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Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LUIS CABALLERO, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

AMERICAN METAL FILTER COMPANY, a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: 37-2022-00050163-CU-OE-CTL
[Assigned to Hon. Wendy M. Behan, Dept C-66, for all purposes]

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing
Date: March 21, 2025
Time: 9:30 a.m.
Dept.: C-66

Complaint filed: December 15, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for

1 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
2 competently testify thereto.

3 **COUNSEL'S EXPERIENCE**

4 2. I have been a member, in good standing, of the State Bar of California since 2001.
5 I am admitted to practice in the United States District Courts for the Central and Southern
6 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
7 courts in California.

8 3. I have handled well over 500 employee vs. employer litigation matters during my
9 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
10 representing employees, the majority of which has included class action and representative
11 action wage and hour matters. In total, I have handled well over 300 class action and
12 representative action wage/hour cases, and have been appointed by the court as class counsel and
13 have received final court approval and judgment in over half of those actions to date, and
14 anticipate receiving final approval in many more of those in the future.

15 4. As part of these settlements and judgments, I have recovered well in excess of
16 \$250 million in damages for my clients and the class members (who often work as nurses,
17 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
18 occupations and countless other trades). My team and I once held the record for the largest
19 PAGA-only case in California's history - a \$12.5 million-dollar court approved settlement,
20 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
21 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

22 5. I have tried two major class and PAGA cases against Fortune 100 companies over
23 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
24 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
25 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
26 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
27 the PAGA case was reversed and remanded.
28

1 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
2 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
3 employment/labor law attorneys in 2023). Additionally, over the last 5+ consecutive years, I
4 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
5 only 5% of lawyers receive.

6 **BRIEF SUMMARY OF THE SETTLEMENT**

7 7. Following a contested but productive mediation, Plaintiff and Defendants
8 (collectively, the “Parties”) entered into a Class Action and PAGA Settlement Agreement (the
9 “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit A**.

10 8. The Settlement Agreement seeks to release and discharge Defendants from the
11 claims brought against them in exchange for Defendants’ agreement to pay \$400,000 on a non-
12 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
13 Settlement Amount without having to submit a claim form or take any action, except for those
14 who opt-out). As set forth in the motion and Settlement Agreement, Plaintiff seeks to represent
15 “All current and former nonexempt employees employed by Defendant American Metal Filter
16 Company, in California, at any time during the Class Period of December 15, 2018, through
17 December 31, 2023, or an earlier period termination date if Defendants exercise their option to
18 shorten the Class Period pursuant to the escalator clause.”

19 9. Under the terms of the Settlement Agreement, Defendants will not oppose
20 Plaintiff Counsel’s application for a reasonable award of attorney’s fees not to exceed
21 \$133,333.33 (1/3 of the Gross Settlement Amount), litigation expenses not to exceed \$20,000,
22 Settlement Administrator Costs not to exceed \$5,500, PAGA penalties of \$30,000 (with 75% to
23 the LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a Service Payment
24 of \$10,000 to Plaintiff Luis Caballero (“Class Representative”). (S.A. ¶ 3.2 et seq.). After
25 subtracting the agreed-upon deductions from the Settlement Amount, approximately
26 \$201,166.67 will be available to pay the individual settlement amounts to approximately the
27 Class Members who do not opt-out of the settlement, as follows:
28

<i>Gross Settlement Amount</i>	\$ 400,000.00
Attorneys' Fees (1/3)	\$ 133,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs (estimated)	\$ 5,500.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 201,166.67

10. Assuming 100 Class Members, the average payment to each Class Member will be approximately \$2,011.67 (\$201,166.67 /100). The actual payment to the Class Members will be calculated on a pro-rata basis according to the number of Weeks Worked during the Class Period with each Workweek having a value of approximately \$33.53 (\$201,166.67 / 6,000 estimated Work Weeks). (S.A. ¶ 3.2.4). In addition, the Aggrieved Employees will receive a share of the \$7,500 allocated to PAGA Penalties (25% of the total \$30,000 PAGA allocation), calculated pro-rata based on the number of PAGA Pay Periods worked during the PAGA Period.

11. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks he/she is credited with working during the Class Period which is attached hereto as **Exhibit B**.

PROCEDURAL BACKGROUND

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, we believe this settlement to be fair, reasonable, and adequate.

13. After being retained by Plaintiff, we sent a letter to Defendants requesting the production of Plaintiff's personnel and timekeeping records in order to further evaluate his wage and hour claims. On December 15, 2022, we submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney

1 General Act of 2004 (the “PAGA”), which is attached hereto as **Exhibit C**.

2 14. On December 15, 2022, Plaintiff filed a class and representative PAGA action
3 complaint in the Court alleging the following class action and PAGA claims against Defendant
4 American Metal Filter Company: (1) Failure to Pay Minimum Wages; (2) Failure to Pay
5 Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5)
6 Failure to Reimburse Business Expenses; (6) Failure to Timely Pay Final Wages; (7) Failure to
7 Provide Accurate Itemized Wage Statements; (8) Unfair and Unlawful Competition, and (9)
8 related PAGA Claims. On March 27, 2024, Plaintiff filed Doe Amendments, adding Valentine
9 Deilgat, David Carter, and Michele Carter as named Defendants.

10 15. Defendants retained counsel and immediately began to defend the case. After
11 initial written discovery, depositions, and *Belaire* process, there were discussions among counsel
12 to exchange documents in order to facilitate settlement discussions.

13 16. In preparation for settlement discussions, the Parties informally exchanged
14 documents and information that allowed both sides to calculate the potential damages and
15 evaluate potential risk, including policies and procedures pertaining to each claim alleged, and
16 statistics relating to the number of current and former employees, number of shifts /Work Weeks
17 completed, pay periods worked and other things. In discovery, Defendants also provided their
18 written policies and practices and a robust sampling of payroll and timekeeping records for Class
19 Members. This information enabled both parties to take a deep dive into the claims. During this
20 process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,
21 including matters related to the calculation of damages, trial, and appellate issues and risks.
22 Finally, Plaintiff had his expert evaluate and opine as to Defendants’ financial documents before
23 initiating settlement discussions.

24 17. The Parties engaged in weeks of extensive settlement negotiations; and on May
25 26, 2024, Plaintiff and Defendants reached a global resolution.

26 18. During all settlement discussions, the Parties conducted their negotiations at
27 arm’s length in an adversarial position. Arriving at a settlement that was acceptable to both
28 Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on

1 the merits and at certification, and Plaintiff and Class Counsel believed that they would be able
2 to obtain class certification and prevail at trial. After conducting investigations, extensive
3 settlement negotiations, and with the aid of expert financial analysis, the Parties have agreed that
4 the matter is well-suited for settlement given the legal issues as well as the costs and risks to both
5 sides that would attend further litigation. The Parties now seek the Court's preliminary approval
6 of the Settlement.

7 **SUMMARY OF THE CLAIMS AND DEFENSES**

8 19. Here, Plaintiff alleged numerous wage and hour violations on behalf of the Class
9 Members. However, Defendants vigorously contested and denied Plaintiff's material allegations
10 on the merits and as to the propriety of a class action or PAGA representative action.

11 20. One of the primary claims in the action was based on failure to pay all wages.
12 Plaintiff alleged this occurred through various theories.

13 21. *First*, Plaintiff claimed that he and the Class Members all took lunch at the same
14 time as the company would ring a bell to start and end lunch periods. However, Plaintiff alleges
15 that Defendants would end the 30-minute lunch period early by 2 minutes as Defendants required
16 Plaintiff and the Class to be back at their workstations and start working as soon as 30 minutes
17 had elapsed. This resulted in unpaid wages of 2 minutes of unpaid time each shift to Plaintiff and
18 the Class. However, Defendants denied any liability for this claim by arguing that (1) it had
19 compliant policies and (2) Defendants did not prevent Plaintiff or the Class to finish their 30-
20 minute lunch break.

21 22. *Second*, Plaintiff alleged an underpayment of overtime wages to Plaintiff and the
22 Class Members due to Defendants' policies to only overtime wages for shifts over 10 hours in a
23 day. However, Defendants argued that it elected to utilize an alternative workweek schedule of
24 10 hours per day for 4 days per week (*i.e.*, a "4/10").

25 23. *Third*, Plaintiff alleged that Defendants failed to provide compliant meal periods
26 due to the scheduling of late meals. However, Defendants argued that it provided and actually
27 scheduled meal breaks to all employees. Furthermore, Defendants argued that any instances of
28 late meals were negated by the existence of meal waivers.

1 24. Plaintiff also alleged various other Class and PAGA claims, such as failure to
2 reimburse business expenses, failure to pay all wages owed upon termination, failure to provide
3 accurate wage statements, and other claims related to the alleged violations mentioned above.
4 However, Defendants argued that these other claims, as well as the “derivative claims” have no
5 merit.

6 25. Despite the disputed nature of the claims, the Parties concluded that further
7 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
8 be fully and finally settled to limit further risk, expense, and protracted litigation.

9 **EVALUATION OF THE SETTLEMENT**

10 26. In preparation for mediation, Kristina Carlson, an associate with 10 years of
11 litigation experience within my office, and I formulated a damages model and risk analysis based
12 upon detailed data obtained through discovery and informal information exchanges. The
13 summary of the claims below is based on calculations by our expert and us, and the risks that we
14 potentially faced, giving significant credit to the defenses that Defendants raised or would likely
15 raise in further proceedings.

16 27. Following the informal exchange and other information provided by Defendant,
17 we estimated the following data points through settlement negotiations in *April 2024*: (1) 90
18 Class Members, (2) 5,474 workweeks, (3) 21,896 shifts worked during the Class Period, and (4)
19 approximately 1,259 wage statements during the PAGA period. From these metrics, and when
20 factoring in claim certification probabilities and liability probabilities, we formulated detailed
21 damages models to value the claims in preparation for mediation and to reach a realistic and
22 reasonable resolution.

23 28. Here, there were three categories of claims alleged by Plaintiff: (1) unpaid wage
24 claims under various theories, (2) meal and rest break violations, and (3) claims for waiting time
25 and wage statement penalties due to the other alleged violations.

26 29. As to Plaintiff’s unpaid wage claims, Plaintiff alleged that Defendants failed to
27 properly compensate for all time worked due to shorten meal breaks. Plaintiff alleged that
28 Defendants would ring a bell to signal the end of lunch 2 minutes before the 30-minute lunch

1 was completed as Defendants required Plaintiff and Class Members to be back at their stations
2 and resume working immediately. This resulted in unpaid wages each shift as Defendants would
3 deduct a full 30 minutes from Plaintiff and the Class to account a meal break.

4 30. Additionally, Plaintiff alleges that Defendants' overtime policies resulted in an
5 underpayment to the Class for Defendants' failure to compensate overtime hours worked at a rate
6 of one-and-a-half times the regular rate of pay. Plaintiff alleged that prior to the initiation of
7 Plaintiff's Action, Defendants failed to have a valid alternative workweek schedule. Defendants
8 vehemently opposed these underpaid wage claims on the merits and the propriety of class
9 certification. Furthermore, Defendants raised several defenses (as discussed in the Sections
10 above). Due to the defenses and arguments raised, Plaintiff assigned a 30% risk for the unpaid
11 wage claim at the class certification stage and an additional 30% risk on the merits. In sum,
12 Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage claims as \$177,029.

13 31. Additionally, Plaintiff alleged meal and rest break claims against Defendants.
14 Based on data analysis and investigation, Class Counsel estimated nearly 100% of pay periods
15 had at least one meal violation due to Defendants' scheduling of late lunches. Additionally, Class
16 Counsel estimated that essentially 100% of pay periods had at least one rest break violation due
17 to the fact that these rest breaks were not off-duty. However, Defendants raised numerous
18 arguments against this claim, including compliant policies and meal waivers. Defendants argued
19 that a fact-finder would have to make an individualized determination for each Class Member as
20 to why a meal was missed or late and the reasons why. Given the total number of Work Weeks
21 and a 100% violation rate, Plaintiff's counsel estimated 21,896 alleged meal violations and
22 21,896 shifts with alleged rest break violations. This established a maximum potential value for
23 these claims of \$656,880 (43,792 violations multiplied by the average hourly rate of \$15.00 as
24 the applicable premium rate under § 226.7). However, Defendants raised numerous arguments in
25 response to this claim, including that it authorized the Class Members to take meal and rest
26 breaks, meaning that no one had a reason or cause to miss a break or take a short/late break.
27 Furthermore, Defendants argued that the meal and rest break claims may be subject to
28 exemptions. Therefore, Defendants asserted that a fact-finder would have to determine for each

1 Class Member whether a break was missed and why, and why a break was noncompliant or
2 nonexistent, because if it was by the employee's choice, no liability attaches to Defendants.
3 These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise
4 questions regarding whether the meal and rest break claims could be certified, and Plaintiff
5 placed a 20% risk at the class certification stage for meal periods and a 20% risk for rest breaks.
6 Second, these defenses also go toward the merits given the evidentiary question of proving the
7 number of meal and rest violations. As such, Plaintiff placed a 20% risk on the merits for meal
8 breaks, and an additional 20% risk on the merits for rest breaks, setting the risk-adjusted value
9 for the combined meal and rest break claims at \$420,403.

10 32. Plaintiff also alleged claims for waiting time penalties and wage statement
11 violations, including failure to accurately state all applicable hourly rates and total hours worked.
12 The maximum values for these claims were as follows: (1) \$85,500 for waiting time penalties
13 [19 former employees x \$150.00 average daily pay x 30 days], and (2) \$119,900 for wage
14 statement violations [1,259 wage statements at the \$50/\$100 formula under § 226(e)]. Some of
15 these claims were derivative of the claims above, meaning that they only had merit if the claims
16 for unpaid wages or meal/rest breaks were successful. But Defendants raised a variety of
17 defenses to these derivative claims that impacted the valuation. Namely, as to the wage
18 statement violations, Defendants argued that its wage statements did not violate Labor Code §
19 226 and even if there was a "technical" violation, that Plaintiff would be unable to prove the
20 required "knowing and intentional" and "injury" elements. Based on these facts and defenses,
21 Plaintiffs placed a 20% risk at class certification and estimated another 20% risk the merits,
22 leading to a risk-adjusted value of \$76,736 for the wage statement claims.

23 33. Then, as to the waiting time penalty claim, Plaintiff's valuation had to account for
24 the fact that part of this claim was derivative of the unpaid wage claims and also of the meal and
25 rest break claims, if those claims failed at certification or on the merits, there would be no
26 waiting time penalties owed. Furthermore, even if the unpaid wage and/or meal/rest claims
27 succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if
28 any existed) were "willful" under the meaning of Labor Code § 203. And, here, Defendants

1 argued there was no “willful” violation as they were inadvertent and unintentional. As a result of
2 this analysis, Plaintiff’s counsel applied a 20% risk at class certification and a 20% risk on the
3 merits, leading to a risk-adjusted value of \$54,720.

4 34. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff
5 estimates the risk-adjusted class recovery as follows:

6	• Unpaid Wage Claims	\$ 177,029
7	• Meal and Rest Break Claims	\$ 420,403
8	• Wage Statement Claims	\$ 76,736
9	• Waiting Time Penalty Claims	<u>\$ 54,720</u>
10	• Total Risk Adjusted Penalties and Damages	\$ 728,888

11 The reasonableness of the settlement is apparent from the fact that the proposed settlement is
12 54.88% of the risk-adjusted class damages and penalties. Furthermore, Defendants provided
13 financial documents to Plaintiff’s counsel as finances were a concern. Plaintiff’s counsel had an
14 expert review and analyze Defendant American Metal Filter’s financial documents. After review,
15 Plaintiff’s counsel further believed an additional discount was warranted due to Defendants’
16 finances.

17 35. Likewise, while the PAGA penalties had a maximum value in the mid six-figures,
18 this also fails to incorporate the risks above and, further, fails to acknowledge that courts have
19 wide latitude to reduce the civil penalties “based on the facts and circumstances of a particular
20 case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
21 confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendants argued against the merits of the
22 underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses
23 mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendants also
24 argued it is improper to stack civil penalty claims on top of underlying statutory claims. For
25 these reasons, the Parties submit that this settlement is fair and reasonable.

26 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

27 36. The settlement was the product of extensive arm’s length negotiations between
28 counsel. Though cordial and professional, the settlement negotiations were adversarial and non-

1 collusive in nature. The settlement reached is the product of substantial effort by the parties and
2 their counsel. Although we believed that there was a possibility of certifying the claims, we
3 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
4 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
5 and/or on an appeal that can take several more years to litigate.

6 37. The settlement will result in a fair payment to each Class Member based on the
7 percentage of weeks worked during the Class Period and other factors as set forth in the
8 Settlement Agreement. As set forth hereinabove, Plaintiff and his counsel have diligently
9 investigated the claims and defenses on behalf of the Class Members and worked to achieve a
10 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys'
11 fees and costs. After evaluating the significant risks attendant with further litigation described
12 above and weighing them against the benefits of a known compromise and settlement as set forth
13 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
14 interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

15 38. My office brought to bear a great deal of experience in negotiating the settlement
16 of this case. As detailed herein, my office engaged in the necessary discovery and investigation,
17 making it possible to exercise informed judgment throughout the settlement process, including
18 significant document review (e.g. documents pertaining to Defendants' policies and procedures,
19 personnel documents, among others), and conducted an extensive analysis of the detailed class-
20 wide data provided by Defendants.

21 39. Based on my experience in other cases, including wage and hour matters, I
22 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
23 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
24 settlement at this time is in the best interests of the class. The settlement provides each class
25 member with compensation for the alleged violations when viewed in relation to the costs and
26 risks inherent in obtaining class certification and proceeding to trial.

27 40. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and
28 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

1 41. Of course, the settlement amount represents a compromise figure, taking into
2 account the various risks surrounding class certification and the merits of Defendants' asserted
3 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
4 members, with no reversion to Defendants.

5 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

6 42. Plaintiff seeks an enhancement payment of \$10,000 for his service to the class,
7 which I believe is fair and warranted. Plaintiff came forward in an effort to effectuate a policy
8 and practice change that benefitted all other Class Members, and to recover unpaid wages. He
9 assumed significant risk in bringing this litigation—namely, had he lost, he would have been
10 ordered to pay Defendants' costs.

11 43. Plaintiff provided invaluable assistance to my office and the Class in this case,
12 including providing factual background for the Class Complaint; reviewing the litigation
13 documents; providing information and documents about Defendants' policies and practices;
14 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
15 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
16 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
17 the reasons why he believes that the service award should be approved.

18 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
19 **REQUESTED FEES AND COSTS**

20 44. As set forth above, I have handled over 300 class and representative actions, have
21 been appointed as class counsel and have successfully resolved over half of those cases, and
22 many others remain pending and will successfully resolve in the future.

23 45. When this case was taken on a contingency fee basis, with my firm agreeing to
24 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
25 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
26 and mediation costs. There was never a guarantee that we would recoup those expenditures.

27 46. It is my experience that attorney fee awards of one-third of a common fund
28 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third

1 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
2 is further warranted because it is within the range of reasonableness typically awarded in class
3 actions. The costs are reasonably capped at \$20,000 and will be based on the actual amount of
4 costs incurred at the time of final approval.

5 **SETTLEMENT ADMINISTRATOR**

6 47. The parties request that the Court appoint Phoenix Class Action Settlement
7 Administrators to serve as the Settlement Administrator. Phoenix is experienced in
8 administering class action settlements, and has provided a proposal to administer this settlement
9 for \$5,500, which is attached hereto as **Exhibit D** and further attached to the declaration of Mike
10 Moore of Phoenix.

11 **SUBMISSION TO THE LWDA**

12 48. Plaintiff has concurrently submitted the settlement and motion documents to the
13 LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto
14 as **Exhibit E**.

15 **EXHIBITS AND CONCLUSION**

16 49. The fully signed Settlement Agreement is attached as Exhibit "A."

17 50. The proposed Class Notice is attached hereto as Exhibit "B."

18 51. The December 15, 2022, notice letter to the California Labor Workforce
19 Development Agency (the "LWDA") is attached hereto as Exhibit "C."

20 52. Phoenix's proposal to administer the Settlement is attached as Exhibit "D."

21 53. The LWDA's confirmation of receipt of this Motion, Declarations and exhibits is
22 attached hereto as Exhibit "E."

23 54. For the foregoing reasons, it is respectfully requested that the Court grant
24 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
25 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
26 payment to the Class Representative.
27
28

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on September 12, 2024, at Riverside, California.

3
4 By: 
5 Brian J. Mankin, Esq.
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EXHIBIT “A”

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Attorney for Defendant AMERICAN METAL FILTER COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LUIS CABALLERO, individually, on a
representative basis, and on behalf of all
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Plaintiff,

vs.

AMERICAN METAL FILTER COMPANY,
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Defendants.

Case No.: 37-2022-00050163-CU-OE-CTL
*[Assigned to Hon. Wendy M. Behan, Dept C-
66, for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT**

Complaint filed: 12/15/2022

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by
2 and between Luis Caballero (“Plaintiff”) and Defendants American Metal Filter
3 Company (“AMF”) and its owners/officers Valentine Deilgat, David Carter, and Michele
4 Carter (collectively “Defendants”). Plaintiff and Defendants shall collectively be referred
5 to as “Parties,” or individually as “Party.”

6 **1. DEFINITIONS.**

7 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
8 Defendants captioned *Luis Caballero v. American Metal Filter Company*, which was initiated
9 on December 15, 2022, and pending in Superior Court of the State of California, County of San
10 Diego.

11 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity
12 the Parties have agreed to appoint to administer the Settlement.

13 1.3. “Administration Expenses Payment” means the amount the Administrator will
14 be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
15 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
16 with Preliminary Approval of the Settlement.

17 1.4. “Agreement” or “Settlement Agreement” shall mean this Class Action and
18 PAGA Settlement Agreement, including the Class Notice.

19 1.5. “Aggrieved Employee” means all current and former nonexempt
20 employees who were employed by American Metal Filter Company in California at any
21 time during the PAGA Period.

22 1.6. “Class” consists of all current and former nonexempt employees who were
23 employed by American Metal Filter Company in California at any time during the Class
24 Period.

25 1.7. “Class Counsel” means Brian Mankin and Kristina Bui Carlson of Lauby Mankin
26 Lauby LLP and Andrew Malatesta of Malatesta Law.

27 1.8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses
28 Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable

attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.9. "Class Data" means a complete list that Defendants will diligently and in good faith compile from their records and provide to the Settlement Administrator on one spreadsheet which shall include the Class Member's name, last-known mailing address, Social Security number, and number of Weeks Worked during the Class Period and PAGA Period, respectively.

1.10. "Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.11. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.12. "Class Notice" means the court approved notice of class action settlement to be mailed to Class Members in English and Spanish in the form attached as Exhibit A and incorporated by reference into this Agreement.

1.13. "Class Period" means the period from December 15, 2018, to December 31, 2023, or an earlier period termination date if Defendants exercise their option to shorten the Class Period pursuant to the escalator clause in Paragraph 9 below.

1.14. "Class Representative" means the named Plaintiff, who is seeking Court approval to serve as a Class Representative.

1.15. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.16. "Complaint" refers to the operative complaint filed in the Action, alleging class action and representative PAGA action claims, which is pending in the Court and designated as Case No. 37-2022-00050163-CU-OE-CTL.

1.17. "Court" means the Superior Court of California, County of San Diego.

1.18. "Defendants" mean American Metal Filter Company ("AMF") and Valentine

Deilgat, David Carter, and Michele Carter.

1.19. “Defense Counsel” means BLC Law Center, APC.

1.20. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.21. “Exclusion List” means the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion.

1.22. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.23. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.24. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.25. “Gross Settlement Amount” or “GSA” means \$400,000, which is the total amount Defendants agree to pay under the Settlement, except as provided in Paragraph 9 below and except for the employer’s share of applicable payroll tax obligations that Defendants shall pay to the Administrator. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

1.26. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Weeks Worked during the Class Period.

1.27. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Weeks Worked during

1 the PAGA Period.

2
3 1.28. “Judgment” means the judgment entered by the Court based upon the
4 Final Approval.

5 1.29. “LWDA” means the California Labor and Workforce Development Agency, the
6 agency entitled, under Labor Code section 2699, subd. (i).

7 1.30. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to
8 the LWDA under Labor Code section 2699, subd. (i).

9 1.31. “Net Settlement Amount” means the Gross Settlement Amount, less the
10 following payments in the amounts approved by the Court: Individual PAGA Payments, the
11 LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment,
12 Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The
13 remainder is to be paid to Participating Class Members as Individual Class Payments.

14 1.32. “Non-Participating Class Member” means any Class Member who opts out of
15 the Settlement by sending the Administrator a valid and timely Request for Exclusion. A Non-
16 Participating Class Member shall receive their share of the PAGA Penalties.

17 1.33. “PAGA Period” means the period from December 15, 2021, through December
18 31, 2023, or an earlier period termination date if Defendants exercise their option to shorten the
19 Class Period pursuant to the escalator clause in Paragraph 9 below.

20 1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

21 1.35. “PAGA Notice” means Plaintiff’s December 15, 2022, letter to
22 Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3,
23 subd.(a).

24 1.36. “PAGA Penalties” means the total amount of PAGA civil penalties to be
25 paid from the Gross Settlement Amount (\$30,000), allocated 25% to the Aggrieved
26 Employee (\$7,500) and 75% to LWDA (\$22,500) in settlement of PAGA claims.

27 1.37. “Participating Class Member” means all Class Members except for those
28 who opt-out by submitting a timely valid Request for Exclusion.

1 1.38. “Plaintiff” means Luis Caballero, the named plaintiff in the Action.

2 1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary

3 Approval of the Settlement.

4 1.40. “Preliminary Approval Order” means the proposed Order Granting

5 Preliminary Approval and Approval of PAGA Settlement.

6 1.41. “Released Class Claims” means the claims being released as described

7 in Paragraph 6.2 below.

8 1.42. “Released PAGA Claims” means the claims being released as described

9 in Paragraph 6.3 below.

10 1.43. “Released Parties” means: Defendants and its former and present directors,

11 officers, shareholders, owners, members, employees, agents, attorneys, insurers, predecessors,

12 successors, assigns, parents, subsidiaries, and affiliates.

13 1.44. “Request for Exclusion” means a Class Member’s submission of a written

14 request to be excluded from the Class Settlement signed by the Class Member.

15 1.45. “Response Deadline” means 45 days after the Administrator mails the Class

16 Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class

17 Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail an Objection

18 to the Settlement. Class Members to whom Notice Packets are resent after having been

19 returned undeliverable to the Administrator shall have an additional 14 calendar days beyond

20 the Response Deadline has expired.

21 1.46. “Settlement” means the disposition of the Action effected by this Agreement

22 and the Judgment.

23 1.47. “Weekly Report” refers to the report that the Administrator must email to

24 Defense Counsel and Class Counsel on a weekly basis that, among other things, tally the

25 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests

26 for Exclusion (whether valid or invalid) received, objections received, challenges to credited

27 Weeks Worked, and checks mailed for Individual Class Payments and Individual PAGA

28 Payments. The Weekly Reports must include the Administrator’s assessment of the validity of

1 Requests for Exclusion and attach copies of all Requests for Exclusion and objections
2 received.

3
4 1.48. “Weeks Worked” in the context of the Class Members, means all weeks
5 during the Class Period in which the Class Member was employed by AMF as a non-
6 exempt employee in California and worked at least one shift during the workweek. In the
7 context of Aggrieved Employees, it means all weeks during the PAGA Period in which
8 the Aggrieved Employee was employed by AMF as a non-exempt employee in California
9 and worked at least one shift during the workweek.

10 **2. RECITALS.**

11 2.1. On December 15, 2022, Plaintiff commenced this Action by filing the Complaint
12 alleging causes of action against Defendant AMF for (1) Failure to Pay Minimum Wages; (2)
13 Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide
14 Rest Breaks; (5) Failure to Reimburse Business Expenses; (6) Failure to Timely Pay Final
15 Wages; (7) Failure to Provide Accurate Itemized Wage Statements; (8) Unfair and Unlawful
16 Competition, and (9) related PAGA Claims. On March 27, 2024, Plaintiff filed Doe
17 Amendments, adding Valentine Deilgat, David Carter, and Michele Carter as named
18 Defendants. Defendants deny the allegations in the Complaint, deny any failure to comply with
19 the laws identified in in the Complaint and denies any and all liability for the causes of action
20 alleged.

21 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely
22 written notice to Defendants and the LWDA by sending the PAGA Notice.

23 2.3. On April 26, 2024, the Parties reached a global resolution to settle the Action;
24 and thereafter entered into this Agreement. This Settlement was reached after months of
25 negotiations between the Parties and expert review of financial documents.

26 2.4. Prior to negotiating the Settlement, Plaintiff obtained documents and information
27 through both formal discovery, depositions and informal discovery, including but not limited to
28 AMF’s written policies and practices, information relating to the size of the Class and Aggrieved

1 Employees, number of weeks worked, as well as a sampling of payroll and timekeeping records.
2 Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk*
3 *v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail,*
4 *Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

5 2.5. The Court has not granted class certification.

6 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not
7 aware of any other pending matter or action asserting claims that will be extinguished or
8 affected by the Settlement.

9 **3. MONETARY TERMS.**

10 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
11 Defendants agree to pay \$400,000 and no more as the Gross Settlement Amount, and to
12 separately pay to the Administrator any and all employer payroll taxes owed on the Wage
13 Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross
14 Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this
15 Agreement. The Administrator will disburse the entire Gross Settlement Amount without
16 asking or requiring Participating Class Members or Aggrieved Employees to submit any claim
17 as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

18 3.2. Payments from the Gross Settlement Amount. The Administrator will make
19 and deduct the following payments from the Gross Settlement Amount, in the amounts
20 specified by the Court in the Final Approval:

21 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
22 Representative of not more than \$10,000 (in addition to any Individual Class Payment and any
23 Individual PAGA Payment the Class Representative is entitled to receive as a Participating
24 Class Member and Aggrieved Employee). Defendants will not oppose Plaintiff's request for a
25 Class Representative Service Payment that does not exceed this amount. As part of the motion
26 for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek
27 Court approval for any Class Representative Service Payments on a date set by the Court at
28 the Preliminary Approval Hearing and no later than 16 court days prior to the Final Approval

1 Hearing. If the Court approves a Class Representative Service Payment less than the amount
2 requested, the Administrator will retain the remainder in the Net Settlement Amount. The
3 Administrator will pay the Class Representative Service Payment using IRS Form 1099.
4 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
5 Representative Service Payment.

6 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
7 one-third of the GSA, which is currently estimated to be \$133,333.33 and a Class Counsel
8 Litigation Expenses Payment of not more than \$20,000. Defendants will not oppose requests
9 for these payments provided that they do not exceed these amounts. Plaintiff and/or Class
10 Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses
11 Payment on a date set by the Court at the Preliminary Approval Hearing and no later than 16
12 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees
13 Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts
14 requested, the Administrator will allocate the remainder to the Net Settlement Amount.
15 Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel
16 arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel
17 Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment
18 and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel
19 assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment
20 and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and
21 indemnifies Defendants, from any dispute or controversy regarding any division or sharing of
22 any of these Payments.

23 3.2.3. To the Administrator: An Administrator Expenses Payment not to
24 exceed \$5,500.00 except for a showing of good cause and as approved by the Court. To the
25 extent the Administration Expenses are less or the Court approves payment less than
26 \$5,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

27 3.2.4. To Each Participating Class Member: An Individual Class Payment
28 calculated by (a) dividing the Net Settlement Amount by the total number of Weeks Worked

1 by all Participating Class Members during the Class Period and (b) multiplying the result by
2 each Participating Class Member's Weeks Worked.

3
4 3.2.4.1. Tax Allocation of Individual Class Payments. Portions of the
5 Individual Class Payment paid to the Participating Class Members will be allocated as 15% to
6 wage claims (the "Wage Portion") and remaining 85% will be allocated to settlement of
7 claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not
8 subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class
9 Members assume full responsibility and liability for any employee taxes owed on their
10 Individual Class Payment.

11 3.2.4.2. Effect of Non-Participating Class Members on Calculation of
12 Individual Class Payments. Non-Participating Class Members will not receive any Individual
13 Class Payments. The Administrator will retain amounts equal to their Individual Class
14 Payments in the Net Settlement Amount for distribution to Participating Class Members on a
15 pro rata basis.

16 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
17 amount of \$30,000 to be paid from the Gross Settlement Amount, with 75% (\$22,500)
18 allocated to the LWDA PAGA Payment and 25% (\$7,500) allocated to the Individual PAGA
19 Payments.

20 3.2.6. The Administrator will calculate each Individual PAGA Payment by
21 (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$7,500)
22 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period
23 and (b) multiplying the result by each Aggrieved Employee's Weeks Worked during the
24 PAGA period. Aggrieved Employees assume full responsibility and liability for any taxes
25 owed on their Individual PAGA Payment.

26 3.2.6.1. If the Court approves PAGA Penalties of less than the amount
27 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
28 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

1 **4. SETTLEMENT FUNDING AND PAYMENTS.**

2 4.1. Weeks Worked. See Paragraph 9 below.

3 4.2. Class Data. Not later than 30 days after the full execution of this Agreement,
4 Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel
5 spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the
6 Class Data in confidence, use the Class Data only for purposes of this Settlement and for no
7 other purpose, and restrict access to the Class Data to Administrator employees who need
8 access to the Class Data to effect and perform under this Agreement. Defendants have a
9 continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted
10 Class Member identifying information and to provide corrected or updated Class Data as soon
11 as reasonably feasible. Without any extension of the deadline by which Defendants must send
12 the Class Data to the Administrator, the Parties and their counsel will expeditiously use best
13 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
14 omitted Class Data.

15 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
16 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of
17 payroll taxes by transmitting the funds to the Administrator no later than 15 days after the
18 Effective Date.

19 4.4. Payments from the Gross Settlement Amount. Within 10 days after Defendants
20 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
21 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
22 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
23 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
24 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
25 Service Payment shall not precede disbursement of Individual Class Payments and Individual
26 PAGA Payments.

27 4.4.1. The Administrator will issue checks for the Individual Class Payments
28 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S.

1 Mail, postage prepaid. The face of each check shall prominently state the date (180 days after
2 the date of mailing) when the check will be voided. The Administrator will cancel all checks
3 not cashed by the void date. The Administrator will send checks for Individual Class
4 Payments to all Participating Class Members (including those for whom Class Notice was
5 returned undelivered). The Administrator will also send checks for Individual PAGA
6 Payments to all Aggrieved Employees. If the recipient is both a Participating Class Member
7 and Aggrieved Employees, the Payments may be contained on one check. Before mailing any
8 checks, the Settlement Administrator must update the recipients' mailing addresses using the
9 National Change of Address Database.

10 4.4.2. The Administrator must conduct a Class Member Address Search for
11 all other Class Members whose checks are returned undelivered without a USPS forwarding
12 address. Within 7 days of receiving a returned check the Administrator must re-mail checks to
13 the USPS forwarding address provided or to an address ascertained through the Class Member
14 Address Search. The Administrator need not take further steps to deliver checks to Class
15 Members whose re-mailed checks are returned as undelivered. The Administrator shall
16 promptly send a replacement check to any Class Member whose original check was lost or
17 misplaced, and requested by the Class Member prior to the void date.

18 4.4.3. For any Class Member whose Individual Class Payment check or
19 Individual PAGA Payment check is uncashed and cancelled after the void date, the
20 Administrator shall transmit the funds represented by such checks to the California State
21 Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no
22 "unpaid residue" subject to the requirements of California Code of Civil Procedure Section
23 384, subd. (b).

24 4.4.4. The payment of Individual Class Payments and Individual PAGA
25 Payments shall not obligate Defendants to confer any additional benefits or make any
26 additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those
27 specified in this Agreement.

28 **6. RELEASES OF CLAIMS.** Effective on the date when Defendants fully funds the entire

1 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the
2 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
3 against all Released Parties as follows:

4 6.1 Plaintiff's Release. Plaintiff and his or her respective former and present
5 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns
6 generally, release and discharge Released Parties from all claims, transactions, or occurrences
7 whether known or unknown, which exist or may exist on her behalf as of the date of this
8 Agreement, including but not limited to any and all tort claims, contract claims, wage claims,
9 wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation
10 claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy
11 claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising
12 under any federal, state or other governmental statute, law, regulation or ordinance, including,
13 but not limited to claims for violation of the Fair Labor Standards Act, the California Labor
14 Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and
15 hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
16 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
17 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the
18 Family Medical Leave Act, California's Whistleblower Protection Act, California Business &
19 Professions Code Section 17200 et seq., and any and all claims arising under any federal, state
20 or other governmental statute, law, regulation or ordinance. ("Plaintiff's Release.") Plaintiff's
21 Release does not extend to any claims or actions to enforce this Agreement or to any claims for
22 vested benefits. Plaintiff acknowledges that Plaintiff may discover facts or law different from,
23 or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
24 nonetheless, that Plaintiff's Release shall be and shall remain effective in all respects,
25 notwithstanding such different or additional facts or Plaintiff's discovery of them.

26 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section
27 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
28 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which

reads:

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

6.2 Release by Participating Class Members: All Participating Class Members will be bound by a release of all claims alleged in the Complaint, as set forth below: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, regular wages and/or overtime pay; (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to provide complete and accurate wage statements; (e) failure to reimburse business expenses; (f) failure to pay wages upon termination; (g) violations of the California Business & Professions Code §§ 17200 *et seq.* These claims include, but are not limited to, California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1 and 1198, and all related provisions of the California Code of Regulations, the California Industrial Wage Orders, the California Business & Professions Code sections 17200 *et seq.* ("Released Class Claims"). The Released Class Claims extend to all theories of relief regardless of whether the claim is, was or could have been alleged under federal law, state law or common law (including, without limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations, and California's Business and Professions Code section 17200), and includes all types of relief available for the above-referenced claims, including, any claims for damages, restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. The operative release period for the Released Class Claims is the Class Period.

1
2
3 6.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to
4 release, on behalf of themselves and their respective former and present representatives,
5 agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all
6 claims for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*,
7 that Plaintiff alleged against Defendants, on behalf of Aggrieved Employees and State of
8 California, based on the facts stated in the Complaint and in Plaintiff's PAGA Notice to the
9 LWDA (including any amendments thereto), or reasonably could have been alleged based on
10 the allegations, the facts, and/or legal theories under the PAGA contained in the Complaint,
11 including all of the following claims for relief: (a) failure to pay minimum wages, regular
12 wages and/or overtime pay (including any theory of failure to pay any and all wages for all
13 time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c)
14 failure to provide or pay premium payments for rest periods; (d) failure to provide complete
15 and accurate wage statements; (e) failure to reimburse business expenses; and (f) failure to pay
16 wages upon termination ("Released PAGA Claims"). The Released PAGA Claims include,
17 but are not limited to, California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
18 512, 1174, 1194, 1197, 1197.1 and 1198, and all related provisions of the California Code of
19 Regulations, and the California Industrial Wage Orders. The time period governing the
20 Released PAGA Claims shall be the entire time during the PAGA Period. The Released
21 PAGA Claims do not release any potential claims for wages or statutory penalties.

22 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare
23 and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies
24 with the Court's current checklist for Preliminary Approvals.

25 7.1 Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary for
26 obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in
27 support, of the Motion for Preliminary Approval that includes an analysis of the Settlement
28 under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code

1 Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and
2 Approval of PAGA Settlement; (iii) a signed declaration from the Administrator attaching its
3 “not to exceed” bid for administering the Settlement and attesting to its willingness to serve;
4 competency; operative procedures for protecting the security of Class Data; amounts of
5 insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts
6 relevant to any actual or potential conflicts of interest with Class Members; and the nature and
7 extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (iv) a
8 signed declaration from Plaintiff confirming willingness and competency to serve and
9 disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
10 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
11 competency to represent the Class Members; its timely transmission to the LWDA of all
12 necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd.
13 (a)), Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section
14 2699, subd. (l)(2)).

15 7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
16 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
17 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
18 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the
19 Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s
20 Preliminary Approval to the Administrator, and all related documents.

21 7.3 Duty to Cooperate. Defense Counsel shall be given at least 5 days prior to the
22 filing deadline to review and comment upon a draft of the Motion for Preliminary Approval
23 and proposed Order. If the Parties disagree on any aspect of the proposed Motion for
24 Preliminary Approval and/or Order, Class Counsel and Defense Counsel will expeditiously
25 work together on behalf of the Parties, and in good faith, to resolve the disagreement. If the
26 Court does not grant Preliminary Approval or conditions Preliminary Approval on any
27 material change to this Agreement, Class Counsel and Defense Counsel will expeditiously
28 work together on behalf of the Parties, and in good faith, to modify the Agreement and

otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected the Administrator to serve and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, and Weeks Worked in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 10 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A, or as modified by the Court and agreed to by the Parties. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Weeks Worked as a Class Member and Aggrieved Employee (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

1 8.4.3 Not later than 3 business days after the Administrator's receipt of any
2 Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
3 Notice using any forwarding address provided by the USPS. If the USPS does not provide a
4 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-
5 mail the Class Notice to the most current address obtained. The Administrator has no obligation
6 to make further attempts to locate or send Class Notice to Class Members whose Class Notice
7 is returned by the USPS a second time.

8 8.4.4 The deadlines for Class Members' written objections, Challenges to
9 Weeks Worked, and Requests for Exclusion will be extended an additional 14 days beyond
10 the Response Deadline otherwise provided in the Class Notice for all Class Members whose
11 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
12 with the re-mailed Class Notice.

13 8.4.5 If the Administrator, Defense Counsel, Class Counsel or Defendants are
14 contacted by or otherwise discovers any persons who believe they should have been included in
15 the Class Data and should have received Class Notice, the Parties will expeditiously meet and
16 confer in person or by telephone, and in good faith in an effort to agree on whether to include
17 them as Class Members. If the Parties agree, such persons will be Class Members entitled to the
18 same rights as other Class Members, and the Administrator will send, via email or overnight
19 delivery, a Class Notice requiring them to exercise options under this Agreement not later than
20 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are
21 later.

22 8.5 Requests for Exclusion (Opt-Outs).

23 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
24 Settlement must mail the Administrator a signed written Request for Exclusion not later than
25 the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is
26 re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative
27 that reasonably communicates the Class Member's election to be excluded from the Settlement
28 and includes the Class Member's name, address and email address or telephone number. To be

1 valid, a Request for Exclusion must be timely postmarked by the Response Deadline.

2 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
3 because it fails to contain all the information specified in the Class Notice. The Administrator
4 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain
5 the identity of the person as a Class Member and the Class Member's desire to be excluded.
6 The Administrator's determination shall be final and not appealable or otherwise susceptible to
7 challenge. If the Administrator has reason to question the authenticity of a Request for
8 Exclusion, the Administrator may demand additional proof of the Class Member's identity. The
9 Administrator's determination of authenticity shall be final and not appealable or otherwise
10 susceptible to challenge.

11 8.5.3 Every Class Member who does not submit a timely and valid Request for
12 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
13 benefits and bound by all terms and conditions of the Settlement, including the Participating
14 Class Members' Releases under Paragraph 6.2 of this Agreement, regardless of whether the
15 Participating Class Member actually receives the Class Notice or objects to the Settlement.

16 8.5.4 Every Class Member who submits a valid and timely Request for
17 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class
18 Payment or have the right to object to the class action components of the Settlement. Because
19 future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
20 Participating Class Members who are Aggrieved Employees are deemed to release the claims
21 identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

22 8.6 Challenges to Calculation of Weeks Worked. Each Class Member shall have
23 until the Response Deadline (plus an additional 14 days for Class Members whose Class
24 Notice is re-mailed) to challenge the number of Weeks Worked that were allocated to the
25 Class Member in the Class Notice. The Class Member may challenge the allocation by
26 communicating with the Administrator via mail. The Administrator must encourage the
27 challenging Class Member to submit supporting documentation. In the absence of any
28 contrary documentation, the Administrator is entitled to presume that the Weeks Worked

1 contained in the Class Notice are correct so long as they are consistent with the Class Data.
2 The Administrator's determination of each Class Member's allocation of Weeks Worked shall
3 be final and not appealable or otherwise susceptible to challenge. The Administrator shall
4 promptly provide copies of all challenges to calculation of Weeks Worked to Defense
5 Counsel and Class Counsel and the Administrator's determination of the challenges.

6 8.7 Objections to Settlement.

7 8.7.1 Only Participating Class Members may object to the class action
8 components of the Settlement and/or this Agreement, including contesting the fairness of the
9 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
10 Litigation Expenses Payment and/or Class Representative Service Payment.

11 8.7.2 Any Class Member, other than Plaintiff, who does not submit a valid and
12 timely Request for Exclusion may object to the terms of this Agreement. To object, a Class
13 Member shall inform the Administrator, in writing, of his or her objection which must be
14 postmarked by the Response Deadline at the address set forth in the Notice. Such objection shall
15 include the Objecting Class Member's full name, address, telephone number, last four digits of
16 the social security number or date of birth, signature, and dates of employment with Defendants,
17 in addition to the case name and number, the basis for the objection, including any legal support
18 and each specific reason in support of the objection, as well as any documentation or evidence in
19 support thereof, and, if the Objecting Class Member is represented by counsel, the name and
20 address of his or her counsel. The Administrator shall provide objections, if any, to Class
21 Counsel and Defense Counsel within three (3) calendar days of receipt, and the Administrator
22 shall attach the same to its declaration of due diligence and file with the Court prior to the Final
23 Approval Hearing. An Objecting Class Member remains eligible to receive monetary
24 compensation from the Settlement. Plaintiff and Defendants shall not be responsible for any
25 fees, costs, or expenses incurred by an Objecting Class Member and/or his or her counsel related
26 to any objections to the Settlement. Submitting an objection does not preserve the right to appeal
27 a final judgment. Rather, the right to appeal is preserved by becoming a party of record by
28 timely and properly intervening or filing a motion to vacate the judgment under Code of Civil

1 Procedure § 663.

2 8.7.3 Non-Participating Class Members have no right to object to any of
3 the class action components of the Settlement.

4 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
5 tasks to be performed or observed by the Administrator contained in this Agreement or
6 otherwise.

7 8.8.1 Website and Toll-Free Number. The Administrator will establish and
8 maintain and use an internet website to post information of interest to Class Members
9 including the date, time and location for the Final Approval Hearing and copies of the
10 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
11 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
12 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
13 Approval and the Judgment. The Administrator will also maintain and monitor a toll-free
14 telephone number to receive Class Member calls.

15 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The
16 Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their
17 validity. Not later than 5 days after the expiration of the deadline for submitting Requests for
18 Exclusion, the Administrator shall email the Exclusion List to Class Counsel and Defense
19 Counsel containing (a) the Exclusion List containing names and other identifying information
20 of Class Members who have timely submitted valid Requests for Exclusion; (b) the names and
21 other identifying information of Class Members who have submitted invalid Requests for
22 Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid
23 or invalid).

24 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
25 written reports to Class Counsel and Defense Counsel that, among other things, tally the
26 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests
27 for Exclusion (whether valid or invalid) received, objections received, challenges to Weeks
28 Worked received and/or resolved, and checks mailed for Individual Class Payments and

1 Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the
2 Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all
3 Requests for Exclusion and objections received.

4 8.8.4 Weeks Worked Challenges. The Administrator has the authority to
5 address and make final decisions consistent with the terms of this Agreement on all Class
6 Member challenges over the calculation of Weeks Worked. The Administrator’s decision shall
7 be final and not appealable or otherwise susceptible to challenge.

8 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
9 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
10 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration
11 suitable for filing in Court attesting to its due diligence and compliance with all of its
12 obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the
13 Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class
14 Members, the total number of Requests for Exclusion from Settlement it received (both valid
15 or invalid), the number of written objections and attach the Exclusion List. The Administrator
16 must also provide a breakdown of the Gross Settlement Amount, high/low/average payments
17 to Participating Class Members, the total Weeks Worked by Class Members and Aggrieved
18 Employees and the per Weeks Worked value of each. The Administrator will supplement its
19 declaration as needed or requested by the Parties and/or the Court. Class Counsel is
20 responsible for filing the Administrator’s declaration(s) in Court.

21 8.8.6 Final Report by Settlement Administrator. Within 10 days after the
22 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will
23 provide Class Counsel and Defense Counsel with a final report detailing its disbursements by
24 employee identification number only of all payments made under this Agreement. At least 15
25 days before any deadline set by the Court, the Administrator will prepare, and submit to Class
26 Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its
27 disbursement of all payments required under this Agreement. Class Counsel is responsible for
28 filing the Administrator's declaration in Court.

1 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE** Based on its records,
2 Defendants estimate that there are 90 Class Members who worked approximately 6,000 Work
3 Weeks during the Class Period. If the number of Work Weeks increases by more than 10% of the
4 number stated herein by the end of the Class Period, Defendants will increase the Gross
5 Settlement Amount proportionately for the percentage of Work Weeks worked in excess of the
6 10% threshold (i.e., an 11% increase in Work Weeks will result in a 1% increase of the Gross
7 Settlement Amount.) In the alternative, Defendants shall have the exclusive option to modify the
8 applicable Class Period to a date prior to December 31, 2023, to avoid the pro rata increase.

9 **10. MOTION FOR FINAL APPROVAL.** On a date to be set by the Court in the
10 Preliminary Approval Order, Plaintiff will file in Court, a motion for final approval of the
11 Settlement that includes a request for approval of the PAGA settlement under Labor Code
12 section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively
13 “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense
14 Counsel not later than 5 days prior to filing the Motion for Final Approval. Class Counsel and
15 Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith,
16 to resolve any disagreements concerning the Motion for Final Approval.

17 10.1 Response to Objections. Each Party retains the right to respond to any objection
18 raised by a Participating Class Member, including the right to file responsive documents in
19 Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or
20 accepted by the Court.

21 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions
22 Final Approval on any material change to the Settlement (including, but not limited to, the
23 scope of release to be granted by Class Members), the Parties will expeditiously work together
24 in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain
25 Final Approval. The Court’s decision to award less than the amounts requested for the Class
26 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
27 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
28 modification to the Agreement within the meaning of this paragraph.

1
2 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
3 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely
4 for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
5 administration matters, and (iii) addressing such post-Judgment matters as are permitted by
6 law.

7 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
8 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
9 Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their
10 respective counsel, and all Participating Class Members who did not object to the Settlement
11 as provided in this Agreement, waive all rights to appeal from the Judgment, including all
12 rights to post-judgment and appellate proceedings, the right to file motions to vacate
13 judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does
14 not include any waiver of the right to oppose such motions, writs or appeals. If an objector
15 appeals the Judgment, the Parties' obligations to perform under this Agreement will be
16 suspended until such time as the appeal is finally resolved and the Judgment becomes final,
17 except as to matters that do not affect the amount of the Net Settlement Amount.

18 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
19 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
20 material modification of this Agreement (including, but not limited to, the scope of release to
21 be granted by Class Members), this Agreement shall be null and void. The Parties shall
22 nevertheless expeditiously work together in good faith to address the appellate court's concerns
23 and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional
24 Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate,
25 reverse, or modify the Court's award of the Class Representative Service Payment or any
26 payments to Class Counsel shall not constitute a material modification of the Judgment within
27 the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

28 **11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil

1 Procedure section 384, the Parties will work together in good faith to jointly submit a proposed
2 amended judgment.

3 **12. ADDITIONAL PROVISIONS.**

4 12.1 No Admission of Liability, Class Certification or Representative Manageability
5 for Other Purposes. This Agreement represents a compromise and settlement of highly
6 disputed claims. Nothing in this Agreement is intended or should be construed as an admission
7 by Defendants that any of the allegations in the Complaint have merit or that Defendants have
8 any liability for any claims asserted; nor should it be intended or construed as an admission by
9 Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
10 certification and representative treatment is for purposes of this Settlement only. If, for any
11 reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment,
12 Defendants reserve the right to contest certification of any class for any reasons, and
13 Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the
14 right to move for class certification on any grounds available and to contest Defendants'
15 defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will
16 have no bearing on, and will not be admissible in connection with, any litigation (except for
17 proceedings to enforce or effectuate the Settlement and this Agreement).

18 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
19 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary
20 Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or
21 publicize, or cause or permit another person to disclose, disseminate or publicize, any of the
22 terms of the Agreement directly or indirectly, specifically or generally, to any person,
23 corporation, association, government agency, or other entity except: (1) to the Parties'
24 attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement
25 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to
26 appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to
27 an inquiry or subpoena issued by a state or federal government agency.

28 Each Party agrees to immediately notify each other Party of any judicial or agency

1 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and
2 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or
3 other communication, before the filing of the Motion for Preliminary Approval, with any third
4 party regarding this Agreement or the matters giving rise to this Agreement except to respond
5 only that “the matter was resolved,” or words to that effect. This paragraph does not restrict
6 Class Counsel’s communications with Class Members in accordance with Class Counsel’s
7 ethical obligations owed to Class Members.

8 12.3 No Solicitation. The Parties separately agree that they and their respective
9 counsel and employees will not solicit any Class Member to opt out of or object to the
10 Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to
11 restrict Class Counsel’s ability to communicate with Class Members in accordance with Class
12 Counsel’s ethical obligations owed to Class Members.

13 12.4 Integrated Agreement. Upon execution by all Parties and their counsel,
14 this Agreement together with its attached exhibits shall constitute the entire agreement
15 between the Parties relating to the Settlement, superseding any and all oral
16 representations, warranties, covenants, or inducements made to or by any Party.

17 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately
18 warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to
19 take all appropriate action required or permitted to be taken by such Parties pursuant to this
20 Agreement to effectuate its terms, and to execute any other documents reasonably required to
21 effectuate the terms of this Agreement including any amendments to this Agreement.

22 12.6 Cooperation. The Parties and their counsel will cooperate with each other and
23 use their best efforts, in good faith, to implement the Settlement by, among other things,
24 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
25 points and authorities as requested by the Court. In the event the Parties are unable to agree
26 upon the form or content of any document necessary to implement the Settlement, or on any
27 modification of the Agreement that may become necessary to implement the Settlement, the
28 Parties will seek the assistance of a mediator and/or the Court for resolution.

1
2 12.7 No Prior Assignments. The Parties separately represent and warrant that they
3 have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
4 transfer, or encumber to any person or entity any portion of any liability, claim, demand,
5 action, cause of action, or right released and discharged by the Party in this Settlement.

6 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense
7 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
8 Settlement be relied upon as such within the meaning of United States Treasury Department
9 Circular 230 (31 CFR Part 10, as amended) or otherwise.

10 12.9 Modification of Agreement. This Agreement, and all parts of it, may be
11 amended, modified, changed, or waived only by an express written instrument signed by all
12 Parties or their representatives, and approved by the Court.

13 12.10 Agreement Binding on Successors. This Agreement will be binding upon,
14 and inure to the benefit of, the successors of each of the Parties.

15 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits
16 will be governed by and interpreted according to the internal laws of the state of California,
17 without regard to conflict of law principles.

18 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
19 preparation of this Agreement. This Agreement will not be construed against any Party on the
20 basis that the Party was the drafter or participated in the drafting.

21 12.13 Confidentiality. To the extent permitted by law, all agreements made, and
22 orders entered during Action and in this Agreement relating to the confidentiality of
23 information shall survive the execution of this Agreement.

24 12.14 Headings. The descriptive heading of any section or paragraph of this
25 Agreement is inserted for convenience of reference only and does not constitute a part of this
26 Agreement.

27 12.15 Calendar Days. Unless otherwise noted, all reference to “days” in this
28 Agreement shall be to calendar days. In the event any date or deadline set forth in this

1 Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the
2 first business day thereafter.

3 12.16 Notice. All notices, demands or other communications between the Parties in
4 connection with this Agreement will be in writing and deemed to have been duly given as of
5 the third business day after mailing by United States mail, or the day sent by email or
6 messenger, addressed as follows:

7 To Plaintiff:

8 Brian J. Mankin, Esq.
9 *brian@LMLfirm.com*
10 Lauby Mankin Lauby LLP
11 5198 Arlington Ave, PMB 513
12 Riverside, CA 92504
13 Tel: (951) 320-1444 | Fax: (951) 320-1445

14 To Defendants:

15 Ahren A. Tiller, Esq.
16 *Ahren.tiller@blc-sd.com*
17 BLC Law Center, APC
18 1230 Columbia St.
19 San Diego, CA 92101
20 Tel: (619) 894-8831 | Fax: (866) 444-7026

21 12.17 Execution in Counterparts. This Agreement may be executed in one or more
22 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
23 Agreement shall be accepted as an original. All executed counterparts and each of them will be
24 deemed to be one and the same instrument if counsel for the Parties exchange between
25 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
26 prove the existence and contents of this Agreement.

27 12.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement
28 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties
further agree that upon the signing of this Agreement that pursuant to CCP section 583.330
they extend the date to bring a case to trial under CCP section 583.310 for the entire period of
this settlement process.

1
2 Dated: 08/12, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

3
4 
Luis Caballero (Aug 12, 2024 19:23 PDT)

5 Luis Caballero

6
7 Dated: , 2024

CLASS COUNSEL:

8 LAUBY MANKIN LAUBY LLP

9
10
11 Brian J. Mankin, Esq.
Attorneys for Plaintiff

12 Dated: , 2024

CLASS COUNSEL:

13 MALATESTA LAW

14
15
16 Andrew Malatesta, Esq.
Attorneys for Plaintiff

17
18 Dated: , 2024

DEFENDANT:

19 AMERICAN METAL FILTER COMPANY

20
21
22 By: _____

23 Title: _____

24
25 Dated: , 2024

DEFENDANT: VALENTINE DEILGAT

26
27
28 Valentine Deilgat

1 Dated: _____, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

2
3
4 _____
Luis Caballero

5
6 Dated: _____, 2024

CLASS COUNSEL:

7 LAUBY MANKIN LAUBY LLP

8
9 _____
Brian J. Mankin, Esq.
Attorneys for Plaintiff

10 August
11 Dated: 12 _____, 2024

CLASS COUNSEL:

12 MALATESTA LAW

13
14 *Andrew Malatesta*
15 _____
Andrew Malatesta, Esq.
Attorneys for Plaintiff

16
17 Dated: August 9, 2024

DEFENDANT:

18 AMERICAN METAL FILTER COMPANY

19
20 *Valentine Deilgat*
21 By: Valentine Deilgat
22 Title: President

23
24 Dated: August 9, 2024

DEFENDANT: VALENTINE DEILGAT

25 *Valentine Deilgat*
26 Valentine Deilgat
27
28

1 Dated: _____, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

2
3
4 _____
Luis Caballero

5 Dated: _____, 2024

CLASS COUNSEL:

6 LAUBY MANKIN LAUBY LLP

7
8
9 _____
Brian J. Mankin, Esq.
Attorneys for Plaintiff

10 Dated: _____, 2024

CLASS COUNSEL:

11 MALATESTA LAW

12
13
14 _____
Andrew Malatesta, Esq.
Attorneys for Plaintiff

15 Dated: August 9, 2024

DEFENDANT:

16 AMERICAN METAL FILTER COMPANY

17
18 _____
By: Valentine Deilgat
Title: President

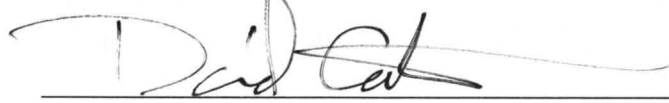
19 Dated: August 9, 2024

DEFENDANT: VALENTINE DEILGAT

20
21 _____
Valentine Deilgat

1 Dated: August 9, 2024

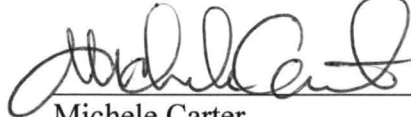
DEFENDANT: DAVID CARTER

2 

3 David Carter

4
5 Dated: August 9, 2024

DEFENDANT: MICHELE CARTER

6 

7 Michele Carter

8
9
10 Dated: August 9th, 2024

DEFENDANTS' COUNSEL:

BLC LAW CENTER, APC

11
12
13 

14 Ahren A. Tiller, Esq.
15 Attorneys for Defendants

16 **END OF DOCUMENT**

EXHIBIT “A”

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR FINAL COURT APPROVAL**

Luis Caballero v. American Metal Filter Company
(San Diego Superior Court, Case No. 37-2022-00050163-CU-OE-CTL)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

Attention: All current and former hourly, non-exempt employees who were employed by American Metal Filter Company (“AMF”) in California at any time from December 15, 2018, to June 26, 2024 (the “Class Period”). You are a “Class Member” in a class action settlement.

You may be eligible to receive money as a Class Member in a class action lawsuit (“Action”) against AMF and its owners/directors, Valentine Deilgat, David Carter, and Michele Carter (collectively, the “Defendants”) for alleged wage and hour violations. The Action was filed by Luis Caballero (“Plaintiff” and “Class Representative”) and seeks payment of unpaid wages, statutory damages, interest and attorneys’ fees on behalf of all Class Members (defined above). Additionally, the Action seeks civil penalties under the California Private Attorney General Act (“PAGA”) on behalf of the “Aggrieved Employees,” which includes all current and former hourly, non-exempt employees who were employed by American Metal Filter Company (“AMF”) in California at any time from December 15, 2021, through December 31, 2023, or an earlier period termination date if Defendants exercise their option to shorten the Class Period pursuant to the escalator clause (the “PAGA Period”).

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with and continue to comply with all applicable laws. Defendants are settling the Action in order to avoid the further burden and expense of litigation.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”). Your share in these two parts is shown below:

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Weeks Worked	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendants’ records, your Individual Class Payment (less withholding) and your Individual PAGA Payment (to the extent applicable) are shown in the chart above, along with the Weeks you are credited with working during the Class Period and during the PAGA

Period, according to Defendants’ records. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment because you did not work during the PAGA Period.)

If you believe that you worked more Work Weeks during either period versus what Defendants’ records show, you can submit a challenge by the **DATE**, 2024 (the “Response Deadline”). See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you were employed by AMF during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING & PARTICIPATE IN THE SETTLEMENT	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described below.
OPT-OUT (EXCLUDE YOURSELF) RESPONSE DEADLINE: DATE , 2024	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT RESPONSE DEADLINE: DATE , 2024	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not

	personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
DISPUTE YOUR PAY PERIODS WORKED RESPONSE DEADLINE: , 2024	If you believe that your number of Weeks Worked listed above is incorrect, you may challenge it. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Weeks you worked during the Class Period and how many Weeks you worked during the PAGA Period, respectively. The number you are credited are shown in the chart on the first page, and are based on Defendants' records. If you disagree with either of these numbers, you must submit a challenge by the deadline. See Section 4 of this Notice.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED	
DATE: , 2024 TIME: A.M. / P.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative is a former employee of AMF. The Action accuses Defendants of violating California labor laws by failing to pay overtime wages, minimum wages, meal and rest period premiums, and wages due upon termination, and failing to provide meal periods, rest breaks, reimbursement for expenses, and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA").

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with and continue to comply with all applicable laws. Defendants have agreed to settle the case in order to avoid the burden and expense of further litigation.

Plaintiff is represented by attorneys in the Action ("Class Counsel"). See Section 9 below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, the Parties resolved the Action by negotiating an end to the case by

settlement rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$400,000 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than 15 days after the Judgment is entered by the Court and the Settlement becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$133,333.33 (one-third of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000 to Plaintiff Luis Caballero as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. In addition to the Class Representative Service Payment, Plaintiff will receive from the Settlement Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$5,500 to Phoenix Settlement Administrators (the “Settlement Administrator” or “Administrator”) for services administering the

Settlement.

- D. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked.
 - E. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.
3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 15% of each Individual Class Payment to taxable wages (“Wage Portion”) and 85% to penalties and interest (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay, to the Administrator, employer payroll taxes it owes on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than the Response Deadline, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will

not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants subject to the applicable statute of limitations. Section 9 of this Notice has the Administrator's contact information.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the "Settlement Administrator" or "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Weeks Worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for claims based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

All Participating Class Members will be bound by a release of all claims alleged in the operative complaint ("Complaint"), as set forth below: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, regular wages and/or overtime pay; (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to provide complete and accurate wage statements; (e) failure to reimburse business expenses; (f) failure to pay wages upon termination; (g) violations of the California Business & Professions Code §§ 17200 *et seq.* These claims include, but are not limited to, California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1 and 1198, and all related provisions of the California Code of Regulations, the California Industrial Wage Orders, the California Business & Professions

Code sections 17200 *et seq.* (“Released Class Claims”). The Released Class Claims extend to all theories of relief regardless of whether the claim is, was or could have been alleged under federal law, state law or common law (including, without limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations, and California’s Business and Professions Code section 17200), and includes all types of relief available for the above-referenced claims, including, any claims for damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. The operative release period for the Released Class Claims is the Class Period.

As used herein, “Released Parties” means “Defendants and its former and present directors, officers, shareholders, owners, members, employees, agents, attorneys, insurers, predecessors, successors, assigns, parents, subsidiaries, and affiliates.”

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes to the Settlement Administrator), all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, that Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in the Complaint and in Plaintiff’s PAGA Notice to the LWDA (including any amendments thereto), or reasonably could have been alleged based on the allegations, the facts, and/or legal theories under the PAGA contained in the Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, regular wages and/or overtime pay (including any theory of failure to pay any and all wages for all time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to provide complete and accurate wage statements; (e) failure to reimburse business expenses; and (f) failure to pay wages upon termination (“Released PAGA Claims”). The Released PAGA Claims include, but are not limited to, California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1 and 1198, and all related provisions of the California Code of Regulations, and the California Industrial Wage Orders. The time period governing the Released PAGA Claims shall be the entire time during the PAGA Period. The Released PAGA Claims do not release any potential claims for wages or statutory penalties.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.
3. Weeks Worked Challenges. The number of weeks you worked during the Class Period as recorded in Defendants' records, are stated in the first page of this Notice. You have until the Response Deadline to challenge the number of Weeks Worked credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Weeks Worked based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Weeks Worked challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Caballero v. American Metal Filter*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by INSERT DATE (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 court days before the INSERT DATE Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys’ fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator’s Website INSERT URL or the Court’s website INSERT URL.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is INSERT DATE (the “Response Deadline”).** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Caballero v. American Metal Filter* and include your name, current address, telephone number, and approximate dates of employment for Defendant AMF and sign the objection. Section 9 of this Notice has the Administrator’s contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don’t have to, attend the Final Approval Hearing on INSERT DATE at INSERT TIME in Department C-66 of the San Diego Superior Court, located at 330 West Broadway, San Diego, CA 92101. At the Hearing, the judge will decide whether to grant Final

Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Microsoft Teams ([INSERT URL](#)). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [INSERT URL](#) beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

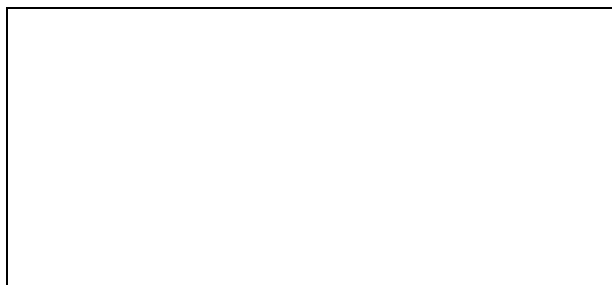
The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Administrator's website at [INSERT URL](#). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to ([INSERT URL](#)) and entering the Case Number for the Action, Case No. 37-2022-00050163-CU-OE-CTL. You can also make an appointment to personally review court documents in the Clerk's Office at the Central Civil Division of the Hall of Justice by calling (619) 844-2700.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

The contact information for Class Counsel and the Settlement Administrator are below:

<u>Class Counsel:</u>
Brian Mankin, Esq. <i>brian@lmlfirm.com</i> Kristina Bui Carlson, Esq. <i>kristina@lmlfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

<u>Settlement Administrator:</u>
Phoenix Settlement Administrators Email Address Mailing Address Telephone Number Fax Number Case URL



10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “B”

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR FINAL COURT APPROVAL**

Luis Caballero v. American Metal Filter Company
(San Diego Superior Court, Case No. 37-2022-00050163-CU-OE-CTL)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

Attention: All current and former hourly, non-exempt employees who were employed by American Metal Filter Company (“AMF”) in California at any time from December 15, 2018, to June 26, 2024 (the “Class Period”). You are a “Class Member” in a class action settlement.

You may be eligible to receive money as a Class Member in a class action lawsuit (“Action”) against AMF and its owners/directors, Valentine Deilgat, David Carter, and Michele Carter (collectively, the “Defendants”) for alleged wage and hour violations. The Action was filed by Luis Caballero (“Plaintiff” and “Class Representative”) and seeks payment of unpaid wages, statutory damages, interest and attorneys’ fees on behalf of all Class Members (defined above). Additionally, the Action seeks civil penalties under the California Private Attorney General Act (“PAGA”) on behalf of the “Aggrieved Employees,” which includes all current and former hourly, non-exempt employees who were employed by American Metal Filter Company (“AMF”) in California at any time from December 15, 2021, through December 31, 2023, or an earlier period termination date if Defendants exercise their option to shorten the Class Period pursuant to the escalator clause (the “PAGA Period”).

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with and continue to comply with all applicable laws. Defendants are settling the Action in order to avoid the further burden and expense of litigation.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”). Your share in these two parts is shown below:

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Weeks Worked	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendants’ records, your Individual Class Payment (less withholding) and your Individual PAGA Payment (to the extent applicable) are shown in the chart above, along with the Weeks you are credited with working during the Class Period and during the PAGA

Period, according to Defendants’ records. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment because you did not work during the PAGA Period.)

If you believe that you worked more Work Weeks during either period versus what Defendants’ records show, you can submit a challenge by the **DATE**, 2024 (the “Response Deadline”). See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you were employed by AMF during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING & PARTICIPATE IN THE SETTLEMENT	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described below.
OPT-OUT (EXCLUDE YOURSELF) RESPONSE DEADLINE: DATE , 2024	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT RESPONSE DEADLINE: DATE , 2024	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not

	personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
DISPUTE YOUR PAY PERIODS WORKED RESPONSE DEADLINE: , 2024	If you believe that your number of Weeks Worked listed above is incorrect, you may challenge it. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Weeks you worked during the Class Period and how many Weeks you worked during the PAGA Period, respectively. The number you are credited are shown in the chart on the first page, and are based on Defendants' records. If you disagree with either of these numbers, you must submit a challenge by the deadline. See Section 4 of this Notice.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED	
DATE: , 2024 TIME: A.M. / P.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative is a former employee of AMF. The Action accuses Defendants of violating California labor laws by failing to pay overtime wages, minimum wages, meal and rest period premiums, and wages due upon termination, and failing to provide meal periods, rest breaks, reimbursement for expenses, and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA").

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with and continue to comply with all applicable laws. Defendants have agreed to settle the case in order to avoid the burden and expense of further litigation.

Plaintiff is represented by attorneys in the Action ("Class Counsel"). See Section 9 below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, the Parties resolved the Action by negotiating an end to the case by

settlement rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$400,000 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than 15 days after the Judgment is entered by the Court and the Settlement becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$133,333.33 (one-third of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000 to Plaintiff Luis Caballero as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. In addition to the Class Representative Service Payment, Plaintiff will receive from the Settlement Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$5,500 to Phoenix Settlement Administrators (the “Settlement Administrator” or “Administrator”) for services administering the

Settlement.

- D. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked.
 - E. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.
3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 15% of each Individual Class Payment to taxable wages (“Wage Portion”) and 85% to penalties and interest (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay, to the Administrator, employer payroll taxes it owes on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than the Response Deadline, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will

not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants subject to the applicable statute of limitations. Section 9 of this Notice has the Administrator's contact information.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the "Settlement Administrator" or "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Weeks Worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for claims based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

All Participating Class Members will be bound by a release of all claims alleged in the operative complaint ("Complaint"), as set forth below: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, regular wages and/or overtime pay; (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to provide complete and accurate wage statements; (e) failure to reimburse business expenses; (f) failure to pay wages upon termination; (g) violations of the California Business & Professions Code §§ 17200 *et seq.* These claims include, but are not limited to, California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1 and 1198, and all related provisions of the California Code of Regulations, the California Industrial Wage Orders, the California Business & Professions

Code sections 17200 *et seq.* (“Released Class Claims”). The Released Class Claims extend to all theories of relief regardless of whether the claim is, was or could have been alleged under federal law, state law or common law (including, without limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations, and California’s Business and Professions Code section 17200), and includes all types of relief available for the above-referenced claims, including, any claims for damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. The operative release period for the Released Class Claims is the Class Period.

As used herein, “Released Parties” means “Defendants and its former and present directors, officers, shareholders, owners, members, employees, agents, attorneys, insurers, predecessors, successors, assigns, parents, subsidiaries, and affiliates.”

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes to the Settlement Administrator), all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, that Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in the Complaint and in Plaintiff’s PAGA Notice to the LWDA (including any amendments thereto), or reasonably could have been alleged based on the allegations, the facts, and/or legal theories under the PAGA contained in the Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, regular wages and/or overtime pay (including any theory of failure to pay any and all wages for all time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to provide complete and accurate wage statements; (e) failure to reimburse business expenses; and (f) failure to pay wages upon termination (“Released PAGA Claims”). The Released PAGA Claims include, but are not limited to, California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1 and 1198, and all related provisions of the California Code of Regulations, and the California Industrial Wage Orders. The time period governing the Released PAGA Claims shall be the entire time during the PAGA Period. The Released PAGA Claims do not release any potential claims for wages or statutory penalties.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.
3. Weeks Worked Challenges. The number of weeks you worked during the Class Period as recorded in Defendants' records, are stated in the first page of this Notice. You have until the Response Deadline to challenge the number of Weeks Worked credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Weeks Worked based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Weeks Worked challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Caballero v. American Metal Filter*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by INSERT DATE (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 court days before the INSERT DATE Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys’ fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator’s Website INSERT URL or the Court’s website INSERT URL.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is INSERT DATE (the “Response Deadline”).** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Caballero v. American Metal Filter* and include your name, current address, telephone number, and approximate dates of employment for Defendant AMF and sign the objection. Section 9 of this Notice has the Administrator’s contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don’t have to, attend the Final Approval Hearing on INSERT DATE at INSERT TIME in Department C-66 of the San Diego Superior Court, located at 330 West Broadway, San Diego, CA 92101. At the Hearing, the judge will decide whether to grant Final

Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Microsoft Teams ([INSERT URL](#)). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [INSERT URL](#) beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

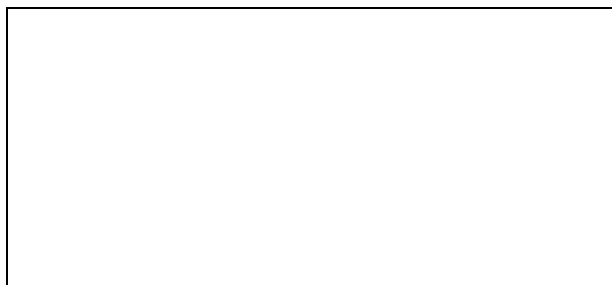
The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Administrator's website at [INSERT URL](#). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to ([INSERT URL](#)) and entering the Case Number for the Action, Case No. 37-2022-00050163-CU-OE-CTL. You can also make an appointment to personally review court documents in the Clerk's Office at the Central Civil Division of the Hall of Justice by calling (619) 844-2700.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

The contact information for Class Counsel and the Settlement Administrator are below:

<u>Class Counsel:</u>
Brian Mankin, Esq. <i>brian@lmlfirm.com</i> Kristina Bui Carlson, Esq. <i>kristina@lmlfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

<u>Settlement Administrator:</u>
Phoenix Settlement Administrators Email Address Mailing Address Telephone Number Fax Number Case URL



10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “C”



December 15, 2022

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

American Metal Filter Company
611 Marsat Court
Chula Vista, CA 91911

Valentice Deligat
611 Marsat Court
Chula Vista, CA 91911

David Carter
611 Marsat Court
Chula Vista, CA 91911

Re: PAGA Civil Penalty Claim
Luis Caballero v. American Metal Filter Company

To the Labor and Workforce Development Agency, American Metal Filter Company, Mr. Deligat, and Mr. Carter:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Luis Caballero (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), American Metal Filter Company and/or any affiliated or related entities, as well as its owners Valentice Deligat, David Carter, and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately August 2020 until November 2022. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided all minimum, regular, and overtime wages due to the Company’s failure to accurately record and compensate

for all hours worked. Additionally, Defendants required Claimant and the Aggrieved Employees to frequently work in excess of 8 and/or 12 hours per day, and/or 40 hours per week, without proper overtime compensation. For instance, Claimant and the Aggrieved Employees routinely work ten-hour shifts, four days per week, without receiving overtime compensation.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Claimant and the Aggrieved Employees were often not authorized and/or permitted to take rest breaks that were off-duty, that were within the requisite time period, and/or did not receive additional rest periods they were entitled to for additional time worked. Furthermore, on occasions when Claimant or the Aggrieved Employees worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and meal and rest break premiums. Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining the necessary tools and gear to perform their job duties such as welding and safety equipment.

Claimant alleges that he worked under the joint direction and control of the entities listed herein and their Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the entities listed herein and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the entities listed herein and their Owners are an integrated enterprise and should be treated as a single employer because the entities and their Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the entities listed herein and their Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of the entities listed herein and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of

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the entities listed herein to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that the entities listed herein and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, the entities listed herein and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges the entities listed herein and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, the entities listed herein have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of the entities listed herein would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to the entities listed herein should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all

wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must

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be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 210 and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked (the paystubs failed to accurately reflect total compensable hours); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to accurately state the name and address of the legal entity that is the employer, and; failure to accurately state the corresponding number of hours worked at each hourly rate.

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Additionally, the Company's wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal periods and rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

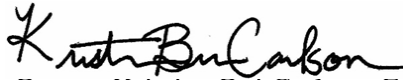
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimant's notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to her employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call.

Very Truly Yours,



By: Kristina Bui Carlson, Esq.

E-mail: kristina@lmfirm.com

Mailing Address

5198 Arlington Avenue, PMB 513, Riverside, CA 92504



Toll Free
888.959.8508

Physical Address

11801 Pierce Street, Suite 200, Riverside, CA 92505

EXHIBIT “D”



June 14, 2024

CASE ASSUMPTIONS

Class Members	100
Opt Out Rate	1%
Opt Outs Received	4
Total Class Claimants	96
Subtotal Admin Only	\$5,950.16

Flat Fee Total \$5,500.00
For 100 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Case: Caballero v. American Metal, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
 Contact Number: 949.331.0131
 Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
 Firm: Lauby, Mankin & Lauby,
 Contact Number: (951) 320-1444
 Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
 Estimate is based on **100** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	1		\$100.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	21		\$42.00
NCOA (USPS)	\$80.00	1		\$80.00
Total				\$522.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Language Translation	\$1,000.00	1		\$1,000.00
Data Merge & Duplication Scrub	\$0.10	100		\$10.00
Notice Packet & Opt-Out Form	\$1.30	100		\$130.00
Estimated Postage (up to 2 oz.)*	\$0.84	100		\$84.00
Static Website	\$200.00	1		\$200.00
Total				\$1,624.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	1		\$55.00
Skip Tracing Undeliverables	\$1.00	19		\$19.00
Remail Notice Packets	\$1.00	16		\$16.00
Estimated Postage	\$0.87	16		\$13.92
Programming Undeliverables	\$50.00	2		\$100.00
Total				\$203.92

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	3		\$165.00
Deficiency & Dispute Letters	\$10.00	4		\$40.00
Case Manager	\$85.00	1		\$85.00
Total				\$640.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	2		\$270.00
Mail Class Checks *	\$0.80	96		\$76.80
Estimated Postage	\$0.64	96		\$61.44
Total				\$908.24

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	1		\$115.00
Remail Checks (Postage Included)	\$2.00	21		\$42.00
Case Associate	\$55.00	2		\$110.00
Reconcile Uncashed Checks	\$85.00	2		\$170.00
Conclusion Reports	\$115.00	1		\$115.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	2		\$230.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,100.00	1		\$1,100.00
Total				\$2,052.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$5,950.16



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “E”