attached hereto as "**Exhibit 1**," and the Opt Out Form, in substantially the
24 form attached hereto as "**Exhibit 2**," both of which are subject to approval by
25 the Court, to each Class Member in English and Spanish, by first-class U.S.
26 mail. Together, the Class Notice and Opt Out Form are referred to as "Notice
27 Packet." Before mailing the Notice Packet, the Settlement Administrator will
28 perform address updates and verifications, as necessary, prior to the first
mailing, by searching the United States Postal Service's National Change of

1 Address database. The date on which the Settlement Administrator first mails
2 the Notice Packet to the Class Members will be referred to as the "Initial
3 Mailing Date." The Settlement Administrator will perform one skip-trace on
4 any Notice Packet that is returned as undeliverable before the Response
5 Deadline, and undertake a single re-mailing of the Notice Packet to any updated
6 address that is located by way of the skip trace search, within five (5) calendar
7 days of receipt of the returned Notice Packet. The Settlement Administrator
8 shall document all efforts under this Section III.C, and retain such
9 documentation for a period of four (4) years from the date of the Court's entry of
10 the Final Approval Order and Judgment. The Response Deadline for a Class
11 Member to whom a Notice Packet has been re-mailed will be the later of the
12 Response Deadline or fifteen (15) calendar days from the date on which the
13 Notice Packet is re-mailed ("Extended Response Deadline").
14

15 **C. Paragraph 35 of the Agreement is hereby amended to state as follows:**

16 **Disputes Regarding Workweeks:** A Class Member may challenge the number
17 of Workweeks credited to him or her, based on Defendants' records, as stated in
18 the Class Notice, by mailing a separate written statement to the Settlement
19 Administrator that is postmarked on or before the date that is forty-five (45)
20 calendar days after the Initial Mailing Date ("Response Deadline"). The written
21 dispute must contain the following: the Class Member's full name, address,
22 signature, telephone number, and last four digits of his or her Social Security
23 number; the case name and number of the Action; a clear statement indicating
24 that the Class Members disputes the number of Workweeks credited to him or
25 her; and facts supporting the Class Member's dispute along with any supporting
26 documents. The Settlement Administrator will forward all disputes that it
27 receives to the Parties within three (3) calendar days of receipt and meet and
28 confer with the Parties within a reasonable time thereafter to determine the
number of Workweeks to be properly credited to a Class Member. Defendants

1 shall provide the Settlement Administrator with additional information to
2 facilitate the Settlement Administrator's determination of the dispute, and
3 Defendants' records will be given the presumption of accuracy unless a Class
4 Member presents a credible basis for determining that Defendants' records are
5 not accurate with respect to the number of Workweeks that the disputing Class
6 Member should be credited with under the Settlement.

7
8 **D. Paragraph 36 of the Agreement is hereby amended to state as follows:**

9 **Requests for Exclusion:** Any Class Member, other than the Named Plaintiffs,
10 may elect to seek exclusion from the Settlement by completing and timely
11 submitting an Opt Out Form to the Settlement Administrator ("Request for
12 Exclusion"). To be valid, the Opt Out Form must be fully completed, so that it
13 contains the Class Member's full name, address, signature, and last four digits
14 of his or her Social Security number, and the Class Member must affix a check-
15 mark next to the pre-typed statement indicating that the Class Member seeks to
16 be excluded from the Settlement. To be timely, the Opt Out Form must be
17 submitted to the Settlement Administrator by mail, postmarked on or before the
18 Response Deadline, and the date of the postmark on the mailing envelope will
19 be the exclusive means to determine whether an Opt Out Form is timely
20 submitted. Any Class Member who submits a timely and valid Opt Out Form in
21 compliance with these requirements will not have any rights under this
22 Agreement, will not be entitled to receive any payment under the Settlement,
23 will not be entitled to submit an objection to Settlement, and will not be bound
24 by this Agreement or Final Approval Order and Judgment.

25
26 **E. Paragraph 54 of the Agreement is hereby amended to state as follows:**

27 **Release by Settlement Class Members**

28 Individual Settlement Payment checks issued to Settlement Class Members will
remain negotiable for one hundred and eighty (180) calendar days, and will be

1 cancelled if not cashed or deposited within the 180-day period. Funds
2 associated with Individual Settlement Payment checks that have not been cashed
3 or deposited within this timeframe will be transmitted in accordance with
4 California Code of Civil Procedure section 384 to the Dream Street Foundation.
5

6 **F. Paragraph 60 of the Agreement is hereby amended to state as follows:**

7 **Settlement Class Members' Release of Claims:** Other than the rights created
8 by this Agreement, upon the Effective Date, and in exchange for the
9 consideration, undertakings, and covenants undertaken by Defendants in this
10 Agreement, including but not limited to the provisions of Paragraphs 45 and 46,
11 and to the fullest extent permitted by law, the Settlement Class Members hereby
12 release, discharge, and covenant not to sue Released Parties from and with
13 respect to any and all individual, class, or representative claims, actions,
14 disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses,
15 attorneys' fees, penalties, damages (including and not limited to, liquidated
16 damages, exemplary damages, and punitive damages), restitution, equitable
17 relief, injunctive relief, or causes of action, penalties, of any nature whatsoever,
18 whether known or unknown, that were pled or could have been pled based on
19 the factual allegations in the Operative Complaint and arising during the Class
20 Period, which the Settlement Class Members have had or hereafter may claim to
21 have, against the Released Parties, or any of them, including, without limitation:
22 (a) claims for violation of the California Labor Code and applicable Wage
23 Order(s) promulgated by the California Industrial Welfare Commission, for
24 failure to pay minimum wages, the failure to pay overtime wages or other
25 premium pay, the failure to provide compliant meal periods, the failure to
26 provide compliant rest periods, failure to provide compliant wage statements,
27 failure to reimburse for necessary business expenditures; (b) claims for unfair,
28 unlawful, and fraudulent business practices under the California Business and
Professions Code sections 17200, *et seq.* and/or any other unfair competition

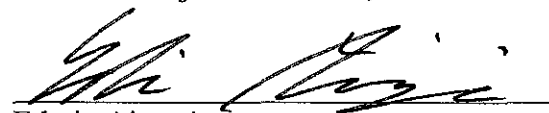
1 law; (c) related or derivative claims for penalties, including, but not limited to,
2 wage statement penalties and/or any other penalties set forth in California Labor
3 Code or Wage Orders; (d) all violations of the Private Attorneys General Act of
4 2004 (including, but not limited to, all claims arising under California Labor
5 Code sections 2698, 2699, and 2699.3); and (e) any additional claims for
6 penalties, damages or wages predicated on the same (collectively, the "Released
7 Claims").

8
9 **G. Exhibit A (the "Notice of Class Action Settlement") to the Agreement shall be**
10 **replaced with:** the [Revised] Notice of Class Action Settlement that is attached
11 hereto as "**Exhibit 1.**"

12
13 **THE PARTIES HAVE AGREED TO AMENDMENT OF THE AGREEMENT AS STATED**
14 **HEREIN, BY AND THROUGH THEIR UNDERSIGNED COUNSEL.**

15 Dated: September 21, 2018

LAWYERS for JUSTICE, PC

16 

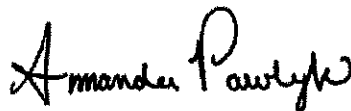
Edwin Aiwarzian

Joanna Ghosh

Attorneys for Plaintiffs

19 Dated: September 21, 2018

MICHELMAN & ROBINSON, LLP

21 

Marc R. Jacobs

Amanda K. Pawlyk

Attorneys for Defendants Motive Energy, Inc., Advanced
Charging Technologies, Inc., and Motive Energy
Telecommunications Group, Inc.

EXHIBIT 1

[REVISED] NOTICE OF CLASS ACTION SETTLEMENT

William Campos, et al. v. Motive Energy, Inc., et al.
Superior Court of California for the County of Orange
Case No. 30-2016-00828352-CU-OE-CXC

ADMINISTRATOR ID: <<[ADMINISTRATOR ID]>>
<<Name>>
<<Address1>> <<Address2>>
<<City>>, <<State>> <<Zip Code>>

To: All current and former hourly-paid or non-exempt employees who worked for Motive Energy, Inc., Motive Energy Telecommunications Group, Inc., and/or Advanced Charging Technologies, Inc. within the State of California at any time during the period from January 5, 2012 to March 16, 2018:

**PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT**

I. INTRODUCTION

The Superior Court of California for the County of Orange ("Court" or "Orange County Superior Court"), has granted preliminary approval of a proposed class action settlement in the above-captioned action (the "Action").

A Final Approval Hearing will be held on [date] at [time] to determine whether the Settlement should be granted final approval. The records of Motive Energy, Inc., Motive Energy Telecommunications Group, Inc., and Advanced Charging Technologies, Inc. (collectively, "Defendants") show that you were employed by at least one of the Defendants as an hourly-paid or non-exempt employee within the State of California at some time during the period from January 5, 2012 to March 16, 2018 ("Class Period"), and therefore you are a "Class Member." As a Class Member, you may be entitled to money under the Settlement, and unless you "opt out" of the Settlement, your legal rights may be affected. The purpose of this Notice of Class Action Settlement ("Notice") is to: (1) describe the Action, (2) inform you of the terms of the Settlement, and (3) inform you of your rights and options in connection with the Settlement.

II. SUMMARY OF THE ACTION

On January 5, 2016, former employee William Campos ("Campos") filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. against Defendants in Orange County Superior Court. On September 22, 2016, Plaintiff Campos filed a First Amended Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. which, *inter alia*, added former employee Juanita Hernandez as a named plaintiff to the Action (together Plaintiff Campos and Hernandez are referred to as "Plaintiffs"). On December 2, 2016, Plaintiffs filed a Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint").

Plaintiffs allege that Defendants failed to properly pay minimum and overtime wages, failed to provide compliant meal periods and pay meal period premiums, failed to provide compliant rest periods and pay rest period premiums, failed to reimburse for necessary business expenses, failed to timely pay wages and associated waiting time penalties, failed to provide accurate and itemized wage statements, and failed to keep requisite pay records, and thereby engaged in unfair business practices and conduct giving rise to civil penalties under the California Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"), with respect to Plaintiffs and all other current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time during the period from January 5, 2012 to final judgment.

Defendants deny all of Plaintiffs' allegations and specifically deny that they violated the law in any way as described in the lawsuit. Nothing in this Notice, or the Settlement itself, or any actions to carry out the terms of the Settlement mean that Defendants admit any fault, guilt, negligence, wrongdoing, or liability whatsoever. There has been no finding of any wrongdoing by Defendants. Defendants wish to settle in order to avoid the costs, time, and disruption caused by litigation.

Plaintiffs and Defendants participated in a mediation before an experienced wage-and-hour mediator, which resulted in

a settlement of the Action, and the parties executed the Joint Stipulation of Class Action and PAGA Settlement and Release and Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or “Settlement Agreement”).

The Court granted preliminary approval of the Settlement on [Preliminary Approval Date] on behalf of the following Class:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from January 5, 2012 to March 16, 2018 (“Class” or “Class Member(s)”).

At that time, the Court also preliminarily approved Plaintiffs William Campos and Juanita Hernandez to serve as representatives of the Class (“Class Representatives”), and Edwin Aiwarzian, Esq., Arby Aiwarzian, Esq., and Joanna Ghosh, Esq. of Lawyers for Justice, PC to serve as counsel for the Class (“Class Counsel”).

Edwin Aiwarzian, Esq.
Arby Aiwarzian, Esq.
Joanna Ghosh, Esq.
Lawyers for Justice, PC
410 Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Fax: (818) 265-1021

III. SUMMARY OF SETTLEMENT TERMS

Maximum Settlement Amount. As a part of the Settlement, Defendants have agreed to pay the amount of \$750,000 (the “Maximum Settlement Amount”) to fully resolve the Action in accordance with the terms of the Settlement Agreement. The “Net Settlement Amount” refers to the amount that will be available for distribution to Class Members who do not submit a valid and timely Request for Exclusion (“Settlement Class Members”). The Net Settlement Amount is the Maximum Settlement Amount less the following amounts, subject to approval by the Court:

- Settlement Administration Costs. Payment to the Settlement Administrator, in an amount not to exceed \$12,000, for the expenses and costs of notifying the Class Members of the Settlement, processing Requests for Exclusion (as described in Section V of this Notice), calculating Class Members’ *pro rata* shares of the Net Settlement Amount, and distributing payments under the Settlement, among other tasks.
- Attorneys’ Fees and Litigation Costs and Expenses. Payment in an amount not to exceed \$262,500 (which is 35% of the Maximum Settlement Amount) for attorneys’ fees to Class Counsel, as compensation for the work that Class Counsel has performed and will continue to perform in this Action through the finalization of the Settlement. Class Counsel also seeks reimbursement of its actual litigation costs and expenses incurred in the Action, in an amount not to exceed \$50,000. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.
- Service Payments. Service Payments in amounts not to exceed \$8,000 to Plaintiff William Campos and \$7,000 to Plaintiff Juanita Hernandez (totaling \$15,000), to compensate them for their services on behalf of the Class in initiating and prosecuting the Action. The Service Payments are in addition to whatever payments Plaintiffs are otherwise entitled to as Settlement Class Members.
- LWDA Payment. Under the Settlement, \$30,000 has been designated as penalties under the Private Attorneys General Act (“PAGA Payment”). As required by statute, 75% of the PAGA Payment (i.e., \$22,500) will be paid to the Labor and Workforce Development Agency (“LWDA Payment”), and the remaining 25% of the PAGA Payment (i.e., \$7,500) will remain part of the Net Settlement Amount to be distributed to Settlement Class Members on a *pro rata* basis.

///

Calculation of Individual Settlement Shares. Settlement Class Members will be entitled to receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"). Each Settlement Class Member's Individual Settlement Share will be calculated based upon the number of weeks that the respective Settlement Class Member was employed by any of the Defendants in an hourly-paid or non-exempt position in California from January 5, 2012 to March 16, 2018 ("Workweeks"), relative to the total number of Workweeks of all Settlement Class Members. The Settlement Administrator has calculated the total number of Workweeks worked by each individual Class Member based on Defendants' records, by using the start and termination dates of each individual Class Member's employment with any of Defendants in an hourly-paid or non-exempt position in California, excluding any period during which the Class Member was on a leave of absence, employed by Defendants outside of California, and/or classified by Defendants as an exempt employee. Your Workweeks calculation is reflected below in Section IV. To calculate a Settlement Class Member's Individual Settlement Share, the Net Settlement Amount will be divided by the total number of Workweeks worked by all Settlement Class Members to arrive at the value of each Workweek ("Weekly Rate"), and each Settlement Class Member's individual Workweeks will be multiplied by the Weekly Rate to yield his or her Individual Settlement Share.

Tax Matters. Each Individual Settlement Share is allocated as follows, for withholding purposes: thirty-three percent (33%) as wages and sixty-seven percent (67%) as interest and penalties. The wages portion of each Individual Settlement Share will be reported on an IRS Form W-2. Settlement Class Members will be issued payment of their respective Individual Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of their Individual Settlement Share, which the Settlement Administrator is responsible for remitting and reporting to the tax authorities. Defendants will be responsible for paying their employer's share of payroll taxes and contributions with respect to the wages portion of Individual Settlement Shares. The portions of the Individual Settlement Share that are allocated towards interest and penalties will be paid out without reduction for taxes or withholdings, and these non-wage portions will be reported on an IRS Form 1099. Settlement Class Members will be exclusively liable for any and all tax liability for payments issued to them under the Settlement. Settlement Class Members may wish to consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Releases. Other than the rights created by the Settlement, upon the Effective Date, all Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class Members) will fully release and discharge Released Parties from, and covenant not to sue the Released Parties for, any and all of the Released Claims.

"Released Parties" means: Defendants and each of its past, present, and future parent companies, subsidiaries, shareholders, lenders, officers, partners, directors, employees, insurers, predecessors, accountants, attorneys, plan administrators, heirs, trustees, successors, and assigns, and each and all of their respective past, present, and future shareholders, lenders, officers, partners, directors, employees, insurers, predecessors, accountants, attorneys, plan administrators, heirs, trustees, successors, and assigns, and all persons acting under, by, through, or in concert with any of them.

"Released Claims" means: all individual, class, or representative claims, actions, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, penalties, damages (including and not limited to, liquidated damages, exemplary damages, and punitive damages), restitution, equitable relief, injunctive relief, or causes of action, or penalties, of any nature whatsoever, whether known or unknown, that were pled or could have been pled based on the factual allegations in the Operative Complaint, arising during the Class Period, which the Settlement Class Members have had or hereafter may claim to have, against the Released Parties, or any of them, including, without limitation: (a) claims for violation of the California Labor Code and applicable Wage Order(s) promulgated by the California Industrial Welfare Commission, for failure to pay minimum wages, the failure to pay overtime wages or other premium pay, the failure to provide compliant meal periods, the failure to provide compliant rest periods, failure to provide compliant wage statements, failure to reimburse for necessary business expenditures; (b) claims for unfair, unlawful, and fraudulent business practices under the California Business and Professions Code sections 17200, et seq. and/or any other unfair competition law; (c) related or derivative claims for penalties, including, but not limited to, wage statement penalties and/or any other penalties set forth in California Labor Code or Wage Orders; (d) all violations of the Private Attorneys General Act of 2004 (including, but not limited to, all claims arising under California Labor Code sections 2698, 2699, and 2699.3), and (e) any additional claims for penalties, damages or wages predicated on the same.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order, at or following a Final Approval Hearing, granting final approval of the Settlement.

IV. RECEIVING PAYMENT UNDER THE SETTLEMENT

If you do nothing, you will be deemed a Settlement Class Member, you will be issued payment from the Settlement, and you will release the Released Parties of all Released Claims, as described herein.

Based on Defendants' records, which will be presumed to be correct unless you timely submit evidence to the contrary to the Settlement Administrator, your Workweeks calculation is as follows:

Your start date of employment:	
Your last date of employment:	
Any periods of your employment with Defendants that is or are excluded:	
Your Workweeks:	

You are credited as having been employed by at least one of the Defendants in an hourly-paid or non-exempt position in California during the time period starting on January 5, 2012 and ending on March 16, 2018 for [WorkWeeks] Workweeks and your estimated gross Individual Settlement Share is [estAmount]

If you wish to challenge the number of Workweeks attributed to you above, then you must submit a written, signed dispute, along with supporting documents, if any exist, to the Settlement Administrator at the following address, postmarked **no later than [Response Deadline]**:

Motive Energy Settlement
c/o [administrator's name]
[mailing address]
[telephone support number].

To be valid, your dispute must contain: (1) your full name, address, signature, and the last four digits of your Social Security number; (2) the case name and number of this Action (the case name is *Campos, et al. v. Motive Energy, Inc., et al.*, and the Case Number is 30-2016-00828352-CU-OE-CXC); (3) a clear statement indicating that you are disputing the number of Workweeks credited to you; and (4) facts supporting your dispute along with any supporting documents.

In order to ensure receipt of your payment, **it is your responsibility to make sure you keep the Settlement Administrator informed of your current mailing address**, and you may do so by contacting the Settlement Administrator at the address listed above or the telephone number listed on the bottom of the page.

V. RIGHT TO REQUEST EXCLUSION FROM THE SETTLEMENT

If you do not wish to participate in the Settlement, you must exclude yourself from the Settlement or "opt out" by completing and timely submitting the Opt Out Form that is being provided to you along with this Notice ("Request for Exclusion"). **If you opt out, you will receive no money from the Settlement and you will not be bound by its terms.** To opt out, you must fully complete the Opt Out Form and submit it to the Settlement Administrator by mail at the address set forth in Section IV, above, postmarked no later than [Response Deadline]. To be valid, the Opt Out Form must contain your full name, address, signature, and last four digits of your Social Security number, and you must also affix a check-mark next to the pre-typed statement indicating that you seek to be excluded from the Settlement. Opt Out Forms that do not include all required information or are postmarked after [Response Deadline] will be rejected. Those Class Members who fail to submit a timely and valid Request for Exclusion (i.e., by submitting a timely and valid Opt Out Form) will remain bound by the Settlement and the release of the Released Claims described above.

VI. RIGHT TO OBJECT TO THE SETTLEMENT

Class Members who have not submitted a timely and valid Request for Exclusion (i.e., Settlement Class Members) and believe that the Settlement should not be finally approved by the Court for any reason, may object to the Settlement. Objections must be in writing and must be mailed or hand delivered to the Settlement Administrator at the address listed above in Section IV, postmarked **on or before [Response Deadline]**. To be valid, an objection must contain: (1) the objector's full name, address, telephone number, signature, the last four digits of the objector's Social Security number; (2) the case name and number of this Action (the case name is *Campos, et al. v. Motive Energy, Inc., et al.*, and the Case Number is 30-2016-00828352-CU-OE-CXC); (3) a clear statement indicating that the objector wishes to object to the

Settlement and the basis for any objection; (4) identification of the name and address of the objector's counsel, if he or she is represented by counsel; and (5) a statement of whether or not the objector intends to appear at the Final Approval Hearing. To object to the Settlement, Class Members must remain members of the Settlement Class, and if the Court approves the Settlement, Settlement Class Members who object will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

VII. HEARING ON THE SETTLEMENT ("FINAL APPROVAL HEARING")

The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held on [date] at [time] in Department CX104, in the Superior Court of California for the County of Orange, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701. The Final Approval Hearing may be continued without further notice. **You are not required to attend the Final Approval Hearing**, although any Settlement Class Member is welcome to attend the hearing at his or her own expense. Any Class Member may retain his or her own legal representation at his or her own expense as well.

VIII. ADDITIONAL INFORMATION

This Notice is only a summary of the Action and the Settlement. Class Members should contact the Settlement Administrator with any concerns or questions regarding the Settlement:

Motive Energy Settlement
c/o [administrator's name]
[mailing address]
[telephone support number]

You may also refer to the pleadings and other papers filed in the Action, which may be viewed at the Office of the Clerk, Complex Civil Division of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701 during regular business hours of each court day. Also, select documents may be downloaded from the Orange County Superior Court's website (<https://www.occourts.org/online-services/case-access/>) by clicking on the "Civil Case & Document Access" option, for a fee.

You may also contact Class Counsel: Edwin Aiwarzian, Esq., Lawyers *for* Justice, PC, 410 Arden Avenue, Suite 203, Glendale, California, 91203, Telephone: (818) 265-1020, Fax: (818) 265-1021.

PLEASE DO NOT CONTACT MOTIVE ENERGY, INC., MOTIVE ENERGY TELECOMMUNICATIONS, INC., OR ADVANCED CHARGING TECHNOLOGIES, INC., OR THEIR HUMAN RESOURCES REGARDING THIS NOTICE.

FURTHER, PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH QUESTIONS.

ALL QUESTIONS SHOULD BE DIRECTED TO THE SETTLEMENT ADMINISTRATOR.

EXHIBIT 2

OPT OUT FORM

William Campos, et al. v. Motive Energy, Inc., et al.
Superior Court of California for the County of Orange
Case No. 30-2016-00828352-CU-OE-CXC

In order to request exclusion from the Settlement, you must complete, sign, and mail this form by U.S. mail or equivalent, postmarked no later than [Response Deadline], to the Settlement Administrator at the following address:

Motive Energy Settlement
c/o [administrator's name]
[mailing address]
[telephone support number]

Do not submit this form if you intend to participate in the Settlement and receive payment under the Settlement.

IF YOU EXCULDE YOURSELF FROM THE SETTLEMENT, YOU WILL NOT BE ENTITLED TO ANY MONETARY PAYMENT UNDER THE SETTLEMENT AND YOU WILL NOT BE ALLOWED TO MAKE AN OBJECTION TO THE SETTLEMENT. For more information regarding the consequences of seeking exclusion from the Settlement, see the accompanying Notice of Class Action Settlement.

IF YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT, PLEASE COMPLETE THE FOLLOWING SECTION:

Full Name: _____

Address: _____

Last four digits of your Social Security No.:

Telephone Number: (____) _____ - _____

Please check-mark the following box to elect the statement indicating your intent to seek exclusion from the Settlement:

☐ I wish to be excluded from the Settlement in *William Campos, et al. v. Motive Energy, Inc., et al.* I understand that in asking to be excluded from the Settlement, I will not receive any payment from the Settlement, if the Settlement is approved by the Court in this case.

I declare under penalty of perjury under the laws of the United States and the State of California that the information I have provided on this Opt Out Form is true and correct.

Signature: _____

Date: _____

EXHIBIT C

Edwin Aiwarzian (SBN 232943)
Arby Aiwarzian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Facsimile: (818) 265-1021

Attorneys for Plaintiffs

Mona Z. Hanna (SBN 131439)
Marc R. Jacobs (SBN 185924)
Amanda K. Pawlyk (SBN 276063)
Allison Aguirre (SBN 312544)
MICHELMAN & ROBINSON, LLP
17901 Von Karman Ave., 10th Floor
Irvine, California 92614
Telephone: (714) 557-7990 / Facsimile: (714) 557-7991

Attorneys for Defendants

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

WILLIAM CAMPOS; individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;
JUANITA HERNANDEZ; individually, and
on behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

vs.

MOTIVE ENERGY, INC., a California
corporation; MOTIVE ENERGY
TELECOMMUNICATIONS GROUP, INC.,
a California corporation; ADVANCED
CHARGING TECHNOLOGIES, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 30-2016-00828352-CU-OE-CXC

Honorable William D. Claster
Department CX104

CLASS ACTION

**AMENDMENT NO. 1 TO JOINT
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT AND RELEASE**

Complaint Filed: January 5, 2016
FAC Filed: September 22, 2016
SAC Filed: December 6, 2016
Trial Date: None Set

1 Plaintiffs William Campos and Juanita Hernandez ("Plaintiffs" or "Class Representatives"), on
2 behalf of themselves, other members of the general public similarly situated and other aggrieved
3 employees pursuant to the California Private Attorneys General Act, and Defendants Motive Energy,
4 Inc., Motive Energy Telecommunications Group, Inc., and Advanced Charging Technologies, Inc.
5 ("Defendants"), pursuant to Paragraph 72 of the Joint Stipulation of Class Action and PAGA
6 Settlement and Release entered into on or about July 10, 2018 ("Agreement"), hereby agree to amend
7 and supplant the Agreement to the extent stated herein, and the amendments stated herein are
8 incorporated in the Agreement by this reference:

9
10 **A. Paragraph 10 of the Agreement is hereby amended to state as follows:**

11 "Workweeks" means the number of weeks that a Class Member was employed
12 by Defendants in an hourly-paid or non-exempt position in California during the
13 Class Period, which shall be calculated ~~using each individual Class Members start~~
14 ~~and termination dates as applicable by using the start and termination dates of each~~
15 individual Class Members' employment with Defendants in an hourly-paid or
16 non-exempt position in California, excluding any period during which the Class
17 Member was on a leave of absence, employed by Defendants outside of
18 California, and/or classified by Defendants as an exempt employee.

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19
20 **B. Paragraph 33 of the Agreement is hereby amended to state as follows:**

21 Within fifteen (15) business days after the Settlement Administrator receives the
22 Class Information from Defendants, the Settlement Administrator will mail the
23 Revised Notice of Class Action Settlement ("Class Notice"), in substantially the
24 form attached hereto as "Exhibit A-1," and the Opt Out Form, in substantially
25 the form attached hereto as "Exhibit 2," both of which are subject to approval by
26 the Court, to each Class Member in English and Spanish, by first-class U.S. mail.
27 Together, the Class Notice and Opt Out Form are referred to as "Notice Packet."
28 Before mailing the Class-Notice Packet, the Settlement Administrator will
perform address updates and verifications, as necessary, prior to the first mailing,

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1 by searching the United States Postal Service's National Change of Address
2 database. The date on which the Settlement Administrator first mails the Class
3 Notice Packet to the Class Members will be referred to as the "Initial Mailing
4 Date." The Settlement Administrator will perform one skip-trace on any Class
5 Notice Packet that is returned as undeliverable before the Response Deadline, and
6 undertake a single re-mailing of the Class-Notice Packet to any updated address
7 that is located by way of the skip trace search, within five (5) calendar days of
8 receipt of the returned Class-Notice Packet. The Settlement Administrator shall
9 document all efforts under this Section III.C, and retain such documentation for a
10 period of four (4) years from the date of the Court's entry of the Final Approval
11 Order and Judgment. The Response Deadline for a Class Member to whom a
12 Class-Notice Packet has been re-mailed will be the later of the Response Deadline
13 or fifteen (15) calendar days from the date on which the Class-Notice Packet is re-
14 mailed ("Extended Response Deadline").
15

16 **C. Paragraph 35 of the Agreement is hereby amended to state as follows:**

17 **Disputes Regarding Workweeks:** A Class Member may challenge the number
18 of Workweeks credited to him or her, based on Defendants' records, as stated in
19 the Class Notice, by mailing a separate written statement to the Settlement
20 Administrator that is postmarked on or before the date that is ~~thirty (30)~~forty-five
21 (45) calendar days after the Initial Mailing Date ("Response Deadline"). The
22 written dispute must contain the following: the Class Member's full name,
23 address, signature, telephone number, and last four digits of his or her Social
24 Security number; the case name and number of the Action; a clear statement
25 indicating that the Class Members disputes the number of Workweeks credited to
26 him or her; and facts supporting the Class Member's dispute along with any
27 supporting documents. The Settlement Administrator will forward all disputes
28 that it receives to the Parties within three (3) calendar days of receipt and meet
and confer with the Parties within a reasonable time thereafter to determine the

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1 number of Workweeks to be properly credited to a Class Member. Defendants
2 shall provide the Settlement Administrator with additional information to
3 facilitate the Settlement Administrator's determination of the dispute, and
4 Defendants' records will be given the presumption of accuracy unless a Class
5 Member presents a credible basis for determining that Defendants' records are
6 not accurate with respect to the number of Workweeks that the disputing Class
7 Member should be credited with under the Settlement.

8
9
10
11 **D. Paragraph 36 of the Agreement is hereby amended to state as follows:**

12 **Requests for Exclusion:** Any Class Member, other than the Named Plaintiffs,
13 may elect to seek exclusion from the Settlement by mailing a written request for
14 exclusion from the Settlement ("~~Request for Exclusion~~") completing and timely
15 submitting an Opt Out Form to the Settlement Administrator, ~~postmarked on or~~
16 ~~before the Response Deadline.~~ The ("Request for Exclusion"). To be valid, the
17 Opt Out Form must contain the following: be fully completed, so that it contains
18 the Class Member's full name, address, signature, and last four digits of his or
19 her Social Security number; ~~the case name,~~ and number of ~~the Class Member~~
20 must affix a check-mark next to the Action; a clear pre-typed statement indicating
21 that the Class Member seeks to be excluded from the Settlement. ~~The~~ To be
22 timely, the Opt Out Form must be submitted to the Settlement Administrator by
23 mail, postmarked on or before the Response Deadline, and the date of the
24 postmark on the mailing envelope will be the exclusive means to determine
25 whether a ~~Request for Exclusion~~ an Opt Out Form is timely submitted. Any Class
26 Member who submits a timely and valid ~~Request for Exclusion~~ Opt Out Form in
27 compliance with these requirements will not have any rights under this
28 Agreement, will not be entitled to receive any payment under the Settlement, will

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1 not be entitled to submit an objection to Settlement, and will not be bound by this
2 Agreement or Final Approval Order and Judgment.

3
4 **E. Paragraph 54 of the Agreement is hereby amended to state as follows:**

5 **Release by Settlement Class Members**

6 Individual Settlement ~~Payments~~Payment checks issued to Settlement Class
7 Members will remain negotiable for one hundred and eighty (180) calendar days,
8 and will be cancelled if not cashed or deposited within the 180-day period. Funds
9 associated with Individual Settlement Payment checks that have not been cashed
10 or deposited within this timeframe will be transmitted in accordance with
11 California Code of Civil Procedure section 384, as follows: ~~twenty-five percent~~
12 ~~(25%) to the State Treasury for deposit in the Trial Court Improvement and~~
13 ~~Modernization Fund and seventy-five percent (75%) to the State Treasury for~~
14 ~~deposit into the Equal Access Fund of the Judicial Branch to the Dream Street~~
15 Foundation.

16
17 **F. Paragraph 60 of the Agreement is hereby amended to state as follows:**

18 **Settlement Class Members' Release of Claims:** Other than the rights created by
19 this Agreement, upon the Effective Date, and in exchange for the consideration,
20 undertakings, and covenants undertaken by Defendants in this Agreement,
21 including but not limited to the provisions of Paragraphs 45 and 46, and to the
22 fullest extent permitted by law, the Settlement Class Members hereby release,
23 discharge, and covenant not to sue Released Parties from and with respect to any
24 and all individual, class, or representative claims, actions, disputes, debts,
25 liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees,
26 penalties, damages (including and not limited to, liquidated damages, exemplary
27 damages, and punitive damages), restitution, equitable relief, injunctive relief, or
28 causes of action, penalties, of any nature whatsoever, whether known or unknown,
that were pled or could have been pled based on the factual allegations in the

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Operative Complaint and arising during the Class Period, which the Settlement Class Members have had or hereafter may claim to have, against the Released Parties, or any of them, including, without limitation: (a) claims for violation of the California Labor Code and applicable Wage Order(s) promulgated by the California Industrial Welfare Commission, for failure to pay minimum wages, the failure to pay overtime wages or other premium pay, the failure to provide compliant meal periods, the failure to provide compliant rest periods, failure to provide compliant wage statements, failure to reimburse for necessary business expenditures; (b) claims for unfair, unlawful, and fraudulent business practices under the California Business and Professions Code sections 17200, *et seq.* and/or any other unfair competition law; (c) related or derivative claims for penalties, including, but not limited to, wage statement penalties and/or any other penalties set forth in California Labor Code or Wage Orders; (d) all violations of the Private Attorneys General Act of 2004 (including, but not limited to, all claims arising under California Labor Code sections 2698, 2699, and 2699.3); and (e) any additional claims for penalties, damages or wages predicated on the same (collectively, the "Released Claims"). ~~Settlement Class Members acknowledge and/or are deemed to acknowledge that they may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement and/or this release, and which, if known or suspected at the time of executing this Agreement, may have materially affected this release. Nevertheless, the Settlement Class Members will be deemed to waive any right, claim or cause of action that might arise as a result of such different or additional claims or facts.~~

G. Exhibit A (the "Notice of Class Action Settlement") to the Agreement shall be replaced with: the [Revised] Notice of Class Action Settlement that is attached hereto as "Exhibit 1."

1 THE PARTIES HAVE AGREED TO AMENDMENT OF THE AGREEMENT AS STATED
2 HEREIN, BY AND THROUGH THEIR UNDERSIGNED COUNSEL.

3 Dated: September ____, 2018 LAWYERS for JUSTICE, PC

4
5 _____
6 Edwin Aiwazian
7 Joanna Ghosh
8 *Attorneys for Plaintiffs*

9 Dated: September ____, 2018 MICHELMAN & ROBINSON, LLP

10 _____
11 Marc R. Jacobs
12 Amanda K. Pawlyk
13 *Attorneys for Defendants Motive Energy, Inc., Advanced*
14 *Charging Technologies, Inc., and Motive Energy*
15 *Telecommunications Group, Inc.*

EXHIBIT D

[REVISED] NOTICE OF CLASS ACTION SETTLEMENT

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William Campos, et al. v. Motive Energy, Inc., et al.
Superior Court of California for the County of Orange
Case No. 30-2016-00828352-CU-OE-CXC

[ADMINISTRATOR] ID: <<[ADMINISTRATOR] ID>>
<<Name>>
<<Address1>> <<Address2>>
<<City>> <<State>> <<Zip Code>>

To: All current and former hourly-paid or non-exempt employees who worked for Motive Energy, Inc., Motive Energy Telecommunications Group, Inc., and/or Advanced Charging Technologies, Inc. within the State of California at any time during the period from January 5, 2012 to March 16, 2018:

**PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT**

I. INTRODUCTION

The Superior Court of California for the County of Orange ("Court" or "Orange County Superior Court"), has granted preliminary approval of a proposed class action settlement in the above-captioned action (the "Action").

A Final Approval Hearing will be held on [date] at [time] to determine whether the Settlement should be granted final approval. The records of Motive Energy, Inc., Motive Energy Telecommunications Group, Inc., and Advanced Charging Technologies, Inc. (collectively, "Defendants") show that you were employed by at least one of the Defendants as an hourly-paid or non-exempt employee within the State of California at some time during the period from January 5, 2012 to March 16, 2018 ("Class Period"), and therefore you are a "Class Member." As a Class Member, you may be entitled to money under the Settlement, and unless you "opt out" of the Settlement, your legal rights may be affected. The purpose of this Notice of Class Action Settlement ("Notice") is to: (1) describe the Action, (2) inform you of the terms of the Settlement, and (3) inform you of your rights and options in connection with the Settlement.

II. SUMMARY OF THE ACTION

On January 5, 2016, former employee William Campos ("Campos") filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. against Defendants in Orange County Superior Court. On September 22, 2016, Plaintiff Campos filed a First Amended Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. which, *inter alia*, added former employee Juanita Hernandez as a named plaintiff to the Action (together with Plaintiff Campos, and Hernandez are referred to as "Plaintiffs"). On December 2, 2016, Plaintiffs filed a Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint").

Plaintiffs allege that Defendants failed to properly pay minimum and overtime wages, failed to provide compliant meal periods and pay meal period premiums, failed to provide compliant rest periods and pay rest period premiums, failed to reimburse employees for necessary business expenses, failed to timely pay wages and associated waiting time penalties, failed to provide accurate and itemized wage statements, and failed to keep requisite pay records, and thereby engaged in unfair business practices and conduct giving rise to civil penalties under the California Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"), with respect to Plaintiffs and all other current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time during the period from January 5, 2012 to final judgment.

Defendants deny all of Plaintiffs' allegations and specifically deny that they violated the law in any way as described in the lawsuit. Nothing in this Notice, or the Settlement itself, or any actions to carry out the terms of the Settlement mean that Defendants admit any fault, guilt, negligence, wrongdoing, or liability whatsoever. There has been no finding of any wrongdoing by Defendants. Defendants wish to settle in order to avoid the costs, time, and disruption caused by litigation.

Plaintiffs and Defendants participated in a mediation before an experienced wage-and-hour mediator, which resulted in

a settlement of the Action, and the parties executed the Joint Stipulation of Class Action and PAGA Settlement and Release and Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement" or "Settlement Agreement").

The Court granted preliminary approval of the Settlement on [Preliminary Approval Date] on behalf of the following Class (each individually, a "Class Member"):

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from January 5, 2012 to March 16, 2018. ("Class" or "Class Member(s)).

At that time, the Court also preliminarily approved Plaintiffs William Campos and Juanita Hernandez to serve as representatives of the Class ("Class Representatives"), and Edwin Aiwarzian, Esq., Arby Aiwarzian, Esq., and Joanna Ghosh, Esq. of Lawyers for Justice, PC to serve as counsel for the Class ("Class Counsel").

Edwin Aiwarzian, Esq.
Arby Aiwarzian, Esq.
Joanna Ghosh, Esq.
Lawyers for Justice, PC
410 Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Fax: (818) 265-1021

III. SUMMARY OF SETTLEMENT TERMS

Maximum Settlement Amount. As a part of the Settlement, Defendants have agreed to pay the amount of \$750,000 (the "Maximum Settlement Amount") to fully resolve the Action in accordance with the terms of the Settlement Agreement. The "Net Settlement Amount" refers to the amount that will be available for distribution to Class Members who do not submit a valid and timely Request for Exclusion ("Settlement Class Members"). The Net Settlement Amount is the Maximum Settlement Amount less the following amounts, subject to approval by the Court:

- **Settlement Administration Costs.** Payment to the Settlement Administrator, in an amount not to exceed \$12,000, for the expenses and costs of notifying the Class Members of the Settlement, processing Requests for Exclusion (as described in Section V of this Notice), calculating Class Members' *pro rata* shares of the Net Settlement Amount, and distributing payments under the Settlement, among other tasks.
- **Attorneys' Fees and Litigation Costs and Expenses.** ~~An award of Payment in an amount not to exceed~~ \$262,500 (which is 35% of the Maximum Settlement Amount) for attorneys' fees to Class Counsel, as compensation for the work that Class Counsel has performed and will continue to perform in this Action through the finalization of the Settlement. Class Counsel also seeks reimbursement of its actual litigation costs and expenses incurred in the Action, in an amount not to exceed \$50,000. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.
- **Service Payments.** Service Payments in amounts not to exceed \$8,000 to Plaintiff William Campos and \$7,000 to Plaintiff Juanita Hernandez (totaling \$15,000), to compensate them for their services on behalf of the Class in initiating and prosecuting the Action. The Service Payments are in addition to whatever payments Plaintiffs are otherwise entitled to as Settlement Class Members.
- **LWDA Payment.** Under the Settlement, \$30,000 has been designated as penalties under the Private Attorneys General Act ("PAGA Payment"). As required by statute, 75% of the PAGA Payment (i.e., \$22,500) will be paid to the Labor and Workforce Development Agency ("LWDA Payment"), and the remaining 25% of the PAGA Payment (i.e., \$7,500) will remain part of the Net Settlement Amount to be distributed to Settlement Class Members on a *pro rata* basis.

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Calculation of Individual Settlement Shares. Settlement Class Members will be entitled to receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"). Each Settlement Class Member's Individual Settlement Share will be calculated based upon the number of weeks that the respective Settlement Class Member was employed by any of the Defendants in an hourly-paid or non-exempt position in California from January 5, 2012 to March 16, 2018 ("Workweeks"), relative to the total number of Workweeks of all Settlement Class Members. The Settlement Administrator has calculated the total number of Workweeks worked by each individual Class Member based on Defendants' records, by using the start and termination dates of each individual Class Member's employment with any of Defendants in an hourly-paid or non-exempt position in California, excluding any period during which the Class Member was on a leave of absence, employed by Defendants outside of California, and/or classified by Defendants as an exempt employee. Your Workweeks calculation is reflected below in Section IV. To calculate a Settlement Class Member's Individual Settlement Share, the Net Settlement Amount will be divided by the total number of Workweeks worked by all Settlement Class Members to arrive at the value of each Workweek ("Weekly Rate"), and each Settlement Class Member's individual Workweeks will be multiplied by the Weekly Rate to yield his or her Individual Settlement Share.

Tax Matters. Each Individual Settlement Share is allocated as follows, for withholding purposes: thirty-three percent (33%) as wages and sixty-seven percent (67%) as interest and penalties. The wages portion of each Individual Settlement Share will be reported on an IRS Form W-2. Settlement Class Members will be issued payment of their respective Individual Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of their Individual Settlement Share, which the Settlement Administrator is responsible for remitting and reporting to the tax authorities. Defendants will be responsible for paying their employer's share of payroll taxes and contributions with respect to the wages portion of Individual Settlement Shares. The portions of the Individual Settlement Share that are allocated towards interest and penalties will be paid out without reduction for taxes or withholdings, and these non-wage portions will be reported on an IRS Form 1099. Settlement Class Members will be exclusively liable for any and all tax liability for payments issued to them under the Settlement. Settlement Class Members may wish to consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Releases. Other than the rights created by the Settlement, upon the Effective Date, all Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class Members) will fully release and discharge Released Parties from, and covenant not to sue the Released Parties for, any and all of the Released Claims.

"Released Parties" means: Defendants and each of its past, present, and future parent companies, subsidiaries, shareholders, lenders, officers, partners, directors, employees, insurers, predecessors, accountants, attorneys, plan administrators, heirs, trustees, successors, and assigns, and each and all of their respective past, present, and future shareholders, lenders, officers, partners, directors, employees, insurers, predecessors, accountants, attorneys, plan administrators, heirs, trustees, successors, and assigns, and all persons acting under, by, through, or in concert with any of them.

"Released Claims" means: all individual, class, or representative claims, actions, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, penalties, damages (including and not limited to, liquidated damages, exemplary damages, and punitive damages), restitution, equitable relief, injunctive relief, or causes of action, or penalties, of any nature whatsoever, whether known or unknown, that were pled or could have been pled based on the factual allegations in the Operative Complaint, arising during the Class Period, which the Settlement Class Members have had or hereafter may claim to have, against the Released Parties, or any of them, including, without limitation: (a) claims for violation of the California Labor Code and applicable Wage Order(s) promulgated by the California Industrial Welfare Commission, for failure to pay minimum wages, the failure to pay overtime wages or other premium pay, the failure to provide compliant meal periods, the failure to provide compliant rest periods, failure to provide compliant wage statements, failure to reimburse for necessary business expenditures; (b) claims for unfair, unlawful, and fraudulent business practices under the California Business and Professions Code sections 17200, et seq. and/or any other unfair competition law; (c) related or derivative claims for penalties, including, but not limited to, wage statement penalties and/or any other penalties set forth in California Labor Code or Wage Orders; (d) all violations of the Private Attorneys General Act of 2004 (including, but not limited to, all claims arising under California Labor Code sections 2698, 2699, and 2699.3), and (e) any additional claims for penalties, damages or wages predicated on the same.

Upon the Effective Date, Settlement Class Members acknowledge and are deemed to acknowledge that they may

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hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of the Action, Settlement Agreement and/or the Released Claims and which, if known or suspected at the time of executing the Settlement Agreement, may have materially affected this release. Nevertheless, the Settlement Class waives any right, claim, or cause of action that might arise as a result of such different or additional claims or facts.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order, at or following a Final Approval Hearing, granting final approval of the Settlement.

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IV. RECEIVING PAYMENT UNDER THE SETTLEMENT

If you do nothing, you will be deemed a Settlement Class Member, you will be issued payment from the Settlement, and you will release the Released Parties of all Released Claims, as described herein.

Based on Defendants' records, which will be presumed to be correct unless you timely submit evidence to the contrary is timely submitted to the Settlement Administrator, your Workweeks calculation is as follows:

Your start date of employment:	
Your last date of employment:	
Any periods of your employment with Defendants that is or are excluded:	
Your Workweeks:	

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You are credited as having been employed by at least one of the Defendants in an hourly-paid or non-exempt position in California during the time period starting on January 5, 2012 and ending on March 16, 2018 for ~~Workweeks~~ Workweeks and your estimated gross Individual Settlement Share is ~~\$64,000.00~~.

If you wish to challenge the number of Workweeks attributed to you above, then you must submit a written, signed dispute, along with supporting documents, if any exist, to the Settlement Administrator at the following address, postmarked no later than ~~Response Deadline~~:

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Motive Energy Settlement
c/o [administrator's name]
[mailing address]
[telephone support number]

To be valid, your dispute must contain: (1) your full name, address, signature, and the last four digits of your Social Security number; (2) the case name and number of this Action (the case name is *Campos, et al. v. Motive Energy, Inc., et al.*, and the Case Number is 30-2016-00828352-CU-OE-CXC); (3) a clear statement indicating that you are disputing the number of Workweeks credited to you; and (4) facts supporting your dispute along with any supporting documents.

In order to ensure receipt of your payment, it is your responsibility to make sure you keep the Settlement Administrator informed of your current mailing address, and you may do so by contacting the Settlement Administrator at the address listed above or the telephone number listed on the bottom of the page.

V. RIGHT TO REQUEST EXCLUSION FROM THE SETTLEMENT

If you do not wish to participate in the Settlement, you may must exclude yourself from the Settlement or "opt out" by completing and timely submitting the Opt Out Form that is being provided to you along with this Notice ("Request for Exclusion"). If you opt out, you will receive no money from the Settlement and you will not be bound by its terms. To opt out, you must fully complete the Opt Out Form and submit a written request to be excluded ("Request for

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Call: ~~insert~~

~~telephone support number~~

Exclusion") it to the Settlement Administrator-- by mail at the address set forth in Section IV, above, postmarked no later than [Response Deadline]. To be valid, your Request for Exclusion the Opt Out Form must contain: (1) your full name, address, signature, and the last four digits of your Social Security number; (2) the case name and number of this Action (the case name is *Campos, et al. v. Motive Energy, Inc., et al.*, and you must also affix a check-mark next to the Case Number is 30-2016-00828352-CU-OE-CXC); and (3) a clear pre-typed statement indicating that you wish seek to opt out of be excluded from the Settlement. The Request for Exclusion must be mailed to the Settlement Administrator at the address set forth in Section IV, above, postmarked no later than [Response Deadline]. Requests for Exclusion Opt Out Forms that do not include all required information or are postmarked after [Response Deadline] will be rejected, and those individuals. Those Class Members who fail to submit a timely and valid Request for Exclusion (i.e., by submitting a timely and valid Opt Out Form) will remain bound by the Settlement and the release of the Released Claims described above.

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VI. RIGHT TO OBJECT TO THE SETTLEMENT

Class Members who have not submitted a timely and valid Request for Exclusion (i.e., Settlement Class Members) and believe that the Settlement should not be finally approved by the Court for any reason, may object to the Settlement. Objections must be in writing and must be mailed or hand delivered to the Settlement Administrator at the address listed above in Section IV, postmarked on or before [Response Deadline]. To be valid, an objection must contain: (1) the objector's full name, address, telephone number, signature, the last four digits of the objector's Social Security number; (2) the case name and number of this Action (the case name is *Campos, et al. v. Motive Energy, Inc., et al.*, and the Case Number is 30-2016-00828352-CU-OE-CXC); (3) a clear statement indicating that the objector wishes to object to the Settlement and the basis for any objection; (4) identification of the name and address of the objector's counsel, if he or she is represented by counsel; and (5) a statement of whether or not the objector intends to appear at the Final Approval Hearing. To object to the Settlement, Class Members must remain members of the Settlement Class, and if the Court approves the Settlement, Settlement Class Members who object will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object. Any Settlement Class Member who does not object in the manner provided in this Notice will waive any objection to the Settlement, whether by appeal or otherwise.

VII. HEARING ON THE SETTLEMENT ("FINAL APPROVAL HEARING")

The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held on [date] at [time] in Department CX102CX104, in the Superior Court of California for the County of Orange, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701. The Final Approval Hearing may be continued without further notice. You are not required to attend the Final Approval Hearing, although any Settlement Class Member is welcome to attend the hearing at his or her own expense. Any Class Member may retain his or her own legal representation at his or her own expense as well. If you are objecting, you must comply with the requirements set forth in Section VI, above in order to have your objection heard by the Court.

VIII. ADDITIONAL INFORMATION

This Notice is only a summary of the Action and the Settlement. Class Members should contact the Settlement Administrator with any concerns or questions regarding the Settlement:

Motive Energy Settlement
c/o [administrator's name]
[mailing address]
[telephone support number]

You may also refer to the pleadings and other papers filed in the Action, which may be viewed at the Office of the Clerk, Central Justice Center Complex Civil Division of the Orange County Superior Court, located at 700751 West Civic Center Drive Santa Ana Boulevard, Santa Ana, California 92701 during regular business hours of each court day or. Also, select documents may be downloaded from the Orange County Superior Court's website (<https://www.occourts.org/online-services/case-access/>) by clicking on the "Civil Case & Document Access" option, for a fee.

You may also contact Class Counsel: Edwin Aivazian, Esq., Lawyers for Justice, PC, 410 Arden Avenue, Suite 203, Glendale, California, 91203, Telephone: (818) 265-1020, Fax: (818) 265-1021.

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PLEASE DO NOT CONTACT MOTIVE ENERGY, INC., MOTIVE ENERGY TELECOMMUNICATIONS, INC., OR ADVANCED CHARGING TECHNOLOGIES, INC., OR THEIR HUMAN RESOURCES REGARDING THIS NOTICE.

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-FURTHER, PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH QUESTIONS.

ALL QUESTIONS SHOULD BE DIRECTED TO THE SETTLEMENT ADMINISTRATOR.

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