

STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement ("Settlement Agreement") is reached by and between Plaintiff Benjamin Duenas Acosta ("Plaintiff"), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Manhole Builders, Inc. ("Manhole Builders"), on the other hand. Plaintiff and Manhole Builders are referred to herein collectively as the "Parties." Plaintiff and the Settlement Class are represented by Shoham J. Solouki of Solouki Savoy, LLP ("Class Counsel"). Manhole Builders is represented by Kyle D. Kring and Kerri N. Kramer of Kring & Chung, LLP.

RECITALS

WHEREAS, Acosta was employed by Manhole Builders from approximately June 2020 through July 2022;

WHEREAS, on December 30, 2022, Acosta filed a putative wage and hour class action complaint entitled *Benjamin Duenas Acosta vs. Manhole Builders, Inc.* in the San Bernardino County Superior Court, Case No. CIVSB 2228832, for claims, damages and causes of action arising from and relating to his employment with Manhole Builders (the "Class Action"), including the following causes of action: (1) failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wage; (5) failure to timely pay wages; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records; (8) failure to furnish accurate itemized statements; (9) failure to indemnify employees for necessary expenditures incurred in discharge of duties; and (10) unfair and unlawful business practices;

WHEREAS, on or about January 4, 2023, Plaintiff, by and through his counsel of record, submitted to the Labor and Workforce Development Agency ("LWDA") a Notice of Labor Code Violations and Demand Pursuant to California Labor Code Section 2699 et. Seq. as to the Individual and Class Members alleging that Manhole Builders violated California Labor Code sections including, but not limited to, 201-203, 226, 226.2, 204, 226.3, 226.7, 403, 404, 510, 512, 558, 1102.5, 1174, 1197, and 1198 (the "PAGA Notice");

WHEREAS, on May 11, 2023, Manhole Builders filed an Answer to the complaint, disputing, and asserting various affirmative defenses to, the claims;

WHEREAS, on April 18, 2024, the Parties attended mediation to attempt to resolve all disputes between them;

WHEREAS, given the expense and uncertainty of litigation, Plaintiff and Manhole Builders wish to settle Plaintiff's claims in the Class Action.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, the Parties agree to the following terms and conditions:

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

All current and former non-exempt employees of Manhole Builders who were employed at any time from December 30, 2018 through the date the Court enters the order granting preliminary approval of this Settlement (the "Settlement Class").

The time period of December 30, 2018 through the date the Court enters the order granting preliminary approval of this Settlement shall be referred to herein as the "Class Period."

The Parties stipulate and 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 or any other applicable rule or 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 the Class Action or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held immediately prior to entering into the Settlement Agreement. In such an event, the Settlement Agreement, any settlement-related document, and any negotiations leading to the settlement may not be disclosed to third parties or used as evidence for any purposes. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, Manhole Builders expressly reserves and shall retain all rights to challenge all claims and allegations in the Class Action, to assert all applicable defenses, and to dispute the propriety of class certification on all applicable grounds.

2. **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), on behalf of themselves, their respective spouses, heirs, executors, representatives, assigns, estates, and attorneys, will fully release and discharge Manhole Builders, and all of its past and present officers, directors, partners, shareholders, members, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and any of their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (collectively the "Released Parties") as follows:

- A. Settlement Class members will release all claims, demands, rights, liabilities, and causes of action that were pled in the Class Action, or which could have been pled in the Class Action based on the factual allegations in any complaint filed therein, that arose during the Class Period including, but not limited to, state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages during employment and/or at termination, failure to maintain required records, failure to furnish accurate itemized wage statements, failure to indemnify employees for business expenses, civil penalties under PAGA based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders (collectively, the "Released Claims").

- B. Settlement Class members who timely and properly submit a Request for Exclusion will not be bound by the release of the Released Claims, but will be bound to the Release of all claims for civil penalties under PAGA that could have been premised on the facts, claims, causes of action, or legal theories described above that arose during the PAGA Period.
- C. Plaintiff has agreed to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal, state, or local law against the Released Parties. Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

- D. Notwithstanding anything else in this Settlement Agreement, Plaintiff's waiver and release in this Settlement does not apply to those rights that as a matter of law cannot be waived.
3. **Gross Settlement Amount.** As consideration, Manhole Builders agrees to pay a "Gross Settlement Amount" of Two Hundred Eighty Thousand Dollars and Zero Cents (\$280,000.00) in full and complete settlement of the Class Action, as follows:
- A. The Gross Settlement Amount shall be deposited by Manhole Builders with the Settlement Administrator within ninety (90) calendar days after the "Effective Date" which is defined as the latest of the following: (a) if the Settlement has received final approval by the Court and there were no timely objections filed, or that any timely objections have been withdrawn, then the date of the Court's order of final approval of the Settlement; (ii) if one or more timely objections has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector to seek appellate review of the trial court's order of final approval of the Settlement, without a timely appeal having been filed; or, (iii) if a timely appeal of the Court's order of final approval has been filed, then the Settlement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the trial court's final approval without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.
 - B. This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;

- (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Twenty Thousand Dollars (\$20,000.00);
 - (3) Up to one-third of the Gross Settlement Amount (or \$93,333.00) in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Class Action, as supported by declaration, up to 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
 - (4) 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. Pursuant to Labor Code section 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 Settlement Class members as the "PAGA Amount," as described below. Even if the Court reduces or increases the amount set aside as PAGA civil penalties, Plaintiff and the Settlement Class Members shall not have the right to revoke this Settlement Agreement, and it will remain binding.
- D. Manhole Builders' share of payroll taxes shall be the only amount paid by Manhole Builders separately from, and in addition to, the Gross Settlement Amount.
- E. **Escalator Clause.** In advance of mediation, Manhole Builders disclosed that there were approximately 10,000 workweeks worked by the Settlement Class members during the Class Period. If, as of the end of the Class Period at the time of preliminary approval, the number of workweeks has increased by more than 10% (i.e., if there are 11,000 or more workweeks), then Manhole Builders shall have the option to: (i) increase the Gross Settlement Amount on a proportional basis (i.e., if there was a 15% increase in the number of workweeks, Manhole Builders would agree to increase the Gross Settlement Amount by 5%); or (ii) agree to close the Class Period as of the date on which the total number of workweeks last increased by 10% or less (i.e., the latest date on which there were 11,000 workweeks or less), instead of having the Class Period end on the date that the Court enters an order granting preliminary approval of this Settlement.
4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Settlement Award") from the Settlement. Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Settlement Administrator's fees and expenses for

administration, and the amount designated as PAGA civil penalties payable to the LWDA. 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. PAGA Amount: Each Settlement Class Member who was employed by Manhole Builders at any time after January 4, 2022 shall receive a portion of the PAGA Amount proportionate to the number of pay periods that they worked during the period of January 4, 2022 through the end of the Class Period (the "PAGA Period"), and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the participating Settlement Class members' number of pay periods worked during this time period, and the denominator of which is the total number of pay periods worked by all participating Settlement Class members during this time period.
 - ii. The remainder of 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 during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class members who worked during the Class Period.
- C. Within fifteen (15) calendar days following Manhole Builders' deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and 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 of all such reports to Manhole Builders' counsel.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated eighty percent (80%) as penalties and interest and twenty percent (20%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay, or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each member of the Settlement Class who receives a Settlement Award must cash 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. Manhole Builders shall be deemed to fully discharge its obligations to participating Settlement Class members to whom a Settlement Award is mailed, regardless of whether such checks are actually received and/or negotiated by Settlement Class members.

- F. Neither Plaintiff nor Manhole Builders shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
- G. The Parties understand and agree that the Parties and their respective counsel are not providing tax advice or legal advice concerning taxes. Settlement Class members will assume any tax obligations or consequences that may arise from this Settlement Agreement and should consult with a tax expert if they have questions. The Parties agree that, in the event that any taxing body determines that additional employee taxes are due from any Settlement Class Member, such Settlement Class Member assumes all responsibility for the payment of such taxes.
- H. **Circular 230 Disclaimer.** The Parties acknowledge and agree that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties, Class Counsel, or Manhole Builders' Counsel and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed, or be relied upon, as tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging Party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement Agreement, (b) has not entered into this Settlement Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on the acknowledging Party; and (3) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

5. **Attorneys' Fees and Costs.** Manhole Builders will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount (\$93,333.00) or for 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 the Class Action, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's

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

6. **No Class Representative Service Award.** Plaintiff shall not seek a class representative award, enhancement payment, or other payment related to his appointment as Class Representative in, or for any other reason in connection with, the Class Action. The only payment which Plaintiff shall seek or to which he shall be entitled to receive in connection with the Class Action is his individual Settlement Award to which he is entitled as a Settlement Class Member.

7. **Settlement Administrator.** The Parties agree to the appointment of CPT Group as Settlement Administrator. The Settlement Administrator shall be responsible for taking all actions necessary to ensure the administration of the Settlement, including sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Manhole Builders' share of taxes payable on the wages, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members, unless otherwise ordered by the Court.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall seek leave (through Stipulation of the Parties) to file a First Amended Complaint maintaining the causes of action of the Complaint and allegation an additional cause of action for civil penalties under PAGA based on all claims raised in the PAGA Notice, and shall then apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement only;
- B. Appointing Class Counsel as counsel for the Settlement Class;
- C. Appointing Plaintiff as Class Representative for the Settlement Class;
- D. Approving CPT Group 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 and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

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

- A. Within thirty (30) business days after entry of an order preliminarily approving this Agreement, Manhole Builders will provide the Settlement Administrator with the names, last known addresses, last known phone numbers, social security numbers,

start and, if applicable, end dates of employment, the number of workweeks worked by each Settlement Class member while employed during the Class Period, and the number of pay periods worked during the PAGA Period (the "Class Data").

- 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. A true and correct copy of the agreed upon Notice Packet is attached hereto as Exhibit "A".
- 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 forty-five (45) 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) and/or is not transmitted as listed in (4), it will not be deemed a valid for exclusion from the Settlement. 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. Any Settlement Class member who does not submit a valid, timely Request for Exclusion as set forth herein is deemed to have released all Released Claims against the Released Parties.
 - ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement, opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.
 - iii. If prior to the Final Approval hearing, five percent (5%) or more of the Settlement Class members timely and properly submit a Request for Exclusion

from this Settlement, Manhole Builders shall have the sole and absolute discretion, if it so elects, to rescind this Settlement Agreement, without any liability or expense; provided, however, if the Settlement Administrator has incurred any actual expenses as of the date of withdrawal, Manhole Builders agrees to pay all such expenses. If Manhole Builders rescinds this Settlement Agreement pursuant to this section, the Settlement Agreement and conditional class certification shall be considered void, and neither the Settlement Agreement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the Parties shall revert to the respective positions they held immediately prior to entering into this Settlement Agreement.

- D. **Objections.** Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement by filing a written Notice of Objection with the Settlement Administrator (who shall serve all objections on Class Counsel and Manhole Builders' counsel within five (5) days of receipt). To be valid, any Notice of 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; and (4) be postmarked no later than the Response Deadline (defined as within forty-five (45) calendar days of the date of the initial mailing of the Notice Packets). Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing irrespective of whether they have submitted any written objection(s).
- E. **Notice of Settlement Award / Disputes.** Settlement Class members will have the opportunity, should they disagree with Manhole Builders' records regarding the numbers of workweeks they worked during the Class Period and/or the number of pay periods they worked during the PAGA Period, 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. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.
- 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 five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement

Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within 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. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Manhole Builders' Counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, 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, Settlement Administrator's costs, and payment to the LWDA for its share of the PAGA Award; and
- C. Entering judgment pursuant to California Rule of Court 3.769, including the Court's retention of jurisdiction pursuant to Code of Civil Procedure section 664.6 to enforce the Settlement Agreement until it has been fully performed.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as or deemed to be an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement, along with any related documents and negotiations, 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.

In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission that Manhole Builders violated any of its obligations under the California Labor Code, applicable Industrial Welfare Commission Wage Orders, or Business and Professions Code, or of liability in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Manhole Builders and/or the Released Parties. In addition, this Settlement Agreement shall not be offered or be admissible in

evidence against any of the Parties or any of the Released Parties, except in any action or proceeding brought by or against Plaintiff, Settlement Class members, or Manhole Builders to enforce the Settlement Agreement's terms, or by Manhole Builders in defense of any subsequent claims brought by Plaintiff or Settlement Class members. The provisions of this paragraph shall become effective when this Settlement Agreement is signed by all Parties, and shall be binding on the Parties and their counsel regardless of whether the Settlement is preliminarily and/or finally approved or terminated for any reason, or rendered null and void.

12. Manhole Builders' Denial of Wrongdoing and Liability and Reasons for Settlement. Manhole Builders has denied and continues to deny each and all of the claims and contentions alleged in the Class Action. Manhole Builders has repeatedly asserted, and continues to assert, defenses thereto, and has expressly denied, and continues to deny, any wrongdoing or legal liability arising out of any of the facts, conduct, and/or omissions alleged in the Class Actions. Manhole Builders has also denied, and continues to deny, *inter alia*, the allegations that the Settlement Class members have suffered damage. Without limiting the foregoing, Manhole Builders contends that the Settlement Class members were properly and timely paid all wages owed, including, but not limited to, all straight time, overtime pay, double time pay, and waiting time pay; and were provided meal and rest periods as required under California law; were properly and timely paid all wages upon separation of employment or otherwise when due, were properly and timely reimbursed for all business expenses, were properly and timely provided accurate itemized wage statements as required under California law, and that Manhole Builders has not engaged in any unlawful, unfair, or fraudulent business practices in violation of California law. However, Manhole Builders has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time, energy, and resources of Manhole Builders have been and, unless this Settlement Agreement is approved, will continue to be devoted to the defense of the claims asserted by Plaintiff. Manhole Builders has also considered the uncertainty and risks inherent in any litigation, especially in complex cases such as the Class Action. Based on the foregoing, Manhole Builders has concluded that it is desirable and beneficial that the Class Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. This will allow Manhole Builders to dispose of burdensome and protracted litigation, permit the operation of Manhole Builders' business without further expensive litigation, and put to an end the distraction and diversion of its personnel regarding matters at issue in the Class Action.

13. Non-disclosure and Non-publication. 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, as otherwise required by law or ordered by the Court, and/or as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. Before the date of the filing of the motion for preliminary approval of the Settlement, Plaintiff and Class Counsel will not initiate any contact with Settlement Class members about the Settlement, except that: (a) Class Counsel, if contacted by a Settlement Class member, may respond that a settlement has been reached and that the details will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by a Settlement Class member, may respond only that the Settlement Class member should contact Class Counsel.

14. **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.

15. **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 Manhole Builders : Kyle D. Kring and Kerri N. Kramer, Kring & Chung, LLP,
38 Corporate Park, Irvine, California 92606;
kkring@kringandchung.com; kkramer@kringandchung.com; and
mbennett@kringandchung.com

if to Plaintiff: Shoham J. Solouki of Solouki Savoy, LLP, 316 W. 2nd Street, Suite
1200, Los Angeles, California 90012; shoham@soloukisavoy.com

16. **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.

17. **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.

18. **Execution by Settlement Class Members.** It is agreed that it is impossible or impractical to have each Settlement Class member execute this Settlement. The Notice of Settlement will advise all Settlement Class members of the binding nature of the release and such shall have the same force and effect as if each Settlement Class member executed this Settlement.

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

20. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent possible, consistent with applicable law and precedent.

21. **Enforcement Action.** In the event that a Party institutes legal action or other proceeding against the other Party to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the prevailing Party will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

22. **Jurisdiction of the Court.** In accordance with California Rule of Court 3.769(h) and Code of Civil Procedure section 664.6, the Parties agree that the Court shall retain and hereby submit to

the Court's, jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith

DATED: 10/31/2024

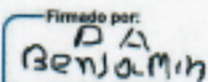
DEFENDANT MANHOLE BUILDERS, INC.

By: Eric D. Kelly

Its: President

DATED: 10/28/2024

PLAINTIFF BENJAMIN DUENAS ACOSTA

By: 
Firmado por:
Benjamin
43C80783A73A4D6
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

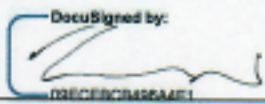
DATED: 11/8/2024

KRING & CHUNG, LLP

By: 
Kyle D. Kring
Kerri N. Kramer
Attorneys for Defendant
MANHOLE BUILDERS, INC.

DATED: 10/30/2024

SOLOUKI SAVOY, LLP

By: 
DocuSigned by:
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