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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

SERGIO RODRIGUEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

SUPERIOR TANK CO., INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. BCV-23-100144 consolidated
with Case No. BCV-23-100926

*[Case Assigned to Hon T. Mark Smith
department T-2]*

**DECLARATION OF SCOTT M.
LIDMAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: July 15, 2024
Time: 8:30 a.m.
Dept.: T-2

1 I, SCOTT M. LIDMAN, declare as follows:

2 1. I am a shareholder and principal of the law firm Lidman Law, APC, and counsel
3 for the named Plaintiff Sergio Rodriguez (“Plaintiff”) and the proposed Settlement Class in the
4 above-captioned matter. I am a member in good standing of the bar of the State of California and
5 am admitted to practice in this Court. I have personal knowledge of the facts stated in this
6 declaration and could testify competently to them if called upon to do so.

7 2. I am a 1998 graduate of Santa Clara University School of Law, where I graduated
8 *summa cum laude*. During law school, I worked as a summer associate for the international
9 employment law firm of Littler Mendelson, P.C., located in Los Angeles, California.

10 3. Since graduating from law school, my practice has focused exclusively on
11 employment litigation. In September 1998, I began working as an associate attorney at the
12 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
13 website is the largest law firm in the world exclusively devoted to representing management in
14 employment, employee benefits and labor law matters.

15 4. In 2000, I left Littler Mendelson to work at the Los Angeles office of Jones Day,
16 which was at the time one of the largest international firms in the world. During my employment
17 at Jones Day, I worked exclusively in the labor and employment department. In or around 2003,
18 I went to work at the law firm of Loeb & Loeb, again working exclusively in the Labor &
19 Employment department. In 2008, I returned to Littler Mendelson, was promoted to Shareholder
20 in 2009, and from 2008 until the end of 2017, I practiced exclusively labor and employment law,
21 with a strong emphasis and most of my time working on wage and hour class actions venued in
22 both state and federal courts. During that time and my legal career in general, I also worked on a
23 number of single and multi-plaintiff wage and hour matters as well.

24 5. During my employment at Littler Mendelson, I played a significant role in the
25 class actions that I was staffed on, and ran many on my own both as an Of Counsel and as a
26 Shareholder. In particular, I received a wide-array of wage and hour class action experience
27 performing the following types of tasks: drafting demurrers, motions to strike and/or dismiss;
28 removing actions from state court to federal court; drafting and responding to written discovery;

1 drafting and opposing discovery related motions; arguing discovery related motions; drafting
2 motions to consolidate related matters; interviewing putative class members and obtaining
3 declarations in connection with class certification; drafting oppositions to motions for class
4 certification; drafting motions for decertification following class certification; conducting
5 exposure analyses to assess the strengths and weaknesses of asserted claims, the likelihood of
6 prevailing at class certification and potential damages resulting from such claims; drafting
7 mediation briefs; serving as the primary contact to in-house counsel; deposing named plaintiffs
8 and putative class members; deposing retained expert witnesses; and defending the depositions
9 of corporate witnesses. I also was involved in the negotiations and settlements of many large
10 wage and hour class actions. In short, I played an integral role in all aspects of litigation from the
11 inception of a matter through and beyond class certification. I also supervised the work of several
12 junior attorneys who were staffed on the same wage and hour class actions.

13 6. Although not exhaustive, below is a list of many of the wage and hour class and
14 PAGA actions that I performed substantial work on while I was a shareholder at Littler
15 Mendelson:

- 16 ► *Ortega v. J.B. Hunt Transport, Inc.*, Case No. 07-cv-8336-RGK-AFMx,
17 United States District Court, Central District of California, Honorable Gary
18 Klausner, presiding¹.
- 19 ► *Aceves v. J.B. Hunt Transport, Inc.*, Case No. CIVDS1306133, California
20 Superior Court, County of San Bernardino, Honorable Michael Sachs,
21 presiding.
- 22 ► *Moreno v. J.B. Hunt Transport, Inc.*, Case No. BC388612, California
23 Superior Court, County of Los Angeles, Honorable Mel Red Recana,
24 presiding.

25
26
27 ¹ My work on this matter including proceedings not only in District Court, but also work before the United States
28 Court of Appeals for the Ninth Circuit as well as the United States Supreme Court.

- 1 ▶ *Newcomb v. J.B. Hunt Transport, Inc.*, Case No. RG16815734, California
2 Superior Court, County of Alameda, Honorable Winifred Smith, presiding.
- 3 ▶ *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. 12-cv-08590-PA-
4 MAN, United States District Court, Central District of California,
5 Honorable Percy Anderson, presiding.
- 6 ▶ *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. BC388612,
7 California Superior Court, County of Los Angeles, Honorable Elihu Berle,
8 presiding.²
- 9 ▶ *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx,
10 United States District Court, Central District of California, Honorable Percy
11 Anderson, presiding.
- 12 ▶ *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx,
13 United States District Court, Central District of California, Honorable Percy
14 Anderson, presiding.
- 15 ▶ *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932,
16 California Superior Court, County of Los Angeles, Honorable Jane
17 Johnson, presiding.³
- 18 ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346,
19 California Superior Court, County of Orange, Honorable Thierry Patrick
20 Colaw, presiding.
- 21 ▶ *Sakkab v. Luxottica Retail North America, Inc.*, Case No. 12-cv-00436-
22 GPC-KSC, United States District Court, Southern District of California.⁴
- 23
24

25
26 ² My work on this matter included proceedings not only in the trial court, but also before the California Courts of
27 Appeal and the California Supreme Court.

28 ³ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

⁴ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ▶ *Page v. Oakley, Inc.*, Case No. FCS041512, California Superior Court,
2 County of Solano, Honorable Paul Berman, presiding.
- 3 ▶ *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00731617-CU-OE-CJC
4 California Superior Court, County of Orange, Honorable William Claster,
5 presiding.
- 6 ▶ *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00723846-CU-DE-CXC,
7 California Superior Court, County of Orange, Honorable William Claster,
8 presiding.
- 9 ▶ *Sierra v. Oakley, Inc.*, Case No. 13-cv-00319-AG-JPR, United States
10 District Court, Central District of California, Honorable Andrew Guilford,
11 presiding.⁵
- 12 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx,
13 United States District Court, Central District of California, Honorable
14 Margaret Morrow, presiding.
- 15 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx,
16 United States District Court, Central District of California, Honorable
17 Margaret Morrow, presiding.
- 18 ▶ *Khelghatian v. Comerica Bank, et al.*, Case No. 11-cv-7689-DSF-FFMx,
19 United States District Court, Southern District of California, Honorable
20 John A. Houston, presiding.
- 21 ▶ *Babasa v. Comerica Bank, et al.*, Case No. 11-cv-0595-JAH-BGS, United
22 States District Court, Central District of California, Honorable Margaret
23 Morrow, presiding.
- 24 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United
25 States District Court, Central District of California, Honorable Margaret
26 Morrow, presiding.

⁵ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ▶ *Khalili v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx,
2 United States District Court, Northern District of California.
- 3 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-
4 CTL, California Superior Court, County of San Diego, Honorable Jeffrey
5 B. Barton, presiding.
- 6 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California
7 Superior Court, County of Santa Clara.
- 8 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California
9 Superior Court, County of Los Angeles, Honorable Terry Green, presiding.
- 10 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California
11 Superior Court, County of San Francisco.
- 12 ▶ *Smith v. Werner Enterprises*, Case No. 15-cv-02978-RS, United States
13 District Court, Northern District of California, Honorable Richard
14 Seeborg, presiding.

15 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to open
16 my own law firm, Lidman Law, APC, to represent employees with work-related claims, including
17 primarily wage and hour claims and almost exclusively on a class-action basis. I am the President
18 and Shareholder of Lidman Law. Currently, over ninety percent (90%) of my practice is
19 dedicated exclusively to the prosecution of wage and hour class actions, and I am currently
20 responsible for prosecuting over sixty-five (65) wage and hour class actions filed in State courts
21 throughout California, with several of them having been removed to Federal courts. I believe that
22 my professional experience renders me more than qualified to serve as class counsel in this
23 lawsuit involving claims of underpaid overtime and minimum wages, meal and rest period
24 violations, and derivative penalty claims. Not only have I litigated dozens of wage and hour cases
25 throughout my career involving similar claims, including the wage and hour class actions
26 identified above, I have litigated similar claims from both plaintiff and defense perspectives. As
27 a result, I am able to realistically assess and evaluate the facts and legal arguments that can be
28 made in pursuit and defense of similar wage and hour claims, as well as those facts and arguments

1 in support and in opposition to class certification. Consequently, I am able to appreciate the
2 significant risks, uncertainties, and delay involved in wage and hour class action litigation.

3 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case
4 No. BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B.
5 Kuhl presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court,
6 County of Los Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances,*
7 *Inc.*, Case No. 30-2017-00964213-CU-OE-CXC, California Superior Court, County of Orange,
8 Honorable Judge William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No.
9 CIVDS1814412, California Superior Court, County of San Bernardino, Honorable Judge David
10 Cohn presiding; *Molina v. Mader News, Inc.*, Case No. BC685960, California Superior Court,
11 County of Los Angeles, Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v.*
12 *Salamander Fire Protection, Inc.*, Case No. BC688326, California Superior Court, County of
13 Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*,
14 Case No. BC653164, California Superior Court, County of Los Angeles, Honorable Judge
15 Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California
16 Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran*
17 *v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside,
18 Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*,
19 Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge
20 Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872,
21 California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko
22 presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County
23 of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing,*
24 Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable
25 Judge David S. Cohn presiding; *Coffee, et al. v. Flyers Transportation Energy, LLC*, Case No.
26 34-2017-00222084, California Superior Court, County of Sacramento, Honorable Judge Alan G.
27 Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case No. BC705667, California
28 Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson presiding;

1 *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California
2 Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding;
3 *Contreras, et al. v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California
4 Superior Court, County of San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v.*
5 *WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara,
6 Honorable Judge Brian C. Walsh presiding; *Acuna v. Canton Food Co., Inc.*, Case No.
7 BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S.
8 Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-
9 06036-PSG-SS, United States District Court for the Central District of California, the Honorable
10 Judge Philip S. Gutierrez presiding.

11 9. As co-lead counsel for Plaintiff and the proposed Settlement Class, I have been
12 intimately involved in every aspect of this case from its inception through the present, and I
13 believe that the proposed Settlement is a favorable result for the Settlement Class Members under
14 the circumstances presented.

15 10. Superior Tank does business by manufacturing and installing a complete line of
16 bolted and welded steel storage tanks for potable water, wastewater, fire protection, rain
17 harvesting, and crude oil industries since 1984.

18 11. On January 17, 2023, Plaintiff filed the instant putative class action complaint
19 against Defendant in Kern County Superior Court alleging the following class action claims against
20 Defendant: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages
21 owed; (c) failure to provide all meal periods; (d) failure to authorize and permit all rest periods;
22 (e) failure to provide accurate, itemized wage statements; (f) failure to reimburse all business
23 expenses; (g) failure to pay all wages upon termination of employment; and (h) unfair business
24 practices.

25 12. On March 20, 2023, the Court in the Class Action, pursuant to a stipulation
26 between the Parties, ordered the Class Action to binding arbitration and otherwise stayed the Class
27 Action. On March 30, 2023, Plaintiff submitted the Class Action to arbitration before the
28 American Arbitration Association, AAA Case No. 012300013261.

1 13. After having exhausted his administrative remedies with the California Labor &
2 Workforce Development Agency (“LWDA”) by way of a letter submitted to the LWDA on
3 January 17, 2023, on September 5, 2023, Plaintiff filed a representative action Complaint against
4 Defendant in Kern County Superior Court, in the matter entitled *Sergio Rodriguez, as an*
5 *individual and on behalf of all others similarly situated v. Superior Tank Co., Inc., a California*
6 *corporation; and Does 1 through 100, inclusive*, Case No. BCV-23-100926 (the “PAGA Action”)
7 asserting a single claim for violations of the California Labor Code Private Attorney General Act
8 (“PAGA) premised on the alleged Labor Code violations set forth in the January 17, 2023 letter
9 to the LWDA.

10 14. On July 28, 2023, pursuant to a stipulation between the Parties, the Court in the
11 PAGA Action ordered Plaintiff’s individually based PAGA claims to binding arbitration and
12 otherwise stayed the representative claims under the PAGA. On September 8, 2023, Plaintiff
13 filed in the Class Action in arbitration a First Amended Demand against Defendant which added
14 Plaintiff’s individually-based claims under the PAGA to the pending arbitration

15 15. On April 30, 2024, the arbitrator dismissed the arbitration without prejudice so
16 that the Class Action could return to this Court, and the Parties could appropriately seek approval
17 of this Settlement. On May 24, 2024, this Court lifted the stay in this action to allow Plaintiff to
18 file a Motion for Preliminary Approval of the class-wide settlement. Further, on May 24, 2024,
19 this Court, pursuant to a stipulation between the Parties, consolidated for all purposes the instant
20 action and the PAGA Action.

21 16. After agreeing to participate in early mediation, Defendant informally produced
22 documents and information relevant to the claims alleged in advance of mediation, including
23 without limitation timekeeping and payroll data for an approximate 15 % sampling of the putative
24 class. Additionally, Defendant produced information and data points needed for a fruitful
25 mediation, including without limitation, the number of employees, workweeks at issue, pay
26 periods at issue, meal and rest period policies and procedures, and payroll policies. After a review
27 and analysis of the documents and information produced by Defendant, Class Counsel drew on
28 their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s

case. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached.

17. On January 8, 2024, after extensive research and analysis, including a detailed analysis of Defendants' potential exposure by Plaintiff, a full-day mediation was held with Michael Ludwig, a well-respected wage and hour class action mediator. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses, as well as the legal basis for the claims and defenses. Ultimately, the Parties agreed in principle on a class-wide resolution. Thereafter, in the weeks that followed, the Parties signed the Stipulation of Class Action and PAGA Settlement ("Settlement"). A true and correct copy of the Settlement is attached hereto as **Exhibit 1**. The proposed Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award is attached as Exhibit B to the Settlement.

18. If the Court approves this Settlement, Defendants will pay a Gross Settlement Amount ("GSA") of \$550,000.00⁶ (Settlement, ¶ 4). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* (Settlement, ¶ 5). Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$550,000.00
Minus Court-approved attorneys' fees (1/3 of GSA):	\$183,333.33
Minus Court-approved, verified costs (up to):	\$30,000.00
Minus Court-approved Class Representative Service Award (up to):	\$7,500.00
Minus Settlement Administration Costs:	\$8,250.00
Minus PAGA civil penalties:	\$20,000.00
Net Settlement Amount ("NSA"):	\$300,916.67

⁶ Defendant represents that there are an estimated 26,262 workweeks worked by settlement class members from January 17, 2019 through April 10, 2024 (date of mediation). If the number of workweeks during the Class Period is more than 10% greater than this figure (i.e., if there are 28,889 or more workweeks worked by the settlement Class Members during the Class Period), Defendant agrees to increase the Gross Settlement Amount on a proportional basis (i.e., if there was an 11% increase in the number of workweeks worked during the Class Period by Class Members, Defendant will increase the Gross Settlement Amount by 11%). See Settlement ¶ 4.E.

1 19. The Gross Settlement Amount shall be deposited by Defendant into a qualified
2 settlement fund set up by the Settlement Administrator for the benefit of participating Settlement
3 Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount
4 and the required employer-side taxes with the Settlement Administrator within sixty (60) calendar
5 days after the “Effective Date” which is defined as the latter of: (a) the Court's final approval of
6 the settlement if no objections by or on behalf of Settlement Class members have been filed; (b)
7 the time for appeal has expired if an objection has been filed and no appeal has been filed or
8 withdrawn; or (c) the final resolution of any appeal that has been filed. Settlement ¶ 4.B.

9 20. After deducting amounts for the Court-approved attorneys’ fees and verified costs,
10 Service Award to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties, the
11 Settlement requires Defendants to pay a Net Settlement Amount (“NSA”) of at least **\$300,916.67**
12 to all Settlement Class Members who do not timely opt out. This amount does not include the
13 \$5,000.00 PAGA Amount to be paid to the PAGA Employees.

14 21. According to Defendant, there are approximately 215 total Settlement Class
15 members defined as:

16 All current and former non-exempt employees of Defendant Superior Tank, Inc.
17 who worked at any time in California during the Class Period.

18 For purposes of the Settlement, the “Class Period” shall mean the time period
19 between January 17, 2019 and the date the Court preliminarily approves the
20 Settlement.

21 Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is
22 projected to be approximately **\$1,399.61 exclusive of any PAGA civil penalties.** Based on
23 these formulas, with approximately 26,262 workweeks during the Class Period, the Settlement
24 equates to about \$20.94 per workweek (\$550,000/26,262).

25 In addition, PAGA Employees is defined as: “All current and former non-exempt
26 employees of Defendant Superior Tank, Inc. who worked at any time in California during the
27 PAGA Period.” For purposes of this Settlement Agreement, the “PAGA Period” shall mean the
28 time period between January 17, 2022 and the date the Court preliminarily approves the

1 Settlement. There are about 10,654 pay periods during the PAGA Period, which equates to about
2 \$0.47 per pay period (\$5000/10,654).

3 22. Settlement Class members' claims arise from Defendants' common, uniform
4 policies and practices that applied to Settlement Class members during the class period.
5 Specifically, Plaintiff alleged that Defendants' common and uniform policies and practices
6 resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to
7 pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4) failure
8 to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized
9 wage statements; (6) failure to timely pay all wages upon separation; (7) failure to reimburse
10 business expenses; and (7) unlawful business practices; and (8) liability for civil penalties under
11 the PAGA.

12 23. As described in the accompanying Motion for Preliminary Approval, Plaintiff
13 alleges that Defendant failed to compensate its non-exempt employees for all time worked.
14 Specifically, Plaintiff alleges that Defendant failed to account for time spent at the yard before
15 and after a shift, and also unlawfully rounded time. This time-shaving and/or rounding practice
16 utilized by Defendant was not even-handed over time and would almost exclusively round and
17 shave in Defendant's favor such that Plaintiff was routinely underpaid for all his time worked.
18 As a result, Defendant failed to pay Plaintiff and other non-exempt employees for all minimum
19 and overtime wages owed. Accordingly, based on 1 hour of unpaid overtime time each week for
20 the 26,262 workweeks at issue, Plaintiff estimates Defendant's exposure at a total of
21 \$1,112,458.32 (26,262 workweeks x 1 hour x \$42.36 (average overtime rate) = \$1,112,458.32).
22 *Id.*

23 24. Defendant contends that it compensated Settlement Class members for all of their
24 time worked, that its rounding practices were lawful, and any unpaid time was *de minimis* and
25 therefore non-compensable. Defendant further asserts that Plaintiff would be unable to certify
26 an unpaid wages class given the individualized inquiries that would be required, and also that
27 Defendant rounding mechanism was, according to it, allegedly facially neutral. Further,
28 Defendant contends that Plaintiff's assessment of the claim at the overtime rate is inflated and

incorrect. In light of these defenses, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately \$333,737.50.

25. Plaintiff alleges that he and Settlement Class Members were not provided with all legally-required meal periods in compliance with California law due to Defendant's unlawful meal period policies/practices. Due to work demands and the manner in which Defendant tracked the time of its employees, Plaintiff was often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30 minutes in length. Therefore, based on a review of the sampling of the time punch data and payroll records, Plaintiff calculated a 21.6% violation rate. Thus, Plaintiff calculated Defendant's maximum exposure for the alleged meal period violations for (1) late first meal breaks; (2) missed first meal breaks; (3) short first meal breaks; and (4) missed second meal break on shifts over 10 hours to be \$800,696.99 (26,262 weeks x 5 shifts per week x 21.6% violation rate x \$28.24 average hourly rate).

26. Defendant counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Defendant. Defendant also points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Defendant further contends there are no second meal period violations because the employee signed valid second meal period waivers. Finally, Defendant contends Plaintiff's meal period claim is not suited for class certification and individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an additional 55% to account for Defendant's defenses on the merits to arrive at

1 an estimated exposure of \$180,218.25.

2 27. Plaintiff alleges that he and other Settlement Class Members were not authorized
3 and permitted to take all required rest periods due to Defendant' rest period policies/practices
4 which fail to authorize and permit all rest periods for every four hours worked, *or major fraction*
5 *thereof*. Based on 26,262 workweeks, there were approximately 131,310 shifts worked during
6 the relevant time period. Thus, Plaintiff calculated Defendant' exposure on unique rest period
7 violations at \$3,708,194.40 (22,262 x 5 x \$28.24). *Id.*

8 28. Defendant contends it has always maintained and enforced lawful rest period
9 policies and practices, and that Settlement Class Members were authorized and permitted to take
10 all off-duty rest periods in compliance with California law. Defendant argues that Plaintiff's rest
11 period claim is inherently unsuited for class treatment as it requires an individualized inquiry
12 into whether each Settlement Class member was in fact authorized and permitted to take a
13 compliant rest period, which would devolve into an unmanageable series of mini-trials.
14 Accordingly, Plaintiff discounted the maximum exposure by 75% for the risk of non-
15 certification, and an additional 50% to account for Defendant's defenses on the merits to arrive
16 at an estimated exposure of \$463,524.30.

17 29. Plaintiff further alleges that Defendant issued inaccurate wage statements in
18 violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period
19 premium wages described above. Specifically, Plaintiff contends that this conduct violated
20 Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not
21 include all hours worked and the rate at which they were being paid. Therefore, Plaintiff
22 calculated Defendant' maximum exposure for wage statement violations based on the 10,654
23 wage statements issued during the relevant time period and applying the maximum \$4000
24 recovery per employee at \$860,000.

25 30. Defendant argues that its alleged wage statement violations could not be shown
26 to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee
27 "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code
28 § 226(e) for imposition of penalties. *Id.* As such, Plaintiff discounted the calculated exposure

1 by 35% for a risk of non-certification and an additional 60% for a risk of being unsuccessful on
2 the merits to arrive at an estimated total of \$223,600.

3 31. Plaintiff alleges that Defendant is also liable for waiting time penalties under
4 Labor Code section 203 as a result of its failure to pay all wages upon separation of employment.
5 Based on the data provided by Defendant, there were approximately 95 Settlement Class
6 Members who have separated their employment with Defendant during the relevant time period
7 who could be entitled to waiting time penalties. Therefore, Plaintiff calculated Defendant'
8 maximum exposure for waiting time penalties at approximately \$643,872.00 (95 separated
9 employees x \$28.24 x 8 x 30).

10 32. Defendant asserts it has strong defenses to the waiting time claim because there
11 exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties.
12 *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude
13 imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017)
14 (holding that "good faith dispute" over whether employee was exempt precluded imposition of
15 waiting time penalties over contested wages owed). Accordingly, Plaintiff discounted the
16 maximum exposure by 45% for the risk of non-certification, and an additional 45% to account for
17 Defendant' defenses on the merits to arrive at an estimated exposure of approximately
18 \$194,771.28.

19 33. Plaintiff further alleges that Defendants required its employees to use their personal
20 cellular phones and tools to discharge their duties but did not reimburse them for the cell phones
21 and/or the data usage. Plaintiff alleges that Defendants knew or should have known that Plaintiff
22 and the other employees were necessarily incurring expenses due to the use of their personal
23 cellular phone and/or tools in the direct discharge of their duties. Yet, despite the necessity of
24 Plaintiff and the other drivers using their cellular phone for work activities and Defendants
25 knowing or should have knowing about same, Plaintiff and the other drivers never reimbursed for
26 a reasonable portion of their cellular phone expenses by Defendants, as mandated by *Cochran v.*
27 *Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137. Plaintiff estimated employees should
28 have been reimbursed approximately \$50.00 per month for cellular related expenses and tools and

1 calculated Defendants' exposure at \$328,275. (26,262/4 workweeks x \$50/month = \$328,275).
2 *Id.*

3 34. Defendant contends that it never required its employees to purchase or use their
4 own tools and provided everything the employees needed. It further contends it did not require
5 the employees to use their cell phones for any business reasons. Defendants further contend that
6 any purportedly necessary expenses incurred by drivers were minimal. Accordingly, Plaintiff
7 discounted the maximum exposure by 50% for the risk of non-certification, and an additional 45%
8 to account for Defendant's defenses on the merits and financial condition, to arrive at an estimated
9 exposure of \$90,275.63.

10 35. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing
11 alleged Labor Code violations. Plaintiff calculated Defendant's exposure at the initial rate of \$100
12 for a total of \$1,065,400.00. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
13 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor
14 Code provision).

15 36. Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that
16 his underlying claims will fail. *See Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
17 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").
18 Defendant also maintains that, given its good faith defenses, this Court would exercise its
19 discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any
20 of Plaintiff's claims. *See Lab. Code § 2699(e)(2); Thurman v. Bayshore Transit Mgmt., Inc.*
21 (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v.*
22 *Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at
23 *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted
24 the maximum exposure figure by 45% for a risk of being unsuccessful on the merits, and an
25 additional 40% to account for the possibility of this Court reducing penalties, to arrive at an
26 estimated exposure of approximately \$351,582.00.

27 37. Using these estimated figures for each of the claims described above, Plaintiff
28 predicted the realistic total recovery for the Settlement Class would be approximately

1 \$1,837,708.96. The proposed settlement of \$550,000.00 therefore represents approximately
2 29.9% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval
3 is appropriate as the settlement will provide tangible monetary relief to Settlement Class
4 Members.

5 38. Here, Class Counsel will also apply for an attorneys' fees award of one-third of
6 the GSA, which is currently estimated to be \$183,333.33, and up to \$30,000 in verified costs
7 reimbursement. *See* Settlement, ¶ 4.C.(4). Plaintiff submits the requested fee is fair
8 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
9 purely contingent fee basis. *Id.* Further, Plaintiff has provided written approval of the split of
10 attorneys' fees in this action. Class Counsel has incurred substantial attorney fees conducting
11 pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
12 Defendant's documents and policies, analyzing Settlement Class Members' timekeeping data
13 and payroll records, preparing for and attending mediation, negotiating and revising the long-
14 form Settlement, preparing this Motion, and otherwise litigating the case. Class Counsel expect
15 to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice
16 process and fielding questions from Settlement Class Members, preparing the final approval
17 papers and attending the Final Approval hearing.

18 39. Plaintiff has provided written approval of the split of attorneys' fees in this action.

19 40. Plaintiff will seek a service award of \$7,500.00 at the time of seeking final
20 approval, and I believe this is reasonable given Plaintiff's efforts in this case and the risks she
21 undertook on behalf of the Settlement Class members, including the risk that she could be liable
22 for Defendant's costs if this case was unsuccessful. Plaintiff was integral in the prosecution of
23 this action, by, among other things, providing substantial factual information and documents to
24 Class Counsel, attending multiple meetings and conferences with Class Counsel to discuss the
25 claims and theories at issue in the litigation, and otherwise actively participating in the
26 prosecution of their claims.

27 41. Although the parties engaged in informal discovery throughout this action, the
28 parties still had significant discovery to complete in formal litigation had the matter not settled.

1 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the
2 wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment
3 ruling. Even if the classes sought to be certified by Plaintiff were in fact certified, the parties
4 would incur considerably more attorneys' fees and costs through a possible decertification
5 motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying
6 expense.

7 42. I have directed my office to submit a copy of the instant Motion for Preliminary
8 Approval and all supporting documents via the LWDA's website on the same date concurrently
9 herewith and will have a supplemental proof of service filed after the Motion for Preliminary
10 Approval and all supporting documents are submitted to the LWDA.

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

13 Executed on June 14, 2024 at El Segundo, California.

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Scott M. Lidman

EXHIBIT 1

EXHIBIT 1

STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Sergio Rodriguez (“Plaintiff”), individually and on behalf of all members of the Settlement Class and PAGA Employees (both terms defined below), on one hand, and Defendant Superior Tank Co., Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff, the Settlement Class and the PAGA Employees are represented by Paul K. Haines of Haines Law Group, APC and Scott M. Lidman and Milan Moore of Lidman Law, APC (collectively, “Class Counsel”). Defendant is represented by Jason Yu and Patricia Brum of Snell & Wilmer L.L.P.

On January 17, 2023, Plaintiff filed a class action Complaint against Defendant in Kern County Superior Court, in the matter entitled *Sergio Rodriguez, as an individual and on behalf of all others similarly situated v. Superior Tank Co., Inc., a California corporation; and Does 1 through 100, inclusive*, Case No. BCV-23-100144 (the “Class Action”) alleging the following class action claims against Defendant: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to provide all meal periods; (d) failure to authorize and permit all rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to reimburse all business expenses; and (g) failure to pay all wages upon termination of employment. As a result of the foregoing alleged violations, Plaintiff contends in the Class Action that Defendant is further liable to Plaintiff and the Settlement Class and PAGA Employees (both terms defined below) because it engaged in unlawful business practices pursuant to Business and Professions Code section 17200 that could have been premised on the facts, claims, causes of action or legal theories described above. Defendant denies the allegations.

On March 20, 2023, the Court in the Class Action, pursuant to a stipulation between the Parties, ordered the Class Action to binding arbitration and otherwise stayed the Class Action.

On March 30, 2023, Plaintiff submitted the Class Action to arbitration before the American Arbitration Association, AAA Case No. 012300013261, where the Class Action was pending.

After having exhausted his administrative remedies with the California Labor & Workforce Development Agency (“LWDA”) by way of a letter submitted to the LWDA on January 17, 2023 (a true and correct copy of which is attached hereto as **Exhibit A**), on September 5, 2023, Plaintiff filed a representative action Complaint against Defendant in Kern County Superior Court, in the matter entitled *Sergio Rodriguez, as an individual and on behalf of all others similarly situated v. Superior Tank Co., Inc., a California corporation; and Does 1 through 100, inclusive*, Case No. BCV-23-100926 (the “PAGA Action”) asserting a single claim for violations of the California Labor Code Private Attorney General Act (“PAGA”) premised on the alleged Labor Code violations set forth in the January 17, 2023 letter to the LWDA.

On July 28, 2023, pursuant to a stipulation between the Parties, the Court in the PAGA Action ordered Plaintiff’s individually based PAGA claims to binding arbitration and otherwise stayed the representative claims under the PAGA.

On September 8, 2023 Plaintiff filed in the Class Action in arbitration a First Amended Demand against Defendant which added Plaintiff's individually-based claims under the PAGA to the pending action.

On April 30, 2024, the arbitrator dismissed the arbitration without prejudice so that the Class Action could return to Kern County Superior Court, Case No. BCV-23-100144, and the Parties could appropriately seek approval of this Settlement.

Given the uncertainty of litigation and Defendant's denial of Plaintiff's claims, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class, PAGA Employees and the State of California. Accordingly, Plaintiff and Defendant agree as follows:

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

All current and former non-exempt employees of Defendant Superior Tank Co., Inc. who worked for Defendant in California during the Class Period.

For purposes of this Settlement Agreement, the "Class Period" shall mean the time period of January 17, 2019 through the date the Court issues an order preliminarily approving this Settlement Agreement.

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **PAGA Employees.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the following definition of PAGA Employees:

All current and former non-exempt employees of Defendant Superior Tank Co., Inc. who worked for Defendant in California during the PAGA Period

For purposes of this Settlement Agreement, the "PAGA Period" and release under the PAGA shall mean the time period between January 17, 2022 through the date the Court issues an order preliminarily approving this Settlement Agreement.

3. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion as set forth below) will fully and forever completely release and discharge Defendant, and all of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the "Released Parties"), as follows:

- A. Settlement Class Members' Release: All Participating Class Members shall release and discharge Released Parties from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses based on or arising from factual predicates alleged, or reasonably could have been alleged, in the operative complaint in the consolidated Class Action and PAGA Action (which is the operative Consolidated Complaint), or which could have been pled in the operative Consolidated Complaint consolidated Class Action and PAGA Action, including, but not limited to: (a) any alleged failure to pay all wages due including minimum wages or overtime wages; (b) any alleged failure to timely pay wages at termination or during employment; (c) any alleged failure to provide meal or rest periods or to pay meal or rest period premiums; (d) any alleged failure to maintain and preserve, in a centralized location in California, any required payroll or employee records; (e) any alleged failure to provide compliant and accurate wage statements; (f) any alleged failure to reimburse business expenses; (g) any alleged failure to pay sick wage; (h) any right or claim for civil penalties pursuant to the California Labor Code, the California Industrial Welfare Commission Wage Orders, the California Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*) based on the foregoing alleged claims; (i) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 *et seq.* based on the foregoing alleged claims; and (j) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged, in the operative Consolidated Complaint consolidated Class Action and PAGA Action, including without limitation, any violation or breach of California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 233, 246, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, or any other similar state or local statute, wage order, rule, regulation, ordinance, or authority, during the Class Period (collectively, "Released Class Claims").
- B. The time period for the release of the Released Claims shall be the same time period as the Class Period.
- C. PAGA Release: All PAGA Employees shall release and discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all individual and representative claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, in the operative Consolidated Complaint in the consolidated Class Action and PAGA Action including, but not limited to, any right or claim for PAGA penalties predicated on alleged nonpayment or under-payment of minimum and overtime wages, failure to pay or under-payment of wages, overtime, meal and rest period premiums, failure to provide meal and rest periods, nonpayment or under-payment of premiums for meal or rest period violations, failure to timely pay wages, failure to pay all wages due at termination, failure to maintain accurate records, failure to provide and/or maintain accurate and itemized wage statements, failure to reimburse business expenses,

failure to pay sick wages, and any claims for PAGA civil penalties based on the foregoing alleged claims under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, including any alleged violations of the California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 233, 246, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, during the PAGA Period (“Released PAGA Claims”).

- D. The time period for the release of the PAGA Released Claims shall be the same time period as the PAGA Period.
- E. Plaintiff’s Release. Plaintiff and his spouse, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties, in exchange for consideration provided in this Agreement, from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys’ fees, costs, liabilities, expenses, and losses arising from or related to all facts, transactions, and occurrences – known or unknown – as of the date he executes this Settlement Agreement, including, but not limited to, all Released Class Claims, and Released PAGA Claims, as defined in Paragraphs 3.A through 3.F below (“Plaintiffs’ Release”). Plaintiff’s Release does not extend to any claims or actions to enforce this Settlement Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or to claims or actions based on occurrences after he executes this Settlement Agreement. Plaintiff acknowledges he may discover facts or law different from, or in addition to, the facts or law that he now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts, or their discovery thereof.

For purposes of Plaintiff’s Release only, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

- F. The releases identified herein will only be effective upon the date that Defendant fully funds the Gross Settlement Amount and all employer-side taxes owed.
4. **Gross Settlement Amount.** As consideration, Defendant agree to pay a “Gross Settlement Amount” of Five Hundred Fifty Thousand Dollars and Zero Cents (\$550,000.00) (unless such Gross Settlement Amount is increased pursuant to Paragraph 4.E. below) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrator as the “Settlement Administrator” to administer this Settlement. All administrative costs

due and owing to the Settlement Administrator shall be paid from the Gross Settlement Amount.

- B. The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within sixty (60) calendar days after the “Effective Date” which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.
- C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class members;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than eight thousand two hundred and fifty dollars (\$8,250.00);
 - (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff's Class Representative Service Award or Enhancement Payment, in recognition of his contributions to the Action, and his service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke this Settlement Agreement, and this Settlement shall remain binding;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees [currently estimated to be One Hundred Eighty Three Hundred Thirty Three Dollars and Thirty Three Cents (\$183,333.33), unless the Gross Settlement Amount is increased pursuant to Paragraph 4.E. below], plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Thirty Thousand Dollars and Zero Cents (\$30,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees and/or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
 - (5) Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Fifteen Thousand Dollars and Zero Cents (\$15,000.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or Five Thousand Dollars and

Zero Cents (\$5,000.00), will be payable to certain Settlement Class members as the “PAGA Amount,” as described below.

- D. Defendant’s share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.
- E. **Unexpected Workweeks/Escalator Clause.** Defendant represents that there are an estimated 26,262 workweeks worked by settlement class members from January 17, 2019 through April 10, 2024 (date of mediation). If the number of workweeks during the Class Period is more than 10% greater than this figure (i.e., if there are 28,889 or more workweeks worked by the settlement Class Members during the Class Period), Defendant agrees to increase the Gross Settlement Amount on a proportional basis (i.e., if there was an 11% increase in the number of workweeks worked during the Class Period by Class Members, Defendant will increase the Gross Settlement Amount by 11%).

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

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiff’s Class Representative Service Award, the Settlement Administrator’s fees and expenses for administration, and the amounts designated as PAGA civil penalties payable to the LWDA and the PAGA Employees. The remaining amount shall be known as the “Net Settlement Amount.”
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Settlement Award based on the following formula:
 - i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member’s total workweeks worked as a non-exempt employee during the Class Period, and the denominator of which is the total workweeks worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period.
- C. PAGA Amount: Five Thousand Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of pay periods worked as

a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees.

- D. Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.
- E. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Any portion of each Settlement Award that is provided for the PAGA Amount shall be allocated as penalties. For the remainder of each Settlement Award, twenty percent (20%) of each Settlement Award shall be allocated as wages, seventy percent (70%) of each Settlement Award shall be allocated as penalties, and ten percent (10%) of each Settlement Award shall be allocated as expense reimbursements. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- F. Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member.

6. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be One Hundred Eighty Three Hundred Thirty Three Dollars and Thirty Three Cents (\$183,333.33) (unless the Gross Settlement Amount is increased pursuant to Paragraph 4.E. above in which case the attorneys' fees shall increase accordingly). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's

approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

7. **Class Representative Service Award.** Defendant will not object to a request for a Class Representative Service Award of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff for his time and risk in prosecuting this case and his service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding.

8. **Settlement Administrator.** Defendant will not object the appointment of Phoenix Settlement Administrator as Settlement Administrator. Defendant will not object to Plaintiff seeking permission to pay up to eight thousand two hundred and fifty dollars (\$8,250.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendant's share of taxes payable on the wages, which shall be paid by Defendant separate and apart from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members.

9. **Preliminary Approval.** The Parties, Plaintiff and Defendant agree to the following procedures regarding obtaining approval of this settlement:

After the Court has consolidated the Class Action and PAGA Action in Court, Plaintiff shall then apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines of Haines Law Group, APC and Scott M. Lidman and Milan Moore of Lidman Law, APC as Class Counsel;
- C. Appointing Sergio Rodriguez as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrator as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award, drafts of which are attached collectively hereto as **Exhibit B**) in both English and Spanish, and directing the mailing of same; and

G. Scheduling a Final Approval hearing.

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

- A. Within ten (10) business days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, and the dates of employment (collectively referred to as the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.

- ii. The Parties agree there is no statutory or other right for any Settlement Class member to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement. A Settlement Class member who submits a valid and timely Request for Exclusion shall still receive his or her proportionate share of the PAGA Amount.
- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by mailing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel). Class Counsel shall file any objections with the Court. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence, if any; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing in person or virtually irrespective of whether they submitted any written objections.
- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well the Settlement Class member's number of pay periods worked as a non-exempt employee during the Class Period. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. If a resolution cannot be reached by and among the Parties and the Settlement Administrator, the Court will render all final decisions on disputes.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified before the Response Deadline, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement

Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once before the Response Deadline, the Settlement Administrator shall continue to make reasonable efforts to obtain an updated mailing address. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

11. **Administrator's Declaration.** No later than fourteen (14) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class and Collective Notices returned as undeliverable, the re-mailing of Class and Collective Notices, attempts to locate Class Members or Collective Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid) from Class Members, the number of written objections received from Class Members, and attach a list of the names and other identifying information of Class Members who have submitted timely and valid Requests for Exclusion ("Exclusion List"). The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

12. **Defendant's Right to Withdraw.** If the number of valid Requests for Exclusion identified in the Exclusion List to be prepared by the Settlement Administrator exceeds 10% of the total number of Class Members, Defendant may, within its sole discretion, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraw, the Settlement shall be null and void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, that Defendant remains responsible for paying all Settlement Administration Expenses actually incurred up to that time. Defendant must notify Class Counsel and the Court of their election to withdraw no later than seven (7) calendar days after the Administrator sends the final Exclusion List to Defense Counsel.

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

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Service Award, and settlement administration costs; and

- C. Entering judgment pursuant to California Rule of Court 3.769 and posting notice of the judgment on a static website created and maintained by the Settlement Administrator.

14. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendant and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the any Settling Class member has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

15. **Non-disclosure and Non-publication.** Prior to the filing of the Motion for Preliminary Approval, Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of the Settlement on their respective websites but may not include the name(s) of any of the Parties, or the case name or case number of the Action.

16. **Legal Developments.** The Parties agree that Plaintiff will submit to the Court a motion for preliminary approval and final approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Claims.

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

18. **Attorneys' Fees:** In the event of any dispute arising out of the interpretation, performance, or breach of any provision of this Settlement Agreement, the prevailing party in such dispute(s) shall be entitled to recover her and/or its reasonable attorneys' fees and costs incurred arising from such dispute.

19. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the

addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Jason Yu and Patricia Brum of Snell & Wilmer L.L.P., 300 South Grand Avenue, Suite 3100, City National 2CAL, Los Angeles, California 90017; jyu@swlaw.com and pbrum@swlaw.com

if to Plaintiff: Scott M. Lidman and Milan Moore of Lidman Law, APC, 2155 Campus Drive, Suite 150, El Segundo, California 90245; slidman@lidmanlaw.com and mmoore@lidmanlaw.com

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

20. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

21. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

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

DATED:

DEFENDANT SUPERIOR TANK CO., INC.

By: James Marquez Digitally signed by James Marquez
DN: cn=James Marquez, o=Superior
Tank Co., Inc., ou,
email=james.marquez@superiortan
k.com, c=US
Date: 2024.06.03 14:00:24 -07'00'

Its: PRESIDENT-CEO

DATED:

PLAINTIFF SERGIO RODRIGUEZ

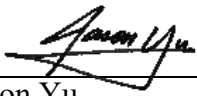
By: 
Sergio Rodriguez (May 17, 2024 09:22 PDT)

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

SNELL & WILMER L.L.P.

By: 

Jason Yu
Patricia Brum
Attorneys for Defendant

DATED: May 13, 2024

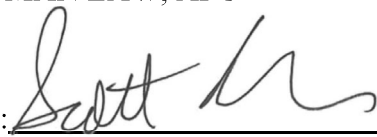
HAINES LAW GROUP, APC

By: 

Paul K. Haines
Attorneys for Plaintiff

DATED: May 13, 2024

LIDMAN LAW, APC

By: 

Scott M. Lidman
Attorneys for Plaintiff

4865-3883-7438

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

January 17, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Superior Tank Co., Inc.

c/o Registered Agent Solutions, Inc., Agent for Service of Process

720 14th Street

Sacramento, CA 95814

Re: *Sergio Rodriguez v. Superior Tank Co., Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Sergio Rodriguez in claims arising from his employment with Superior Tank Co., Inc., a California corporation (“Defendant”). Mr. Rodriguez is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Rodriguez intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all of Defendant’s all current and former non-exempt employees in California who have worked for Defendant, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Rodriguez was employed by Defendant as a non-exempt employee from approximately December 13, 2006 through approximately November 8, 2022. Mr. Rodriguez was a Bolted Tank Installer and Driver and built tanks at the various locations of Defendant’s customers.

During Mr. Rodriguez’s employment with Defendant, Defendant maintained a uniform policy or practice of failing to accurately record all time worked by Mr. Rodriguez and other non-exempt employees. Specifically, Mr. Rodriguez and other non-exempt employees were not paid for time worked at the yard during the workday. For example, Mr. Rodriguez and other non-exempt employees often were required to arrive at Defendant’s yard to collect and prepare the materials for the assigned project and travel to the job worksite by 6:00 a.m. Despite this compensable work at the yard and then traveling to the worksite, Defendant only paid Mr. Rodriguez and other non-exempt employees

starting from the time they arrived at the job worksite (i.e. 6:00 a.m.). This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Rodriguez and other non-exempt employees, and also resulted in Defendant not paying Mr. Rodriguez and other non-exempt employees for all wages owed for the work they performed, including failing to pay them all required minimum and overtime wages.

Throughout Mr. Rodriguez's employment with Defendant, Defendant would keep track of Mr. Rodriguez's and other non-exempt employees' time worked and would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. Specifically, Defendant maintained a uniform policy or practice of having the foreman record Mr. Rodriguez's and other non-exempt employees' hours. The foreman would record rounded hours and not the actual time Mr. Rodriguez and other non-exempt employees began working and/or stopped working. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and shave in Defendant's favor such that Mr. Rodriguez and other non-exempt employees were routinely underpaid for their time worked. Further, during Mr. Rodriguez's employment with Defendant, he and other non-exempt employees often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Rodriguez and other non-exempt employees been properly paid for all of the time that they actually worked, they would have been paid additional minimum and/or overtime wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Rodriguez and other non-exempt employees, and also resulted in Defendant paying Mr. Rodriguez and other non-exempt employees less than they were owed for the work they performed, including failing to pay them all required minimum and overtime wages.

Throughout Mr. Rodriguez's employment with Defendant, Mr. Rodriguez and other non-exempt employees were not provided all required meal periods due to Defendant's meal period policies and practices, which fail to provide 30-minute first meal periods before the end of the fifth hour of work. Specifically, Mr. Rodriguez is informed and believes, and thereon alleges, that as a result of Defendant's failure to consider the compensable time worked before arriving at the job worksite as time worked for purposes of providing a meal period before the end of the fifth hour of work, and the work demands imposed by Defendant, the meal periods were untimely, short and/or otherwise unlawful. Further, Defendant did not require Mr. Rodriguez and the other non-exempt employees to clock in and out for their meal periods. Therefore, despite Defendant's failure to keep any records of Mr. Rodriguez's meal periods, Mr. Rodriguez is informed and believes that Defendant unlawfully and automatically deducted thirty minutes from Mr. Rodriguez's and other non-exempt employees' work time each shift for a purported meal period regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length.

Further, Defendant's meal period policies and practices fail to provide Mr. Rodriguez and the other non-exempt employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Rodriguez and other non-exempt employees worked in excess

of 10.0 hours, they were not provided with a second 30-minute meal period in violation of California law.

Although Mr. Rodriguez and other non-exempt employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Rodriguez and other non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Mr. Rodriguez and other non-exempt employees were also not authorized and permitted to take all required rest periods due to Defendant's rest period policies and practices. Defendant's rest period policies and practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Further, Mr. Rodriguez and other non-exempt employees were unable to take any of their required rest periods due to heavy work demands.

On those occasions when Mr. Rodriguez and other non-exempt employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendant failed to compensate Mr. Rodriguez and other non-exempt employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

Defendant also failed to reimburse Mr. Rodriguez and other non-exempt employees for necessary business expenses incurred during the relevant time period. Specifically, Defendant required Mr. Rodriguez and other non-exempt employees to use their personal cellular phones to communicate with their supervisors in discharge of their duties. Further, Defendant required Mr. Rodriguez and other non-exempt employees to use their personal tools to discharge their duties. Accordingly, despite the non-exempt employees being required to use their personal cellular phones and/or personal tools, Defendant did not reimburse Mr. Rodriguez or other non-exempt employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, or of their obedience to the directions of the employer in violation of California law. Additionally, Defendant also required Mr. Rodriguez and other non-exempt employees to incur expenses that were necessary for the performance of their job duties, including travel expenses such as hotel and lodging expenses while travelling for work without reimbursement for such expenses.

As a result of Defendant's failure to pay all overtime and/or minimum wages owed, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Rodriguez and other non-exempt employees.

As a further result of Defendant's failure to pay all overtime and/or minimum wages owed, and failure to pay all meal and rest period premium wages, Defendant failed to provide pay Mr. Rodriguez and other former non-exempt employees all wages owed upon their separation of employment with Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendant was required to pay Mr. Rodriguez and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked." As explained above, Mr. Rodriguez and other Aggrieved Employees often worked over eight hours in a day and/or 40 hours in a week, and Defendant's policy and practice of failing to compensate them for all hours worked also deprived them of all overtime wages owed due to Defendant's unlawful time shaving/rounding practice. Further, during Mr. Rodriguez's employment with Defendant, Defendant maintained a uniform policy or practice of failing to accurately record all time worked by Mr. Rodriguez and other Aggrieved Employees. For example, Mr. Rodriguez often was required to arrive at Defendant's yard to collect and prepare the materials for the assigned project and travel to the job worksite by 6:00 a.m. Despite this compensable work at the yard and then traveling to the worksite, Defendant only paid Mr. Rodriguez starting from the time he arrived at the job worksite (i.e. 6:00 a.m.) This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Rodriguez, and also resulted in Defendant not paying Mr. Rodriguez for all wages owed for the work he performed, including failing to pay him all required overtime wages. Further, Mr. Rodriguez and other Aggrieved Employees often worked over eight hours in a day and/or 40 hours in a week, and Defendant's policy and practice of failing to compensate them for all hours worked also deprived them of all overtime wages owed.

Minimum Wage Violations

Defendant was required to pay Mr. Rodriguez and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 1, § 4. Mr. Rodriguez and other Aggrieved Employees were not paid for all hours worked due to Defendant's timekeeping and compensation practices. As alleged above, Mr. Rodriguez was not fully paid for all time worked due to Defendant's timekeeping policies and practices because Defendant would unlawfully shave Mr. Rodriguez's work time and/or round Mr. Rodriguez's work time such that Mr. Rodriguez would not be fully paid all wages he was rightfully owed. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would

round and/or shave in Defendant's favor such that Mr. Rodriguez was routinely underpaid for his time worked, including minimum wages. Further, during Mr. Rodriguez's employment with Defendant, Defendant maintained a uniform policy or practice of failing to accurately record all time worked by Mr. Rodriguez and other Aggrieved Employees. For example, Mr. Rodriguez often was required to arrive at Defendant's yard to collect and prepare the materials for the assigned project and travel to the job worksite by 6:00 a.m. Despite this compensable work at the yard and then traveling to the worksite, Defendant only paid Mr. Rodriguez starting from the time he arrived at the job worksite (i.e. 6:00 a.m.). This practice resulted in Defendant not properly tracking the time worked by Mr. Rodriguez, and also resulted in Defendant not paying Mr. Rodriguez for all wages owed for the work he performed, including all required minimum wages. Further, Mr. Rodriguez and other Aggrieved Employees often worked over eight hours in a day and/or 40 hours in a week, and Defendant's policy and practice of failing to compensate them for all hours worked also deprived them of all minimum wages owed.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Rodriguez and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. Specifically, Mr. Rodriguez is informed and believes, and thereon alleges, that as a result of Defendant's failure to consider the compensable time worked before arriving at the job worksite as time worked for purposes of providing a meal period before the end of the fifth hour of work, and the work demands imposed by Defendant, the meal periods were untimely, short and/or otherwise unlawful. Further, Defendant did not require Mr. Rodriguez and the Aggrieved Employees to clock in and out for their meal periods. Therefore, despite Defendant's failure to keep any records of Mr. Rodriguez's meal periods, Mr. Rodriguez is informed and believes that Defendant unlawfully and automatically deducted thirty minutes from Mr. Rodriguez's work time each shift for a purported meal period regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length. Further, Defendant's meal period policies and practices fail to provide Mr. Rodriguez and the other non-exempt employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Rodriguez worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period in violation of California law. Therefore, Mr. Rodriguez and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Rodriguez and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Rodriguez and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Rodriguez and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As alleged above, Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, as a result of the work demands imposed by Defendant, Defendant did not authorize and permit one rest period for every four hours worked, or *major fraction thereof*. As a result, Mr. Rodriguez and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Rodriguez and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, meal and rest period premiums, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Rodriguez and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

Failure to Reimburse Business Expenses

Defendant failed to reimburse Mr. Rodriguez and other Aggrieved Employees for necessary work expenses, including, but not limited to, expenses incurred for the reasonable portion of cellular phone expenses incurred in the direct discharge of the job duties of such employees. Further, Defendant required Mr. Rodriguez to use his personal tools to discharge his duties. Accordingly, despite the Aggrieved Employees being required to use their personal cellular phones and/or personal tools, Defendant did not reimburse Mr. Rodriguez or other Aggrieved Employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, or of their obedience to the directions of the employer in violation of California law. Additionally, Defendant also required Mr. Rodriguez to incur expenses that were necessary for the performance of his job duties, including travel expenses such as hotel and lodging expenses while travelling for work without reimbursement for such expenses. Defendant's policy of not providing reimbursement for necessary work-related expenses is in violation

of Wage Order 1, § 9, and Labor Code § 2802 (“An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”) Mr. Rodriguez and other Aggrieved Employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Rodriguez and other Aggrieved Employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant’s failure to pay all final wages due to Mr. Rodriguez and other Aggrieved Employees was willful and, consequently, entitles Mr. Rodriguez and other Aggrieved Employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendant failed to pay their final wages after their separation, up to a maximum of thirty days.

As an “aggrieved employee,” Mr. Rodriguez will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Rodriguez’s own investigation, and on information and belief, Defendant committed the following Labor Code violations:

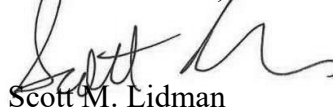
- a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Rodriguez and other Aggrieved Employees the statutory minimum wage for all hours worked;
- b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Rodriguez and other Aggrieved Employees all overtime compensation earned;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Rodriguez and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Rodriguez and other Aggrieved Employees;
- e) Defendant violated Labor Code § 2802 by failing to reimburse Mr. Rodriguez and other Aggrieved Employees for necessary work expenditures;

- f) Defendant violated Labor Code § 226 by failing to furnish Mr. Rodriguez and other Aggrieved Employees with accurate and compliant itemized wage statements;
- g) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Rodriguez and other Aggrieved Employees;
- h) Defendant violated Labor Code § 204 by failing to pay Mr. Rodriguez and other Aggrieved Employees all earned wages at least twice during each calendar month;
- i) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Rodriguez and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT B

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

SERGIO RODRIGUEZ, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

SUPERIOR TANK CO., INC., a California
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case Nos. BCV-23-100144 and BCV-23-100926

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees of Defendant Superior Tank Co., Inc. who worked for Superior Tank Co., Inc., in California at any time during the time period between January 17, 2019 and [insert date of preliminary approval]. Collectively, these employees will be referred to as “Settlement Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. In exchange for the settlement payment, you will release claims against the Defendant as detailed below. Your estimated Settlement Award is explained in the accompanying Notice of Settlement Award. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, you must notify the Settlement Administrator as explained below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. However, if you are a PAGA Employee who requests exclusion, you will still receive an amount as your share of the PAGA civil penalties described below. You are a “PAGA Employee” if you worked for Defendant Superior Tank Co., Inc. in California at any time during the time period between January 17, 2022 and [insert date of preliminary approval]. Instructions are set forth below.
Object	Write to the Court about why you do not agree with the Settlement, and/or appear at the Final Approval Hearing to make an oral objection. Directions are provided below.

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) entitled *Sergio Rodriguez, on behalf of himself and on behalf of all persons similarly situated, v. Superior Tank Co., Inc* Kern Superior Court Case Nos. BCV-23-100144 and BCV-23-100926 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant Superior Tank Co., Inc.’s (“Defendant”) records show that you were employed by Defendant as a non-exempt employee in California at some time from January 17, 2019 and [insert date of preliminary approval] (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

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

What is this case about?

Plaintiff Sergio Rodriguez (“Plaintiff”) brought this Lawsuit against Defendant, seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for Defendant in California at any time between January 17, 2019 and [insert date of preliminary approval]. Plaintiff is known as the “Class Representative,” and their attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

The Lawsuit alleges that Defendant failed to provide Settlement Class members all minimum and/or overtime wages, failed to provide all legally required meal periods, failed to authorize and permit all legally required rest periods, failed to provide accurate, itemized wage statements, failed to reimburse all necessary business expenses, and failed to pay all wages upon termination of employment. As a result of the foregoing alleged violations, Plaintiff also alleges that Defendant engaged in unfair business practices and is liable for civil penalties under the California Labor Code Private Attorney General Act of 2004 (“PAGA”).

Defendant denies that it has done anything wrong. Defendant further denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. No Court has made any determination as to the factual allegations in the Lawsuit. Rather, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, and it expressly denies all liability.

The Court has not ruled that Defendant violated any laws or whether Plaintiff or any other person is entitled to damages or other relief. However, to avoid additional expense, inconvenience, and interference with their business operations, Defendant has concluded that it is in their best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the Parties.

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

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

Who are the Attorneys?

Attorneys for the Plaintiff / Settlement Class Members: LIDMAN LAW, APC Scott M. Lidman slidman@lidmanlaw.com Milan Moore mmoore@lidmanlaw.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 322-4772 Fax: (424) 322-4775 www.lidmanlaw.com HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com 155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for Defendant SNELL & WILMER L.L.P. Jason Yu jyu@swlaw.com Patricia Brum pbrum@swlaw.com 300 South Grand Avenue, Suite 3100 Los Angeles, CA 90017 Telephone: (213) 929-2500 Fax: (213) 929-2525
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What are the terms of the Settlement?

On [INSERT DATE OF PRELIMINARY APPROVAL], the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees of Defendant Superior Tank Co., Inc. who worked for Defendant in California at any time during the time period between January 17, 2019 and [insert date of preliminary approval]. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant as described below.

Defendant has agreed to pay \$550,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, which includes payments to Settlement Class members, attorneys’ fees and expenses, payment to the Labor Workforce Development Agency (“LWDA”), settlement administration costs, and the Class Representative’s Service Award.

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

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside an amount not to exceed \$8,250.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$183,333.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement in an amount not to exceed \$30,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Award to Class Representative. Class Counsel will ask the Court to award the Class Representative a service award in the amount not to exceed \$7,500.00, to compensate him for his services and extra work provided on behalf of the Settlement Class members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$20,000.00 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act ("PAGA"). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Fifteen Thousand Dollars and Zero Cents (\$15,000.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Five Thousand Dollars and Zero Cents (\$5,000.00), will be payable to certain PAGA Employees as the "PAGA Amount," as described below.

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

- (i) The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked as a non-exempt employee during the Class Period, and the denominator of which is the total workweeks worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period.

PAGA Amount. In addition, Five Thousand Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during the time period between January 17, 2022 and [insert date of preliminary approval] ("PAGA Period") which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion.

If you submit a Request for Exclusion, you will still receive a proportionate share of the PAGA Amount regardless of whether you exclude yourself from the Settlement if you are a PAGA Employee.

Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class Members or PAGA Employees whose checks were not cashed within 180 days after mailing will be transferred to the California Secretary of State - Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member or PAGA Employee.

Payment by Defendant of Gross Settlement Amount. The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount and the required employer-side taxes with the Settlement Administrator within sixty (60) calendar days after the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.

Within ten (10) calendar days following Defendant's deposit of the final Settlement Installment of Gross Settlement Amount and all employer-side taxes with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7)

calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards to participating Settlement Class members. Settlement Awards are expected to be disbursed in [insert estimated month and year].

Allocation and Taxes. E. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Any portion of each Settlement Award that is provided for the PAGA Amount shall be allocated as penalties. For the remainder of each Settlement Award, twenty percent (20%) of each Settlement Award shall be allocated as wages, seventy percent (70%) of each Settlement Award shall be allocated as penalties, and ten percent (10%) of each Settlement Award shall be allocated as expense reimbursements. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Settlement Class Members’ Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will fully and forever completely release and discharge Defendant, and all of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively the “Released Parties”), from causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys’ fees, costs, liabilities, expenses, and losses based on or arising from factual predicates alleged, or reasonably could have been alleged, in the operative complaint in the consolidated Class Action and PAGA Action (which is the operative Consolidated Complaint), or which could have been pled in the operative Consolidated Complaint consolidated Class Action and PAGA Action, including, but not limited to: (a) any alleged failure to pay all wages due including minimum wages or overtime wages; (b) any alleged failure to timely pay wages at termination or during employment; (c) any alleged failure to provide meal or rest periods or to pay meal or rest period premiums; (d) any alleged failure to maintain and preserve, in a centralized location in California, any required payroll or employee records; (e) any alleged failure to provide compliant and accurate wage statements; (f) any alleged failure to reimburse business expenses; (g) any alleged failure to pay sick wage; (h) any right or claim for civil penalties pursuant to the California Labor Code, the California Industrial Welfare Commission Wage Orders, the California Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, et seq.) based on the foregoing alleged claims; (i) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 et seq. based on the foregoing alleged claims; and (j) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged, in the operative Consolidated Complaint consolidated Class Action and PAGA Action, including without limitation, any violation or breach of California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 233, 246, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, or any other similar state or local statute, wage order, rule, regulation, ordinance, or authority, during the Class Period (collectively, the “Released Class Claims”). The Class Members do not release any claims other than those set forth above, including without limitation claims for vested benefits, wrongful termination, violations of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

The time period of the Released Claims shall be the same time period as the Class Period.

PAGA Employees’ PAGA Release. If the Court approves the Settlement, all PAGA Employees, including Plaintiff (and also including those who opt-out from the Class portion of the Settlement), will release and forever discharge the Released Parties from all individual and representative claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, in the operative Consolidated Complaint in the consolidated Class Action and PAGA Action including, but not limited to, any right or claim for PAGA penalties predicated on alleged nonpayment or under-payment of minimum and overtime wages, failure to pay or under-payment of wages, overtime, meal and rest period premiums, failure to provide meal and rest periods, nonpayment or under-payment of premiums for meal

or rest period violations, failure to timely pay wages, failure to pay all wages due at termination, failure to maintain accurate records, failure to provide and/or maintain accurate and itemized wage statements, failure to reimburse business expenses, failure to pay sick wages, and any claims for PAGA civil penalties based on the foregoing alleged claims under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, including any alleged violations of the California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 233, 246, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, during the PAGA Period (collectively, “PAGA Released Claims”).

The time period of the PAGA Released Claim is between January 19, 2022 and [insert date of preliminary approval] (“PAGA Period”).

You cannot submit a Request for Exclusion from the PAGA Release.

The releases are null and void if Defendant fails to fully fund the Settlement. The releases identified herein will only be effective upon the date on which Defendant fully funds the Gross Settlement Amount and employer’s share of payroll taxes (“Effective Date of the Release”). Upon the Effective Date of the Release, all Class Members shall be deemed to have, and by operation of Judgment shall have, released, waived and relinquished the Released Claims.

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

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period (as explained above), and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

If your address is incorrect or has changed, you must notify the Settlement Administrator. It is your responsibility to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The Settlement Administrator is: _____ (800) _____.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, and the number of pay periods you worked during the PAGA Period, if any. The information contained in Defendant’s records regarding all of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. Send disputes directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>.

DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator’s decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending a written “Request for Exclusion from the Class Action Settlement” letter or card to the Settlement Administrator postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, your signature, and a statement indicating that you would like to be excluded from the Class Action Settlement. The Request for Exclusion should state something to the effect of:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN *SERGIO RODRIGUEZ V. SUPERIOR TANK CO., INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement.

If you submit a Request for Exclusion, you will only be excluded from the Released Claims. You cannot submit a Request for Exclusion from the PAGA Release. You will receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you were employed and worked between January 19, 2022 and [insert date of preliminary approval].

Do not submit both a Dispute and a Request for Exclusion. If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

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

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 17 of the Kern County Superior Court, located at 1215 Truxton Avenue, Bakersfield, California 93301. You have the right to appear either remotely, in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case (*Sergio Rodriguez v. Superior Tank Co., Inc.* Kern County Superior Court, Case Nos. BCV-23-100144 and BCV-23-100926).

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

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 17 of the Kern County Superior Court, located at 1215 Truxton Avenue, Bakersfield, California 93301. The Court also will be asked to rule on Class Counsel’s request for attorneys’ fees and reimbursement of documented costs and expenses and the Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

Any changes to date, time, or location of the Final Approval Hearing will be posted on the Settlement Administrator’s website (<http://.com>). The Court’s final judgment will also be posted on the Settlement Administrator’s website.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court’s files and the Settlement Agreement at the Office of the Clerk of the Kern County Superior Court, located at 1215

Truxton Avenue, Bakersfield, California 93301. You may get more details by examining the Court's file on the Court Access website for the California Superior Court for the County of Kern (<https://www.kern.courts.ca.gov/online-services/case-information-search>) and entering the Case No. BCV-23-100144 in the Case Number Search field. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANT OR ITS ATTORNEYS FOR INFORMATION
ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

REMINDER AS TO TIME LIMITS

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

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

NOTICE OF SETTLEMENT AWARD

Sergio Rodriguez v. Superior Tank Co., Inc.

KERN COUNTY SUPERIOR COURT, CASE NOS. BCV-23-100144 AND BCV-23-100926

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

(I) Please type or print your name:

(First, Middle, Last)

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

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Award:

According to the records of Superior Tank, Inc. ("Defendant"):

- (a) You were employed by Defendant and worked a total of ____ workweeks between January 17, 2019 and [insert date of preliminary approval].
- (b) You were employed by Defendant and worked a total of ____ pay periods between January 17, 2022 and [insert date of preliminary approval].

Based on the above, your Individual Settlement Award is estimated to be \$_____.

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

If you dispute the above information from Defendant's records, Defendant's records will control unless you are able to provide documentation that establishes that Defendant's records are mistaken. If there is a dispute about whether Defendant's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

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