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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

AGUSTIN UMANA VILLATORO, individually, and BRYAN HERNANDEZ, individually and on behalf of all others similarly situated, *Plaintiff*, vs. AMERICAN ASPHALT REPAIR AND RESURFACING COMPANY, INC.; and DOES 1 through 10, inclusive, *Defendants*.	Case No.: 22CV024706 [*Assigned for all purposes to the Hon. Somnath Raj Chatterjee, Dept 21*] CLASS ACTION **DECLARATION OF H. SCOTT LEVIANT IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT** Date: May 27, 2025 Time: 2:30 p.m. Courtroom: Dept. 21 Judge: Hon. Somnath Raj Chatterjee Action Filed: December 27, 2022 Trial Date: Not Set

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DECLARATION OF H. SCOTT LEVIANT

I, H. Scott Leviant, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States Supreme Court, the Eighth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Eastern, Northern and Southern Districts of California. I have never been subject to discipline by the State Bar of California. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I am employed as a Senior Counsel at the law firm of Moon Law Group, PC (formerly Moon & Yang, APC). My business address is 725 S. Figueroa St., 31st Floor, Los Angeles, California 90017 and my business telephone number is (213) 232-3128. I am counsel for Plaintiffs AGUSTIN UMANA VILLATORO and BRYAN HERNANDEZ ("Plaintiffs"), and I am proposed counsel for the Settlement Class.

3. This Declaration is submitted in support of Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class and Representative Action Settlement.

BACKGROUND

4. Defendant operates operates within the pavement maintenance industry, specializing in all aspects of asphalt and concrete pavement solutions, sealcoating, slurry surfacing and striping. On December 27, 2022, this action was commenced with the filing of a Complaint alleging causes of action against Defendant for failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and provide rest breaks, failure to timely pay final wages at termination, failure to indemnify for necessary business expenses, failure to provide accurate itemized wage statements, and unfair business practices.

5. Initial plaintiff Becerra sent a letter to the Labor and Workforce Development Agency ("LWDA"), pursuant to California Labor Code § 2699.3, providing notice of his intent to seek civil

penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq*. The LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter, and the 65-day time period permitted for the LWDA to provide such a notification expired. On August 1, 2023, plaintiff Becerra filed a First Amended Complaint (1) clarifying plaintiff Becerra's claims; (2) adding Plaintiff Umana Villatoro and Plaintiff Hernandez as additional plaintiffs and class representatives; and (3) alleging Plaintiff Umana Villatoro's causes of action against Defendant for civil penalties under the Private Attorneys General Act ("PAGA"). On March 11, 2025, Plaintiff Becerra, Plaintiff Umana Villatoro, and Plaintiff Hernandez filed a Second Amended Complaint (1) dismissing plaintiff Becerra's claims and (2) alleging Defendant failed to include all non-discretionary compensation within the regular rate of pay. The Second Amended Complaint is the operative complaint in the Action (the "Operative Complaint.").

6. The Parties conducted informal discovery and investigation of the facts and law. Such investigation included, *inter alia*, the exchange of extensive data and discoverable information in preparation for the mediation session. The Parties have analyzed time clock, pay and other data pertaining to Plaintiffs and the Class during the settlement period, including but not limited to the numbers of former and current members of the Class, average workweeks and pay periods, and the average rate of hourly pay. The time and pay data, drawn from over 86% of the Class, was used for Plaintiff's pre-mediation analysis, a highly accurate sample. The margin of error calculation for the sample of the Class in this case is as follows:

$$1.96\sqrt{\frac{0.5(1-0.5)}{276}}\sqrt{\frac{276-238}{276-1}} = \text{margin of error}^{1} = 0.0236 = 2.36\%$$

With a random sample of data for 238 employees, the margin of error, using the population adjustment

[1] The term "1.96" is derived from a standard deviation table for a 95% confidence interval, known as a "z-table." It is not affected by sample or population size. The margin of error is an "overestimate" of the margin of error because the variance is presumed to be at its highest value, using 0.5(1-0.5) to represent p*q in the variance equation of (p*q)/n.

factor, was no more than 2.36 percent.[2] In addition, Defendant also provided other data pertaining to Plaintiffs and the Class during the relevant Class Period, including but not limited documents reflecting wage and hour policies and practices during the Class Period.

7. After reviewing documents regarding Defendant's wage and hour policies and practices and other information obtained during the exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation.

8. On September 25, 2024, the Parties participated in a full day mediation presided over by Jeff Ross, Esq., which led to this Agreement to settle the Action. The Parties discussed at length the burdens and risks of continuing with the litigation. At the mediation, the Parties agreed to settle the Action and thereafter prepared and signed a settlement agreement (the "Agreement").

9. Plaintiffs and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. Plaintiffs and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that confers substantial relief upon the Class.

10. Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. Solely for the purpose of settling this case, the Parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. If this Settlement is not

[2] The margin of error formula does not require an adjustment factor for extremely large populations. (*Id.*) A poll of all potential voters in the United States, for example, does not require an adjustment for the population size, since the second radicand in the equation (the fraction in the second radical sign) is effectively equal to 1. (*Id.*) This is because the square root of a fraction that is very close to 1 is even closer to 1. Consider a population of 200 million and a sample of 1,000 individuals from that population. The second radicand is the fraction of 200 million minus 1,000, all divided by 200 million minus 1. (*Id.*) That is equal to 0.999995. (*Id.*) The square root is 0.99999975, which is indistinguishable from 1 when talking about a margin of error percentage even to the nearest tenth of a percent. (*Id.*) But when the population size is much smaller, the population size has a major impact on the margin of error for a given sample size. (*Id.*)

approved by the Court for any reason, Defendant reserves its right to contest class certification. (*Id.*) This Settlement, if approved, will result in the termination of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members who have not elected to exclude themselves from the Class.

SUMMARY OF THE SETTLEMENT TERMS

11. Key provisions of the proposed settlement include the following:

(a) Defendant agrees not to oppose certification for purposes of settlement. (Settlement, ¶ 12.1.)

(b) Class: All persons currently or formerly employed by Defendant as a non-exempt employee in California during the Class Period (the "Class Period" is the period from August 1, 2019, through the date the Court grants preliminary approval). "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34.)

(c) Settlement Amount: Defendant will pay a maximum of **$790,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** benefit per Class Member of about **$2,862.32.** (Settlement, ¶¶ 1.21, 4.1; Leviant Decl., ¶ 17.)

(d) Escalator Clause: If the number of actual Workweeks at the close of the Class Period is more than ten percent (10%) higher than the estimated Workweeks per Paragraph 4.1 (i.e., exceeds 28,302 Workweeks), Defendant may, at its election, opt to (a) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of workweeks worked by the Class Members above ten percent (10%) (*e.g.,* if the number of Workweeks increases by 11% to 28,559 Workweeks, the Gross Settlement Amount will increase by 1%); or (b) end the Class Period on a date on which the total Workweeks does not exceed 28,302 . This election must be made at the time the Class Data is delivered to the Administrator. (Settlement, ¶ 8.)

(e) Funding of Gross Settlement Amount: Defendant shall fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 calendar days after the Effective Date. (Settlement, ¶ 4.3.)

(f) Class Size: An estimated **276** individuals worked about **25,729** workweeks through September 25, 2024. (Settlement, ¶ 4.1.)

(g) PAGA Group Size: An estimated **192** aggrieved employees who worked about **11,105** pay periods through September 25, 2024. (Settlement, ¶ 8.)

(h) PAGA Period: August 1, 2022, through the date of which the Court grants preliminary approval of this Settlement. (Settlement, ¶ 1.30.)

(i) *Kullar/Munoz* Analysis: Plaintiffs address the claims analysis herein, at Part V.B.3, and in the Declaration of Leviant, at Paragraph 18.

(j) No Reversion: The Settlement is a ***non-reversionary*** settlement. (Settlement, ¶ 3.1.)

(k) Certification: Plaintiffs address certification requisites herein, at Part V.A., and in the Declaration of Leviant, at Paragraphs 34-40;

(l) No Claim Form: No claim form is required. (Settlement., ¶ 3.1.)

(m) Class Release: All Participating Class Members release all claims that were alleged or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint in the Action. (Settlement, ¶ 5.2.)

(n) PAGA Release: Plaintiff Villatoro, on behalf of the State of California, releases the Released Parties from all claims for civil penalties under PAGA, based on the facts and Labor Code sections that were alleged or reasonably could have been alleged in Plaintiff's PAGA Notice of violations and the Operative Complaint. (Settlement, ¶ 5.3.)

(o) Net Settlement Amount: The Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments to Aggrieved Employees, the LWDA PAGA Payment, Class Representative

Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Settlement, ¶ 1.27.) The Net Settlement Amount is estimated to be at least **$399,166.67**, resulting in an average **net** payment per Class Member of at least **$1,446.26**, before any tax withholdings. (Leviant Decl., ¶ 17.)

(p) Tax Allocation: Twenty percent of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims and reported on an IRS W-2 Form. Eighty percent of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties and reported on IRS 1099 Forms. (Settlement, ¶ 3.2.4.1.) The PAGA Settlement payments to Aggrieved Employees will be allocated as 100% penalties. (Settlement, ¶ 3.2.5.2.)

(q) Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA. (Settlement, ¶ 3.1.)

(r) Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, Phoenix Settlement Administrators ("Phoenix"), with the costs of administration not to exceed $10,000.00, except for a showing of good cause as approved by the Court. (Settlement, ¶ 3.2.3.) Phoenix's estimate for settlement administration services, in the amount of **$8,250.00**, was selected as the most reasonable bid for all required services, with all due regard for the administrator's reputation and known quality of work from a competitive bidding process. (Declaration of Jodey Lawrence, ["Lawrence Decl."], ¶ 17.)

(s) Class Data for Administration: The Settlement Administrator will receive the Class Data not later than fourteen (14) calendar days after the Court grants

Preliminary Approval, use the National Change of Address ("NCOA") database to update the Class Data, and then use skip tracing on returned Notices. (Settlement, ¶¶ 1.10; 4.2; 7.4.)

(t) Notice: The Notice will issue within fourteen (14) calendar days of receipt of the Class Data. (Settlement, ¶ 7.5.2.) The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion. (Settlement, ¶¶ 7.5 – 7.8.)

(u) Notice Language: Notice will issue in English *and* Spanish. (Settlement, ¶¶ 1.11.)

(v) Objections: Objections can be timely submitted to the Administrator by fax, email, or mail. Alternatively, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present objections at the Final Approval Hearing. (Settlement, ¶ 7.7.2.)

(w) Exclusion Requests: Signed, written requests for exclusion can be timely submitted to the Administrator by fax, email, or mail. (Settlement, ¶ 7.5.1.)

(x) PAGA Allocation: From the GSA, **$80,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq*. ("PAGA"), allocated as seventy-five percent (75%), or at least **$60,000.00**, to the California Labor & Workforce Development Agency, and twenty-five percent (25%), or at least **$20,000.00** to Aggrieved Employees. (Settlement, ¶¶ 1.33; 3.2.5.)

(y) Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration as Exhibit 2.

(z) Enhancement/Service Award to Plaintiffs: Defendant will not oppose application for a Class Representative Service Payments of up to **$7,500.00** each, paid from the GSA. (Settlement, ¶ 3.2.1.)

(aa) Fees and Costs: Defendant will not oppose Class Counsel's application for fees of not more than one-third of the GSA, which is currently estimated to be

$263,333.33 subject to the escalator clause, and actual costs in an amount not to exceed **$22,500.00**, to be paid out of the GSA. (Settlement, ¶ 3.2.2.)

(bb) Check Void Period: Settlement checks will be valid for 180 days. (Settlement, ¶ 4.2.1.)

(cc) Uncashed Checks: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). (Settlement, ¶ 4.4.3.)

(dd) Judgment Notice: Judgment will be posted on the Settlement Administrator's website after entry. (Settlement, ¶ 7.8.1.)

(ee) Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members. (Settlement ¶ 12.2.)

12. A true and correct copy of the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE is attached hereto as Exhibit "1."

THE SETTLEMENT IS FAIR, JUST AND REASONABLE

13. Plaintiffs and counsel have diligently investigated the claims of the Class Members. Plaintiffs and Class Counsel concluded, after taking into account the disputed factual and legal issues involved in this Action, the substantial risks attending further prosecution, including risks related to the outcome of certification and possible summary judgment efforts, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that settlement on the terms agreed to are in the best interest of Plaintiffs and the putative Class and are fair and reasonable. Plaintiffs' counsel brought to bear a great deal of experience with class actions in negotiating the settlement of this case.

14. One fundamental purpose of the class action device is to promote efficiency. Resolution at this time will forestall the need for additional expensive and time-consuming litigation

that could very well result in an outcome less satisfactory than that proposed under this settlement. But, before any other consideration, we have agreed to this settlement because it is objectively reasonable. The potential for resolution benefits the class members, since they do not have to wait additional years for a similar recovery. The efficiency of this litigation benefits the Court, the Parties and their counsel. A class-wide resolution is the most realistic method for addressing the claims raised in this matter.

15. We have engaged in the necessary investigation in this case that made it possible for us to exercise informed judgment in those aspects of the settlement process in which we were involved. The exchange of time and wage data, wage and hour policy documents, and data about the composition of the Class, were sufficient to permit us counsel to adequately evaluate the settlement. We had more than enough information upon which to evaluate a fair and reasonable settlement amount.

16. In addition to disputing the merits of Plaintiffs' claims at trial, Defendant intended to aggressively challenge the case at the certification stage. Defendant contends that Plaintiffs could not prevail on a certification motion. We believe that the case was viable through trial. However, while Plaintiffs assert a belief that this is a viable case for trial, we realize that there are always very significant risks associated with certification and trials, and those risks cannot be eliminated in this case. Continued litigation of this lawsuit presented Plaintiffs and Defendant with substantial legal risks and costs that were (and continue to be) difficult to assess:

- the risk that Plaintiffs would be unable to establish liability for allegedly unpaid minimum or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial);
- the risk that Defendant's challenged employment policies might not ultimately support class certification or a class-wide liability finding, *see*, *Duran*, 59 Cal. 4th at 14 & fn. 28 *(*citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition);
- the risk that uncertainties pertaining to the legality of Defendant's policies and practices could preclude class-wide awards of penalties under Labor Code §§ 203 and 226(e);

- the risk that individual differences between Class Members could be construed as pertaining to liability, and not solely to damages, *see*, *Duran*, 59 Cal. 4th at 19;
- the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, see Labor Code § 2699(e)(1);
- the risk that lengthy appellate litigation could ensue; and,
- the risk violation rate estimates could prove lower than expected.

These risks are non-exhaustive. While we remain confident that we possess credible strategies for responding to the legal and factual risks facing them, those risks cannot be disregarded. We carefully considered the risks created by all of these uncontrollable factors when evaluating the reasonableness of this proposed settlement. This proposed Settlement provides a benefit to the Class Members that is very reasonable in light of these particular risks.

17. In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. The settlement amount is, of course, a compromise figure. By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. For the approximately **276** members of the Class, the average ***gross*** benefit is **$2,862.32** per class member, and the estimated average ***net*** recovery for each Class Member would be approximately **$1,446.26**. Given that Defendant could potentially defeat certification, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period.

18. After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement is fair, adequate, and reasonable. The Gross Settlement Amount of **$790,000.00** is about 93% of the **$849,289.29** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period, resulting in the following exposure projections:

- A reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the assistance of an expert, to be approximately **$266,394.00**, based on an estimate of five (5) minutes of off-the-clock work for half of all shifts for every Class Member. However, with the high-risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$43,623.04**, assuming certification probability of 40% and merits success at 40%. The off-the-clock time resulted from allegations of off-the-clock loading of equipment and occasional time clock delays. Here, a $43,623.04 exposure has a value of about 16% of its maximum, given a likelihood of success on both certification and the merits, which is an approximation of the chain probability of certification multiplied by merits chances: $0.4 \times 0.4 = 0.16$. This theory of recovery has a high degree of risk because it depends on Class Member estimates of the frequency and duration and is testimony dependent.

- A reasonably estimated exposure for unpaid off-the-clock wages due to regular rate errors was calculated, with the assistance of an expert, to be approximately **$201,932.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$60,579.60**, assuming certification probability of 75% and merits success at 40%. The unpaid overtime depends upon the classification of additional compensation as non-discretionary. This theory of recovery has a moderate degree of risk because it depends on the classification of the "ebon" payment as non-discretionary compensation, which is highly disputed.

- A reasonably calculated exposure for meal break violations over the class period was calculated at **$460,259.50**, with chances of certification and liability risks (50% and 40%, respectively), resulting in a risk-adjusted exposure of **$92,051.90**. This exposure is based upon facial violations. Employee choice is a serious issue in the context of a meal period claim. So long as an employee has the opportunity to take a lawful meal period, an employee can choose to take it late, cut it short, or skip it.

- A reasonably estimated exposure for rest break violations over the class period was calculated at **$931,527.40**, but with chances of certification and proof of liability (20% and 20%, respectively), resulting in a risk-adjusted exposure of **$37,261.10**. This claim is based entirely on class member testimonials that rest breaks were sometimes missed due to work demands. Plaintiffs estimated the exposure assuming 100% of the Class missed one rest break per pay period, while understanding that this theory carries the potential for high risk given that employees were often allowed to determine when to take rest breaks and worked in small teams at job sites.

- A reasonably calculated exposure for unreimbursed expenses was estimated to be **$160,912.50**, but with chances of certification and proof of liability (60% and 50%, respectively), resulting in a risk-adjusted exposure of **$48,273.75**. The allegation is that employees used cell phones to document completed work (which would not have impacted all employees if true) and employees felt obligated to purchase steel-toed boots for safety reasons.

- The risk-adjusted penalty recovery for wage statement penalties were estimated to be approximately **$86,400.00**, on a maximum exposure of **$384,000.00** (with certification and merits success chances of 75% and 30%, respectively, based on all theories of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). The value of this claim was just dealt a severe blow by the recent California Supreme Court decision of *Naranjo v. Spectrum Security Services, Inc.* (May 6, 2024), which significantly strengthened the good faith defense to Section 226 penalties.

- The risk-adjusted penalty recovery for Labor Code § 203 penalties was estimated to be approximately **$149,139.90**, on a maximum exposure of **$662,844.00** (with certification and merits success chances of 75% and 30%, respectively, based on all theories of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). The need to show a knowing and intentional violation constitutes an additional risk factor.

- Performing risk-adjusted valuations for all claims yields a total value in the range of **$516,329.29**, excluding PAGA.[3]

- For the PAGA Period, the number of PAGA Pay Periods at issue is estimated to be **11,105** for the approximately **192** Aggrieved Employees. Using the most straightforward formulation of applying the "catch-all" $100 penalty specified in Labor Code § 2699(f)(2) to each PAGA Pay Period, the total penalty exposure is approximately **$1,110,500.00**. In addition, with assistance from Plaintiff's data consultant, and after a thorough review of evidence casting serious doubt on the viability of many of the theories of penalty recover, counsel separately estimated the plausible potential PAGA exposure to be, on a penalty-by-penalty basis, to be approximately Plausible PAGA penalties exposure was calculated to be **$3,329,600.00**. But, assuming issues with proof and cooperation of aggrieved employees, along with the Court's power to reduce penalties, the realistic exposure was calculated to be **$332,960.00**.

19. This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. Arbitration agreements present a very high risk to all class claims. The Judicial Council's Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 ("Second Interim Report"), at page 5, states that "less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification ***or*** as part of a classwide settlement agreement." *See*, Second Interim Report, at 5 (emphasis added).[4] That "***or***" is significant. The certification rates identified in the study of less that 25% includes ***both*** contested certifications and settlement certifications, which are the majority of certifications. In other words, one must assume in any wage and hour class action prior to certification

[3] It is difficult to assign specific percentages to future events, but it does provide a method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel. The numbers explain with math what can also be described conceptually in words.

[4] The report is available at https://www.courts.ca.gov/documents/classaction-certification.pdf (last viewed March 12, 2024).

that a contested certification motion will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk evaluation. The facts of each case have significant bearing on these percentages. But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to successfully overcome. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of the time a class will not be certified and the result for the class is *zero* dollars. Here, the estimated certification probabilities are ***above*** the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. Since well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion, the recovery falls within the expected outcome under the likelihood of success metric. It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately $1,860,112.90, *with no risk reduction*), excluding penalties and interest.[5] This Settlement achieves the goals of the litigation.

20. To the best of my knowledge there are no other like claims asserted or filed by Class Members. To the best of my knowledge, no Class Member has refrained from bringing an action with claims similar to those raised in the Action, whether in reliance on the Action or otherwise, and who thus might be prejudiced by dismissal of the Action.

THE EXPERIENCE OF CLASS COUNSEL

21. Moon Law Group, PC (former named Moon & Yang, APC), has been engaged in the practice of employment and labor law for almost a decade and presently focuses exclusively on plaintiffs' employment law. The firm and its lawyers have handled many hundreds of wage-related

[5] The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part…")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.,* 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

class actions between them. The firm and its lawyers have successfully settled more than 350 class action matters during that time span. The firm and its lawyers have also tried both bench and jury trials (representing both plaintiffs and defendants) relating to employment matters. Moon Law Group, PC, is routinely appointed lead or co-lead class counsel (or counsel for representative plaintiffs in FLSA representative actions) in federal and state courts in California and elsewhere, by way of motion for class certification or motion for settlement approval. I personally participated in the litigation of more than 500 class actions since 1999, and more than 90 percent of those cases were wage and hour matters. While I have not maintained a comprehensive list, I have been appointed as lead or co-lead counsel in many hundreds of class actions.

22. Kane Moon received a B.A. in History in 1998 from UCLA. He received his J.D. from Loyola Marymount Law School in 2006. He became an Active Member of the State Bar of California in June 2007 and has been an Active Member in good standing continuously since then. He has been selected to Super Lawyers for 2020-2024.

23. Mr. Moon co-founded Moon & Yang, APC, now Moon Law Group, PC, in March 2010. Since that time, Mr. Moon built his practice to have an emphasis on employment and related civil litigation cases. In fact, the practice is focused almost exclusively on advocating for the rights of employees in wage-and-hour litigation through class and representative actions. Moon Law Group, PC is presently class counsel for many dozens of other putative wage-and-hour class and representative action lawsuits pending in various state and federal jurisdictions throughout California. Moon Law Group, PC has also successfully settled hundreds of wage-and-hour cases; tried both bench and jury trials in employment-related matters, representing both plaintiffs and defendants; and been appointed lead or co-lead class counsel in numerous federal and state courts in California. The following is a list of some of the firm's class action settlements that have received preliminary and final approval: *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 20, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 (class size approx. 2,650; lead counsel); *Sison v. Cha Hollywood Medical Center, L.P.*, LASC BC6441 29 (class size approx. 2,100; co-counsel); *Jones v. Fitness Alliance, LLC*, Riverside Superior Court PSC1404079 (class size approx. 1,000; lead counsel); *Gomez v. H Mart Companies, Inc.*, LASC BC671525 (class size approx. 2,500; co-counsel); *Montoya v. Golden 1*

Credit Union, Sacramento Superior Court 34-2018-00228252 (class size approx. 1,900; lead counsel); *Campa v. Bloomingdeals, Inc*., LASC BC700366 (class size approx. 1,500; lead counsel); *Black v. Mission Healthcare Services, Inc*., LASC 19STCV04602 (class size approx. 1,000; lead counsel); *Onofre v. Caitac Garment Processing, Inc*., LASC BC702283 (class size approx. 750; lead counsel); *Martinez v. Bail Hotline Bail Bonds, Inc*., LASC BC700131 (class size approx. 173; lead counsel); *Jones v. Citiguard, Inc.*, LASC BC664890 (class size approx. 587; lead counsel); *Slaughter v. ACA Security Stems, LP*, LASC BC699137 (class size approx. 300; lead counsel); *Taylor v. Sherman's Delicatessen & Bakery, LLC*, LASC BC722765 (class size approx. 515; lead counsel); *Vertti v. Bagcraft Papercon III, LLC*, LASC 19STCV12729 (class size approx. 260; lead counsel); *Rodriguez v. Rossmoyne, Inc.,* LASC BC699137 (class size approx. 220; lead counsel); *Vargas v. AMS Paving, Inc*., LASC BC722767 (case size approx. 260; lead counsel); *Garcia v. Comfy U.S.A. Apparel, Inc.*, LASC BC709630 (class size approx. 210; lead counsel); *Lagos v. ThyssenKrupp Elevator Corporation*, LASC BC682972 ($750,000 for 79 Class Members; lead counsel); *Aparicio v. Lineage Logistics, LLC*, LASC BC722764 (class size approx. 155; lead counsel). Mr. Moon's experience is and has been invaluable in assessing the reasonableness of settlements such as the one at issue here.

24. I received my undergraduate degree from Occidental College. Graduating cum laude, I majored in economics and received a "minor" emphasis in mathematics. Along with my study of economics and mathematics, I also had an emphasis in physics. This combination of scientific and economic education has been of assistance during my litigation of complex civil actions. I received my Juris Doctor degree from the University of Southern California Law Center.

25. My experience relevant to class action litigation includes the following:

(a) I have been involved in the litigation of class actions since 1997, working as a law clerk on a number of class action matters. Since 1999, I have participated as an attorney in the litigation of hundreds of class actions, in California Superior Courts and in federal courts in California, Illinois, and Louisiana. I emphasized litigation of wage and hour class actions beginning in 2005, but I have focused on complex litigation of different types at all times since 1999.

(b) Dating back to 1999, some of the earliest cases in which I contributed to my then-firm's efforts as co-lead/liaison counsel include:

1) *In re Paradise Memorial Park Litigation*, Los Angeles Superior Court Lead Case No. BC130375; and,

2) *In re Lincoln Memorial Park Litigation*, Los Angeles Superior Court Lead Case No. BC133643.

(c) I have litigated contested class certification motions multiple times, prevailing on many. Examples include the following:

1) In 2025, I certified multiple wage and hour claims against Sun Valley Group, in the matter of *Duran v. Sun Valley Group*.

2) In 2023, I certified a rest break claim against SMS Transportation, in the matter of *Beard v. SMS Transportation*. Rest break claims are notably difficult to certify.

3) In 2023, I certified a regular rate claim against Downtown Women's Center, in the matter of *Evans v. Downtown Women's Center*.

4) In 2018, I certified wage and hour claims against Home Depot, in the matter of *Utne v. Home Depot*, in the United Stated District Court, Northern District of California. The contested certification resulted in a certified class of roughly 140,000 individuals.

5) In 2019, I certified a Fair Credit Reporting Act claim related to employment background checks against Wal-Mart Stores, Inc., in the matter of *Pitre v. Wal-Mart Stores, Inc*., in the United Stated District Court, Central District of California. The contested certification resulted in a certified class of over 5,000,000 individuals.

6) In 2018, I fully briefed a contested class certification motion in the matter of *Harelson v. U.S. Aviation*, in the United Stated District Court, Northern District of California. After certification was fully briefed, the matter successfully settled.

7) In 2013, I certified an investment fraud suit, in the matter of *Larsen v. Coldwell Banker*, in the United Stated District Court, Central District of California.

8) In 2012, I fully briefed a contested class certification motion, in the wage and hour matter of *Gillings v. Time Warner*, in the United Stated District Court, Central District of California. In that matter, summary judgment was granted against my clients and the certification motion was deemed moot. I appealed to the Ninth Circuit and obtained a reversal of the District Court's decision. Upon remand, the matter settled.

9) In approximately 2011, I fully briefed a contested class certification motion, in the wage and hour matter of *Gomez v. Lincare, Inc*., in the Superior Court of California, County of Orange. Certification was denied. The result was appealed, and a partial reversal was obtained.

10) In approximately 2008, I fully briefed a contested class certification motion, in the wage and hour matter of *Ghazaryan v. Diva Limousine, LTD.*, Superior Court of California, County of Los Angeles. Certification was denied. I appealed, handling all briefing, and, in *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal.App.4th 1524 (2009), pet. for rev. denied, I obtained a decision directing the trial court to certify the class. *Ghazaryan* is now widely cited, including by the California Supreme Court, as a comprehensive source for the standards applied to certification motions in California.

11) In approximately 2006, I fully briefed a contested class certification motion, in the wage and hour matter of *Laliberte v. Pacific Mercantile Bank*, Superior Court of California, County of Orange. Certification was denied. I appealed, handling all briefing. The published opinion of *Laliberte v. Pacific Mercantile Bank*, 147 Cal.App.4th 1 (2007), rev.

denied, pet. for cert. den. resulted, and I petitioned for a Writ of Certiorari related to certification due process issues.

12) In approximately 2008, I assisted with briefing of a contested class certification motion, in the wage and hour matter, against the Automobile Club of Southern California (AAA). A class was certified and the matter tried.

(d) I have prosecuted appeals in more than 20 class action matters alone, arguing before the United States Court of Appeals for the Ninth Circuit Court and several of California's Courts of Appeal. I have taken several appeals through to Petitions for Writs of Certiorari to the United States Supreme Court. In connection with the appeals I have handled, I have participated in appeals resulting in decisions concerning or relating to class actions or wage and hour issues. Among others, those include:

1) *Camp v. Home Depot, U.S.A., Inc*., 84 Cal. App. 5th 638 (October 24, 2022), *rev. granted* (February 1, 2023);

2) *Donohue v. AMN Services, Inc*., (February 25, 2021) (amicus counsel)

3) *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169 (9th Cir. Jan. 29, 2019), pet. for rehearing and pet. for *en banc* rehearing den.;

4) *Troester v. Starbucks Corporation*, 5 Cal. 5th 829 (2018), *as modified on denial of reh'g* (Aug. 29, 2018);

5) *Gillings v. Time Warner Cable LLC*, 583 Fed.Appx. 712 (9th Cir. 2014);

6) *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal. App. 4th 1524 (2009), pet. for rev. denied;

7) *Laliberte v. Pacific Mercantile Bank*, 147 Cal. App. 4th 1 (2007), rev. denied, pet. for cert. denied;

8) *Alvarez v. May Dept. Stores Co*., 143 Cal. App. 4th 1223 (2006), rev. denied, pet. for cert. denied;

9) *Johnson v. Glaxosmithkline, Inc*., 166 Cal. App. 4th 1497 (2008), rev.

denied;

10) *Howard, et al. v. America Online, Inc.,* 208 F.3d 741 (9th Cir. 2000), pet. for cert. denied;

11) *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489 (2011) (amicus counsel);

12) *D. R. Horton, Inc. and Michael Cuda*, Case 12–CA–25764, 357 NLRB No. 184 (January 3, 2012) (amicus counsel). This NLRB matter is of particular note, as it is at the center of a dispute regarding the interplay between the Federal Arbitration Act (FAA) and two labor relations laws, the National Labor Relations Act (NLRA) and Norris-LaGuardia Act. Cases highlighting that issue have been accepted by the United States Supreme Court.

(e) I was the lead appellate author in a matter before the California Supreme Court that generated substantial interest in the field of wage and hour litigation. That matter, *Troester v. Starbucks Corporation*, resolved a significant issue of whether, under California law, a *de minimis* defense exists to the employer's obligation to pay all wages for all compensable time worked by an employee.

(f) I was the lead appellate counsel in a matter before the California Court of Appeal (Sixth Appellate District) that generated substantial interest in the field of wage and hour litigation. That matter, *Camp v. Home Depot, U.S.A., Inc.*, held that prior jurisprudence erroneously concluded that, under California law, underpayment of wages as a result of rounding of time clock punches is lawful so long as the rounding was neutral on its face and as applied. *Camp* is now pending before the California Supreme Court but remains citable as authority pursuant to an Order of the California Supreme Court.

(g) In addition to my work on complex litigation matters and class actions, I have authored published articles and columns on issues related to class actions and other litigation issues, including:

1) H. Scott Leviant, *Unintended Consequences*, 6 U.C. Davis Bus. L.J. 18 (2006), at http://blj.ucdavis.edu/article.asp?id=636 (May 1, 2006);

2) H. Scott Leviant and Lilit Ter-Astvatsatryan, *Where Troester Stops Not Even Troester Knows*, DAILY JOURNAL (Los Angeles), July 2, 2019;

3) H. Scott Leviant and Lilit Ter-Astvatsatryan, *Unaccounted Time: Reading the Tea Leaves of Troester*, DAILY JOURNAL (Los Angeles), September 12, 2018;

4) Dennis F. Moss and H. Scott Leviant, *Class Actions: One step forward after two steps back*, DAILY JOURNAL (Los Angeles), January 11, 2012;

5) H. Scott Leviant, *Arbitration: A Look Back, a Look Ahead*, DAILY JOURNAL (Los Angeles), December 28, 2010;

6) H. Scott Leviant, *Witnesses Cannot Hide*, Daily Journal (Los Angeles), April 21, 2010;

7) H. Scott Leviant, *Divide and Conquer: The New Paradigm of Class Action Defense?*, FORUM, January/February 2009

8) H. Scott Leviant, *Class Action Appellate Report*, FORUM, 2009-2010 (Ongoing series);

9) H. Scott Leviant & Linh Hua, *Legislature Using Purse Strings to Bind Judiciary*, Daily Journal (San Francisco), March 15, 2010;

10) H. Scott Leviant, *Wrongfully Recused?*, DAILY JOURNAL (Los Angeles), December 2, 2009;

11) H. Scott Leviant, *Cutting Class*, DAILY JOURNAL (Los Angeles), April 15, 2008;

12) H. Scott Leviant, *Leveling The Playing Field*, DAILY JOURNAL (Los Angeles), May 4, 2007;

13) H. Scott Leviant, *A Bad Meal Deal: 'Brinker' Gets the Incentive Question Wrong*, DAILY JOURNAL (Los Angeles), August 6, 2008;

14) H. Scott Leviant & Jason E. Barsanti, *Maximize Recovery in Unpaid*

Wage Cases, FORUM, January/February 2008;

15) H. Scott Leviant, et al., *Electronic Evidence: No Longer an Optional Element in a Comprehensive Litigation Plan*, ADVOCATE, April 2006;

16) H. Scott Leviant, *Improving Rule 12(b)(6) survival odds: Some considerations for effective RICO pleading*, CIVIL RICO REPORT, Volume 15, Number 22, April 26, 2000 (LRP Publications).

(h) In addition to publications in industry newspapers, periodicals and journals, I am the Supervising Editor, primary author and founder of the legal blog The Complex Litigator (http://www.thecomplexlitigator.com). The Complex Litigator reports and comments on news and topics relevant to class action and complex litigation practice, with a primary emphasis on wage and hour litigation issues. Through my blog, I have also, on occasion, published podcasts of round table discussions with preeminent members of the wage and hour practice bar on both the plaintiff and defense sides. My blog has been cited to the California Supreme Court in at least one Petition for Review. The Complex Litigator has been in existence since 2008, having outlasted many other legal blogs, and it has a unique readership that numbers in the tens of thousands.

(i) I have also lectured on issues related to class actions and complex litigation, including the following educational seminars:

1) *Strategies for Settlement of Individual and Wage & Hour Class Actions*, Bridgeport's Eighth Annual Wage & Hour Litigation Conference (December 16, 2011)

2) *The Year in Review – Staying Abreast of Current Cases*, Consumer Attorneys of San Diego Class Action Symposium (October 14, 2011)

3) *Concepcion v. AT&T and Derivative Wage & Hour Claims*, Bridgeport's Mid Year Wage & Hour Litigation Conference (June 3, 2011)

4) *Advanced Principles: UCL Remedies and Defenses*, 20th Annual Golden State Antitrust and Unfair Competition Law Institute (October 21, 2010)

5) *Refining Your Wage and Hour Practice*, 2010 CELA Annual Conference (October 2, 2010)

6) *Word v. WordPerfect Software, Tips, Tools and Tricks*: Legal Technology for Plaintiffs Employment Lawyers (September 30, 2010)

7) *California's 17200 -- Its Use and Abuse*, Federalist Society (May 19, 2010)

8) *20 Tips for Successful Navigation of e-Discovery Requirements*, Los Angeles County Bar Association's Thirtieth Annual Labor and Employment Law Symposium (March 31, 2010)

9) *Social Networking for Lawyers*: A Roadmap to Success, Los Angeles County Bar Association's 2nd Annual two-day 2009 Small Firm and Solo Practitioners Conference: MISSION POSSIBLE (June 25, 2009)

10) *A Seminar Overview of the Current State of Employment Law*, The Westchester/LAX/Marina Del Rey Chamber of Commerce (February 23, 2006)

(j) I served three consecutive years as an elected member of the Board of Governors of the Consumer Attorneys of California. In that capacity, I worked to preserve the right of California's consumers and employees to bring proposed class actions. For example, I provided assistance to CAOC in its successful effort to defeat AB 298, which would have substantially impaired the ability of plaintiffs to prosecute class actions in California. More recently, on behalf of CAOC, I co-authored several requests for publication of unpublished class action decisions, including one such request in *Jaimez v. Daiohs USA, Inc*., 181 Cal. App. 4th 1286 (2010), and authored amicus briefs for CAOC in the Eighth Circuit matter entitled *Avritt v. Reliastar Life. Ins. Co*., Case No. 09-2843, the California Supreme Court matter entitled *Californians for Disability Rights v. Mervyn's, LLC*, 39 Cal. 4th 223 (2006), and the California Court of Appeal matter entitled *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489

(2011).

26. My current contingent billing rate is consistent with my practice area, legal market and accepted hourly rates:

(a) In the December 8, 2008 article "Billable Hours Aren't the Only Game in Town Anymore," *NATIONAL LAW JOURNAL*, the following hourly billing rates were reported by Sheppard Mullin Richter & Hampton, a leading firm in the defense of wage-and-hour class actions that I have frequently opposed when litigating wage-and-hour class actions: Partners: $475-$795; Associates: 1st Year - $275, 2nd Year - $310, 3rd Year - $335, 4th Year - $365, 5th Year - $390, 6th Year - $415, 7th Year - $435, 8th Year - $455.

(b) In 2009 I was retained as appellate counsel in the appeal of a denial of class certification. For the specialized work on that appeal, I charged an hourly rate of $650.00 per hour, a rate the hiring co-counsel accepted.

(c) The 2024-25 Adjusted Laffey Matrix states that an attorney with 20 or more years experience can reasonably charge $1,141 per hour. http://www.laffeymatrix.com/see.html.[6] That rate is derived from the Washington, D.C. area and requires a costs of living evaluation for use in Los Angeles. Using federal statistics for average attorney salaries, attorney pay is 4.9% lower in Los Angeles, compared to Washington, D.C., indicating a 4.9% downward adjustment to the Laffey Matrix may be appropriate. https://www.bls.gov/oes/current/oes231011.htm.[7] However, using federal employee pay tables, federal employee wages are equal when Los Angeles is compared to Washington, D.C., indicating no adjustment to the Laffey Matrix is appropriate. https://www.opm.gov/policy-data-oversight/pay-leave/salaries-

[6]Last viewed October 15, 2024.

[7]Last viewed January 30, 2024.

wages/2017/general-schedule/.[8] And, using Schedule 9 of 5 U.S.C. § 5332, there is a 3% differential favoring Los Angeles. Thus, something in the range of a 4.4% locality reduction to a 3.0% locality increase appears appropriate here. Thus, applying an adjustment factor of 0.0%, the locality corrected Adjusted Laffey Matrix hourly rate for attorneys with 20 or more years of experience is $1,141. The complete Adjusted Laffey Matrix is set forth below.

(d) The full 2024-2025 Adjusted Laffey Matrix provides for the following hourly rates for paralegal/law clerks and attorneys falling into various ranges of years of experience:

Year	**Adj. Factor****	**Paralegal Clerk**	**1-3**	**4-7**	**8-10**	**11-19**	**20+**
6/01/24-5/31/25	1.080182	$258	$473	$581	$839	$948	$1141

(e) I have been selected to Super Lawyers from 2012-2025, achieving that professional recognition for more than a decade. I was selected for the Rising Stars edition of Super Lawyers in 2009.

(f) Based upon my practice area, geographic market, experience, including all of the above information, reputation, and generally accepted hourly rates, my current, regular hourly billing rate is now $975.00, which is well below the presumptively appropriate hourly rate of $1,141 for attorneys with 20 or more years of experience.

REASONABLENESS OF THE REQUESTED FEE AWARD

27. When this case was taken on a contingent fee basis, with the firm agreeing to assume responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation, Moon Law Group, PC, paid filing fees, copy charges, Westlaw fees, and mailing, telephone and express mail charges. There was never a guarantee that Moon Law Group, PC, would recoup those expenditures.

[8] Last viewed January 30, 2024.

The firm took on this case, which necessarily required the firm to forego other opportunities, given finite resources to devote to cases.

28. Because of the uncertainty of the outcome in this and other wage and hour litigation undertaken by Moon Law Group, PC, we took this case with the expectation that a risk enhancement, either in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be available if we prevailed. This expectation stems from the fact that many cases we undertake as putative class actions do not resolve successfully.

29. Class Counsel's experience in employment class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow fields of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation.

30. In the past 5 years, Moon Law Group, PC, has settled hundreds of wage & hour class actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, it has been the experience at Moon Law Group, PC, that attorney fee awards of one-third of a common settlement fund are the rule, rather than the exception. Here, Class Counsel agrees that they will seek no more than one-third of the settlement amount in fees. This is consistent with common practice, consistent with Ninth Circuit practice, consistent with California law approving the percentage of the fund method to award fees from a common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016), and not inappropriate in light of the many hours expended by attorneys and paralegals performing work for Plaintiff before and after the filing of this matter. That work includes:

(a) Numerous interviews with the client, and review of documents provided by Plaintiffs;

(b) Legal research and investigation regarding the Defendant's practices at numerous points in the litigation;

(c) Preparation of multiple drafts of the original class action complaint and finalization and filing of the original class action complaint;

(d) Review of the first amended complaint, and finalization of that complaint;

(e) Extensive "meet and confer" efforts with Defendant's counsel to obtain relevant documents and information through formal discovery;

(f) Contacting witnesses;

(g) Review of data and documents produced by Defendant;

(h) Analysis of the audit results and preparation of a damages model with the aid of a statistics expert;

(i) Research and preparation of Plaintiffs' mediation brief;

(j) Attendance at mediation;

(k) Review of the second amended complaint, and finalization of that complaint;

(l) Drafting, negotiating, and reviewing multiple drafts of the Settlement and attachments; and

(m) Preparation of the initial motion for preliminary approval and multiple revisions thereafter.

31. I anticipate that Class Counsel will spend an additional 50 hours on this matter, appearing at the hearing of preliminary approval, answering class member calls, working with the administrator to finalize documents in mailing format, conferring with counsel over any notice issues, drafting the final approval motion and motion for fees and costs, appearing at the final approval hearing, and resolving any post-approval issues that may arise, and appearing at a final accounting hearing. Class Counsel intends to request up to $263,333.33 in attorneys' fees, as authorized under the Agreement. Class Counsel has also incurred costs in this matter that will be detailed at the time final approval is sought. Class Counsel has agreed to a cap on recoverable costs of $22,500.00, and if total incurred costs exceed the cap, Class Counsel will request no more than the agreed-upon cap. Costs incurred to date are currently below the cap.

THE CONTRIBUTION OF PLAINTIFFS AND THE REASONABLENESS OF THE REQUESTED INCENTIVE AWARDS

32. Here, Plaintiffs seek Class Representative Service Payments of up to **$7,500.00** each for the significant result achieved. This amount is very reasonable given the risks undertaken by Plaintiffs

for involvement in the Action. Taking the risk of filing a lawsuit against an employer deserves recognition, especially in light of the settlement achieved by Plaintiffs. Additionally, Plaintiffs were actively involved in this litigation and the settlement negotiations of this Action, expending considerable effort in advancing the interest of the Class. Plaintiffs provided information to counsel; assisted with the settlement process (with included conferring with counsel during the preparation of Plaintiffs' mediation brief); and, regularly conferred with counsel regarding the case whenever questions arose. Plaintiffs' Declarations also confirms that Plaintiffs were active participants in the settlement of this case.

THE THIRD-PARTY ADMINISTRATOR QUALIFICATIONS AND STATEMENT OF NO CONFLICTS OR AFFILIATION

33. The Parties have agreed that administration will be handled by a third-party administrator, and the Parties estimated that administration would cost approximately $10,000.00. Phoenix Settlement Administrators was chosen by the Parties to conduct that work. In counsel's experience as class counsel in similar wage-and-hour actions with a similar number of employees, Phoenix Settlement Administrators is fully capable of administering the settlement at a competitive and reasonable cost. Phoenix was selected because of its most reasonable bid for all required services, with all due regard for its reputation and known quality of work, which can be performed in the amount of **$8,250.00** for administration services. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of **$8,250.00** is a fair and reasonable amount for administration fees, is below the Parties' estimate of $10,000.00 in costs for administration, and should be preliminarily approved. Phoenix has provided a declaration confirming its experience and its implementation of measures designed to protect Class Member data and Class Settlement funds. Finally, this firm has no relationship with Phoenix, other than as a client retaining a vendor of services via an arms-length transaction. We have no ownership interest in Phoenix.

CLASS CERTIFICATION

34. The class is ascertainable by objective criteria. The class is: All persons currently or formerly employed by Defendant as a non-exempt employee in California during the Class Period (the

“Class Period” is the period from August 1, 2019, through the date the Court grants preliminary approval). “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34)

35. The class is sufficiently numerous. Based upon Defendant’s records and discovery, there are about 276 Class Members, all of whom may be identified by reference to Defendant’s records. Plaintiffs’ counsel believe that the data is reliable.

36. Plaintiffs are typical of the Class. Plaintiffs were employed by Defendant. Plaintiffs worked during the Class Period. Plaintiffs’ claims are typical of the claims of the Class proposed in this settlement. Like other Class Members, Defendant employed Plaintiffs as hourly employees during the Class Period, and Plaintiffs claim that they were subject to the same policies alleged to have impacted the entire class. No unique defenses applicable to Plaintiffs have been identified that do not also exist as to other Class Members.

37. Common *issues* exist. Here, Class Members have shared a common interest in determining whether Defendant violated wage and hour requirements under state and related federal law, including, but not limited to, the following issues: (i) whether or not Defendant paid proper wages to the Class; (ii) whether or not Defendant provided meal periods to the Class; (iii) whether or not Defendant provided rest periods to the Class; (iv) whether or not Defendant paid compensation timely upon separation of employment to former Class Members; (v) whether or not Defendant paid compensation timely throughout Class Members’ employment; (vi) whether or not Defendant provided accurate itemized wage statements to the Class; and, (vii) whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of the California Business and Professions Code §§ 17200-17208.

38. From our review of the documentation provided, we determined that for purposes of settlement of these claims, Defendant’s policies and practices are either identical, or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because Class Members would have to prove the same issues of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to resolve all Class Members’ claims by means of the

Settlement than to require each Class Member to litigate his or her individual claims. Therefore, common questions predominate over any questions that may be unique to individual Class Members, and class-wide settlement is superior to any other method of resolution.

39. My Declaration, in Paragraphs above, summarizes the firm's experience that establishes its adequacy to represent the Class. We have no known conflicts of interest with absent Class Members. Plaintiffs have demonstrated, through participation in this action, a willingness to serve as the representatives for the Class. Plaintiffs have no known conflicts of interest with absent Class Members and have agreed to place Class interests above Plaintiffs' own. Plaintiffs' actions also demonstrate adequacy.

40. By consolidating all of these potential individual actions into one proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-situated employees with small but potentially meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. Moreover, in the context of settlement, superiority concerns are almost non-existent, since case management is controlled and a methodology for trial need not be identified.

EXHIBITS

41. As noted above, a true and correct copy of the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE is attached hereto as **Exhibit "1."** The Settlement includes Exhibit A (the "Notice").

42. Attached hereto as **Exhibit "2"** is a true and correct copy of confirmation of the submission of the settlement to the Department of Industrial Relations, through its online submission portal.

PAGA SETTLEMENT NOTIFICATION TO DIR

43. Counsel for Plaintiffs provided notice of the requested approval of the PAGA settlement through the online submission portal.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed April 30, 2025, at Los Angeles, California.

H. S. Leviant

H. Scott Leviant, "Declarant"

Exhibit “1”

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Attorneys for Plaintiffs, Manuel Carlos Ibarra Becerra, et. al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

MANUEL CARLOS IBARRA BECERRA, individually, AGUSTIN UMANA VILLATORO, individually, and BRYAN HERNANDEZ, individually and on behalf of all others similarly situated, *Plaintiffs*, vs. AMERICAN ASPHALT REPAIR AND RESURFACING COMPANY, INC.; and DOES 1 through 10, inclusive, *Defendants.*	Case No.: 22CV024706 CLASS AND REPRESENTATIVE ACTION [*Assigned to the Hon. Noël Wise, Dept. 21*] **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE** Complaint filed: December 27, 2022 Trial date: Not set

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between plaintiff AGUSTIN UMANA VILLATORO ("Plaintiff Umana Villatoro"), plaintiff BRYAN HERNANDEZ ("Plaintiff Hernandez"), and defendant AMERICAN ASPHALT REPAIR AND RESURFACING COMPANY, INC. ("Defendant"). The Agreement refers to Plaintiff Umana Villatoro and Plaintiff Hernandez, collectively, as "Plaintiffs." Further, this agreement refers to Plaintiffs and Defendant, collectively as "Parties," or individually as "Party."

1. <u>DEFINITIONS.</u>

1.1. "Action" means the Plaintiffs' lawsuit alleging wage and hour violations against Defendant captioned *Becerra et. al. v. American Asphalt Repair and Resurfacing Company, Inc.* initiated on December 27, 2022, and pending in the Superior Court of the State of California, County of Alameda.

1.2. "Administrator" means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

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

1.4. "Aggrieved Employee(s)" means all individuals who are or were employed by Defendant as a non-exempt employee in California during the PAGA Period, as defined below.

1.5. "Class" means all persons currently or formerly employed by Defendant as a non-exempt employee in California during the Class Period, as defined below.

1.6. "Class Counsel" means Moon Law Group, PC.

1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

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1.8. "Class Data" means Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

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

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

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation, if applicable, in the form, without material variation unless otherwise agreed by the Parties, attached as **Exhibit A** and incorporated by reference into this Agreement. The Parties, through counsel, may agree to modifications to the Class Notice required to correct errors or effectuate changes required by the Court without the need to amend this Agreement, and the revised Class Notice shall be incorporated herein in place of the original **Exhibit A**.

1.12. "Class Period" means the period from August 1, 2019, through the date the Court grants preliminary approval of this Settlement.

1.13. "Class Representatives" means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as the Class Representatives.

1.14. "Class Representative Service Payments" means the payment to the Class Representatives for initiating the Action and providing services in support of the Action.

1.15. "Court" means any court before which the Parties seek settlement approval of this Agreement, including the Superior Court of California, County of Alameda.

1.16. "Defendant" means American Asphalt Repair and Resurfacing Company, Inc., the named defendant in the Action.

1.17. "Defense Counsel" means Littler Mendelson, PC.

1.18. "Effective Date" means: (a) sixty-one (61) calendar days after the date of entry of Final Approval, if no appeal is filed; or (b) if a timely appeal is made, one (1) business day after the final resolution of that appeal if the appeal is rejected or dismissed, the settlement is upheld, and the settlement approval order is no longer subject to further judicial review.

1.19. "Final Approval Order" means the Court's order granting final approval of the Settlement.

1.20. "Final Approval Hearing" means the Court's hearing on the motion for final approval of the Settlement.

1.21. "Gross Settlement Amount" means $790,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraphs 3.1 and 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the Administration Expenses Payment.

1.22. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

1.24. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.25. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).

1.26. "LWDA PAGA Payment" means the 75% portion of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).

1.27. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class

Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.28. "Non-Participating Class Member" means any Class Member who opts out of the Class portion of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.29. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.30. "PAGA Period" means the period from August 1, 2022, through the date of which the Court grants preliminary approval of this Settlement.

1.31. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq*.).

1.32. "PAGA Notice" means (a) Plaintiff Becerra's letter to Defendant and the LWDA, dated December 24, 2022; (b) Plaintiff Umana's letter to Defendant and the LWDA, dated March 20, 2023; and (c) Plaintiff Becerra's and Umana's amended letter to Defendant and the LWDA, dated October 1, 2024, providing notice pursuant to Labor Code § 2699.3(a).

1.33. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount ($80,000.00), allocated 25% to the Aggrieved Employees ($20,000.00) and 75% to the LWDA ($60,000.00) in settlement of PAGA claims.

1.34. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement.

1.35. "Plaintiffs" means Plaintiff Umana Villatoro and Plaintiff Hernandez, the named plaintiffs in the Action.

1.36. "Preliminary Approval Hearing" means the hearing of the motion requesting preliminary approval of the Class portion of the Settlement.

1.37. "Preliminary Approval Order" means the order granting preliminary approval of the Class portion of the Settlement.

1.38. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

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1.39. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.40. "Released Parties" means (i) Defendant; (ii) Defendant's past and present parents, subsidiaries and affiliates including without limitation any corporation, limited liability company, partnership, trust, foundation and non-profit entity which controls, is controlled by, or is under common control with Defendant; (iii) the past and present shareholders, directors, officers, agents, employees, members, consultants, benefit plans, successor and assigns of any of the foregoing; and (iv) any individual or entity that could be jointly liable with the foregoing.

1.41. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement.

1.42. "Response Deadline" means sixty (60) calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Class portion of the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. The Response Deadline for Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall be extended by fourteen (14) calendar days beyond the original Response Deadline.

1.43. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.44. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. <u>RECITALS.</u>

2.1. On December 27, 2022, Plaintiff Manuel Carlos Ibarra Becerra ("Plaintiff Becerra") commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 204,1194, 1194.2, and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code §§ 226.7); (5) Failure to Indemnify Necessary Business Expenses (Cal. Lab. Code §2802); (6) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, et seq.). On August 1, 2023, Plaintiff Becerra filed a First Amended Complaint (1) clarifying Plaintiff Becerra's claims; (2) adding Plaintiff Umana Villatoro and Plaintiff Hernandez as additional plaintiffs and class representatives; and (3) alleging Plaintiff Umana Villatoro's causes of action against Defendant for civil penalties under the Private Attorneys General Act ("PAGA"). On March 11, 2025, Plaintiff Becerra, Plaintiff Umana Villatoro, and Plaintiff Hernandez filed a Second Amended Complaint (1) dismissing Plaintiff Becerra's claims and (2) alleging Defendant failed to include all non-discretionary compensation within the regular rate of pay. The Second Amended Complaint is the operative complaint in the Action (the "Operative Complaint."). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code § 2699.3(a), Plaintiffs gave timely written notices to Defendant and the LWDA by sending the PAGA Notice.

2.3. On September 25, 2024, the Parties participated in an all-day mediation presided over by a professional and neutral mediator, Jeff Ross, Esq., which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiffs obtained, through formal and informal discovery, electronic time and pay periods, policy documents, and data about the class. Plaintiffs maintain their investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

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

3. **MONETARY TERMS.**

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay $790,000.00 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than $15,000.00 total, allocated as $7,500.00 to Plaintiff Umana Villatoro and $7,500.00 to Plaintiff Hernandez, (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Settlement amount, which is currently estimated to be $263,333.33, subject to the escalator clause, and a Class Counsel Litigation Expenses Payment of not more than $22,500.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administration Expenses Payment not to exceed $10,000.00, except for a showing of good cause and as approved by the Court. To the extent the Administration expenses are less or the Court approves payment less than $10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Workweeks of Non-Participating Class Members are not included in the calculation of payments to Participating Class Members and therefor have no effect on the calculation of Individual Class Payments paid from the Net Settlement Amount.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $80,000.00 to be paid from the Gross Settlement Amount, with 75% ($60,000.00) allocated to the LWDA PAGA Payment and 25% ($20,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of the $20,000.00 in PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records prior to the Parties' mediation, Defendant estimated there were 276 Class Members who collectively worked a total of 25,729 Workweeks between August 1, 2019 and September 25, 2024, and 192 Aggrieved Employees who worked a total of 11,105 PAGA Pay Periods between August 1, 2022 and September 25, 2024.

4.2. Class Data. Not later than fifteen (15) calendar days after the Court enters a Preliminary Approval Order, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) calendar days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 calendar days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the NCOA database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are retuned undelivered without a United States Postal Service ("USPS") forwarding address. Within seven (7) calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class

Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

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

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses).

5. <u>RELEASES OF CLAIMS.</u>

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. <u>Plaintiffs' Release</u>.

5.1.1. <u>Scope of Plaintiffs' Release</u>. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, known or unknown, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in Plaintiffs' PAGA Notices. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now knows or believes to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.2. Plaintiffs' Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish 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.**

5.2. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that arose during the Class Period and that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint including, but not limited to, claims for: (1) failure to pay minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay final wages at termination; and (8) related violation of California Business and Professions Code § 17200, *et. seq*. Excluded from this portion of the release are claims for PAGA penalties that arose during the PAGA Period and were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Notices. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims that arose outside of the Class Period.

5.3. PAGA Release: Plaintiff Umana Villatoro, on his own behalf, on behalf of his past and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, and on behalf of the State of California, releases the Released Parties from all claims for civil penalties under PAGA, based on the facts and Labor Code sections that arose during the PAGA Period and were alleged or reasonably could have been alleged in the Operative Complaint and/or in the PAGA Notice, including but not limited to claims for civil penalties arising from the alleged violation of California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802.

6. MOTION FOR PRELIMINARY APPROVAL.

Plaintiffs shall file a motion for preliminary approval ("Motion for Preliminary Approval") subject to the review by Defendant, as follows:

6.1. Defendant's Declaration in Support of Preliminary Approval. Within forty-five (45) calendar days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed declaration from Defendant and/or Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator, *if any such actual or potential conflicts exist*. Similarly, if any other pending matter or action asserting claims will be extinguished or adversely affected by the Settlement, Defendant shall prepare and deliver to Class Counsel a signed declaration from Defendant and/or Defense Counsel identifying any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. Alternatively, if such other actions are filed between the execution of this Agreement and the filing of the Motion for Preliminary Approval and become known to Defendant and/or Defense Counsel, Defense Counsel will advise Class Counsel. If there are no actual or potential conflicts of interest with the Administrator to disclose, or any pending matters to disclose, no declaration from Defendant and/or Defense Counsel is required.

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6.2. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel documents necessary for obtaining a Preliminary Approval Order, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under governing case law and a request for approval of the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a draft Preliminary Approval Order; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel, Defendant, or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; and, (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents; and, all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement or disclose the existence of any such pending matters. Alternatively, if such other actions are filed between the execution of this Agreement and the filing of the Motion for Preliminary Approval and become known to Class Counsel, Class Counsel will advise Defense Counsel.

6.3. Responsibilities of Counsel. Class Counsel are responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than forty-five (45) calendar days after the full execution of this Agreement (extended in the event that any court processes delay the ability to file the Motion); obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary

Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval Order to the Administrator.

6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not enter a Preliminary Approval Order or conditions a Preliminary Approval Order on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

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

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

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

7.4. Notice to Class Members.

7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of

Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as **<u>Exhibit A</u>**. The first page of the Class Notice shall prominently estimate the dollar amounts of each Individual Class Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the NCOA database.

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

7.4.4. The deadlines for Class Members' written objections, challenges to Workweeks and/or pay periods, and Requests for Exclusion will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members whose notices are re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in good faith. in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class portion of the Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member that reasonably communicates the Class Member's election to be excluded from the Class portion of the Settlement and includes the Class Member's name, address email address or telephone number and last four digits of his or her Social Security Number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release under Paragraph 5.2 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.3. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees will still receive an

Individual PAGA Payment and will be subject to a claim preclusion defense if they attempt to assert any of the Released PAGA Claims.

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must instruct the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final as to the Parties (although Defendant shall retain the right to correct erroneous Class Data if subsequently discovered), but a Class Member whose Workweek and/or Pay Period challenge is rejected by the Administrator may present the same evidence supporting the Workweek and/or Pay Period challenge to the Court for review. The Administrator shall promptly provide copies of any challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel, along with the Administrator's determinations regarding any challenges.

7.7. Objections to Settlement.

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

7.7.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final

Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) calendar days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice was re-mailed).

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

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

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval Order, the Class Notice, the motion for final approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final Approval Order and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

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

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7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, and challenges to Workweeks and/or PAGA Pay Periods received and/or resolved ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received. In addition to the Weekly Reports, the Administrator shall report to the Parties when it has completed the initial distribution of the Individual Class Payments and Individual PAGA Payments to all individuals with valid addresses.

7.8.4. Administrator's Declaration. Not later than fourteen (14) calendar days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable 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 Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the 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.

7.8.5. Final Report by Settlement Administrator. Within ten (10) calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) calendar days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense

Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. <u>ESCALATOR CLAUSE</u>

If the number of actual Workweeks at the close of the Class Period is more than ten percent (10%) higher than the estimated Workweeks per Paragraph 4.1 (i.e., exceeds 28,302 Workweeks), Defendant may, at its election, opt to (a) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of workweeks worked by the Class Members above ten percent (10%) (*e.g.,* if the number of Workweeks increases by 11% to 28,559 Workweeks, the Gross Settlement Amount will increase by 1%); or (b) end the Class Period on a date on which the total Workweeks does not exceed 28,302 . This election must be made at the time the Class Data is delivered to the Administrator.

9. <u>DEFENDANT'S RIGHT TO WITHDRAW.</u>

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated to, withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be 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, Defendant will remain responsible for paying all Settlement administration expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than ten (10) business days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. <u>MOTION FOR FINAL APPROVAL.</u>

Plaintiffs will timely file in Court a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699(*l*), a Proposed final approval order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven (7) calendar days prior to filing the Motion for Final

Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

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

10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. As this Agreement provides that the Court may award a lesser Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment than requested by Plaintiffs, the failure to award the amount requested shall not qualify as a Judgment inconsistent with the terms and conditions of this Agreement. The waiver of appeal does not include any waiver of the right to oppose any motion to vacate judgment, motion for a new trial, writ or appeal. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

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

11. AMENDED JUDGMENT.

If any amended judgment is required under California Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason, the Court does not issue a Preliminary Approval Order, Final Approval Order, or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's ability to respond to communications received from Class Members in accordance with Class Counsel's ethical obligations owed to them *provided* Class Counsel will not initiate such communications before the Motion for Preliminary Approval of Settlement is filed.

12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment.

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

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

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

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

12.8. No Tax Advice. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, Class Members and Aggrieved Employees are not relying on any statement or representation by the Parties in this regard. Class Members and Aggrieved Employees understand and agree that they will be responsible for the payment of taxes and penalties they owe and that are assessed on the payments described herein, and will hold the Defendant free and harmless from and against any claims, liabilities, costs and expenses, including attorney's fees, resulting in any way from personal tax treatment of the payments made pursuant to this Agreement, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. Each Party to this Agreement acknowledges and agrees that no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to constitute or be construed or be relied upon as, tax advice. Nor shall anything in this Settlement be relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

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

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

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

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

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

12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code § 1152 or comparable laws, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) calendar days after the date when the Court discharges the Administrator's obligation to provide a declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data in proper form.

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

12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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

To Plaintiffs:

Kane Moon, Esq.
H. Scott Leviant, Esq.
Sandy Pham, Esq.
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: hsleviant@moonlawgroup.com
E-mail: spham@moonlawgroup.com

To Defendant:

Marlene S. Muraco, Esq.
Adam J. Fiss, Esq.
Nicholas C. Lansdown, Esq.
LITTLER MENDELSON, PC
50 West San Fernando Street, 7th Floor
San Jose, California 95113
Telephone: (408)998-4150
Facsimile: (408) 288-5686
E-mail: mmuraco@littler.com
E-mail: afiss@littler.com
E-mail: nlansdown@littler.com

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

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. In addition, upon the signing of this Agreement, the Parties agree pursuant to Code of Civil Procedure § 583.330, to extend the date to bring a case to trial under Code of Civil Procedure § 583.310 for the entire period of this settlement process.

[Signature Page Follows]

Plaintiff & Class Representative: **PLAINTIFF, AGUSTIN UMANA VILLATORO**

Dated: 4/1/2025 By: Firmado por: 9964B99863674F4...
Augustin Umana Villatoro

Plaintiff & Class Representative: **PLAINTIFF, BRYAN HERNANDEZ**

Dated: 4/1/2025 By: Signed by: F5B5E90708984AD...
Bryan Hernandez

Defendant: **DEFENDANT, AMERICAN ASPHALT REPAIR AND RESURFACING COMPANY, INC.**

Dated: ____________________ By: ______________________________
Print Name

____
Signature

____
Title

Plaintiffs' Counsel: **MOON LAW GROUP, PC**

Dated: 4/1/2025 By: ______________________________
Kane Moon, Esq.
H. Scott Leviant, Esq.
Sandy Pham, Esq.

Attorneys for Plaintiffs

Defendant's Counsel: **LITTLER MENDELSON, PC**

Dated: ____________________ By: ______________________________
Marlene S. Muraco, Esq.
Adam J. Fiss, Esq.
Nicholas C. Lansdown, Esq.

Attorneys for Defendant

Plaintiff & Class Representative: **PLAINTIFF, AGUSTIN UMANA VILLATORO**

Dated: ____________________ By: ____

Augustin Umana Villatoro

Plaintiff & Class Representative: **PLAINTIFF, BRYAN HERNANDEZ**

Dated: ____________________ By: ____

Bryan Hernandez

Defendant: **DEFENDANT, AMERICAN ASPHALT REPAIR AND RESURFACING COMPANY, INC.**

Dated: 4/1/25 By: Steve Aguirre

Print Name

Steve Aguirre

Signature

V.P.

Title

Plaintiffs' Counsel: **MOON LAW GROUP, PC**

Dated: ____________________ By: ____

Kane Moon, Esq.
H. Scott Leviant, Esq.
Sandy Pham, Esq.

Attorneys for Plaintiffs

Defendant's Counsel: **LITTLER MENDELSON, PC**

Dated: 4/4/2025 By: ____

Marlene S. Muraco, Esq.
Adam J. Fiss, Esq.
Nicholas C. Lansdown, Esq.

Attorneys for Defendant

EXHIBIT A

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

Becerra et. al. v. American Asphalt Repair and Resurfacing Company, Inc., Alameda County Superior Court Case No. 22CV024706

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

You may be eligible to receive money from an employee class action lawsuit ("Action") against defendant AMERICAN ASPHALT REPAIR AND RESURFACING COMPANY, INC. ("Defendant")[1] for alleged wage and hour violations. The Action was pursued by Defendant's former employees, Augustin Umana Villatoro and Bryan Hernandez ("Plaintiffs"), and seeks payment of (1) back wages and other relief for a class of hourly non-exempt employees ("Class Members") who worked for Defendant during the Class Period (August 1, 2019 to __________); and, (2) penalties under the California Labor Code Private Attorneys General Act ("PAGA") for all hourly non-exempt employees who worked for Defendant during the PAGA Period (August 1, 2022 to __________) (the "Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Defendant's records, and the Parties' current assumptions, your Individual Class Payment is estimated to be $______ (less withholding) and your individual share of the Individual PAGA Payment is estimated to be $______. The actual amount you may receive might be slightly different and will depend on a number of factors, including the amount of various payments approved by the Court. (If no amount is stated for your Individual PAGA Payment, then according to Defendant's records you are not eligible for such a payment under the Settlement because you didn't work during the covered period.)

The above estimates are based on Defendant's records showing that you worked ______ workweeks during the Class Period, and you worked ______ pay periods during the PAGA Period. If you believe that you worked more workweeks or pay periods during either of the respective periods, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

If you worked for Defendant during the Class Period, you have two primary options under the Settlement:

(1) **Do Nothing**. You don't have to do anything to participate in the proposed Settlement and receive a monetary payment.

(2) **Opt-Out of the Class Settlement**. You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion. If you opt-out of the Settlement, you will not receive an Individual Settlement Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant in a separate action. You cannot opt-out of the PAGA portion of the proposed Settlement so if you qualify for an Individual PAGA Payment you will receive it.

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

[1] All key terms herein are further defined in the Parties' CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement **The Opt-out Deadline is ______________**	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section **6** of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. All Aggrieved Employees (defined below) will receive an Individual PAGA Payment.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement **Written Objections Must be Submitted by ______________**	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement except with respect to the PAGA Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section **7** of this Notice.
You Can Participate in the ______________ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on ______________. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section **8** of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods **Written Challenges Must be Submitted by ______________**	The amount of your Individual Class Payment and Individual PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period, and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by ______________. See Section **4** of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendant. The Action accuses Defendant of violating California labor laws by failing to pay overtime wages, minimum and straight time wages, wages due upon termination and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (beginning at Labor Code section 2698) ("PAGA Claims"). Plaintiffs are represented by attorneys in the Action: Moon Law Group, PC ("Class Counsel.")

Defendant denies all liability arising from the Action and is confident it has strong legal and factual defenses to Plaintiffs' claims. Defendant contends that, at all relevant times, Defendant properly compensated all employees and fully complied with all applicable laws. Defendant also denies that the Action is appropriate to maintain as a class or representative action.

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

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator Jeff Ross, Esq., to resolve the Action by negotiating and to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

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

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

1. Defendant will Pay $790,000.00 as the Gross Settlement Amount (GSA). Defendant has agreed to deposit the GSA into an account controlled by the Administrator of the Settlement. Following Court approval, the Administrator will use the GSA to pay the Individual Settlement Payments, Individual PAGA Payments, the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Administration Expenses Payment, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the GSA not more than fourteen (14) days after the Judgment entered by the Court becomes final (the "Effective Date"). The Judgment will be final 61 days after the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from GSA. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the GSA, the amounts of which will be decided by the Court at the Final Approval Hearing:

  A. Up to $263,333.33 (one-third (1/3) of the GSA) to Class Counsel for attorneys' fees and up to $22,500.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

  B. Up to $15,000.00 total for the Class Representative Service Payments for pursuing the Action, working with Class Counsel and representing the Class.

  C. Up to $10,000.00 to the Administrator for services administering the Settlement.

  D. $80,000.00 for PAGA Penalties, allocated 75% ($60,000.00) to the LWDA and 25% ($20,000.00) to Individual PAGA Payments to the Aggrieved Employees based on their PAGA Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the GSA (the "Net Settlement") by making Individual Settlement Payments to Participating Class Members based on their Workweeks worked.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report any Individual PAGA Payments and the Non-Wage Portions of the Individual Class Settlement Payments on IRS 1099 Forms.

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

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

6. Requests for Exclusion from the Class Settlement (Opt-Out Request). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _______________, that you wish to opt-out. The process for opting out is discussed in Question 6, below..

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class (Non-Participating Class Members) remain eligible for an Individual PAGA Payment.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that

is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Request for Exclusion. The Administrator will also evaluate Class Member challenges over Workweeks and/or Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks to administer the Settlement. The Administrator's contact information is in Section 9 below.

9. Participating Class Members' Release. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of another lawsuit against Defendant or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

> All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that arose during the Class Period and that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint including, but not limited to, claims for: (1) failure to pay minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay final wages at termination; and (8) related violation of California Business and Professions Code § 17200, et. seq. Excluded from this portion of the release are claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the PAGA Notices. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims that arose outside of the Class Period.

10. The PAGA Release. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, on their own behalf and on behalf of the State of California, will be barred from asserting PAGA Claims against the Released Parties, including Defendant. Because this Court-approved Settlement of PAGA claims will bind the State of California, other individuals cannot later sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA claims alleged in the Action and resolved by this Settlement.

The release of PAGA claims is follows:

> Plaintiff VILLATORO, on his own behalf, on behalf of himself and his respective past and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, and on behalf of the State of California, releases the Released Parties from all claims for civil penalties under PAGA, based on the facts and Labor Code sections that arose during the PAGA Period and were alleged or reasonably could have been alleged in the Operative Complaint and/or in Plaintiff VILLATORO's PAGA notices of violations and/or amended PAGA notices of violations, including but not limited to claims for civil penalties arising from the alleged violation of California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing $20,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual Aggrieved Employee.

3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until ______________ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel and Defendant's Counsel. If you submit a challenge that is rejected by the Administrator, you may present the same evidence supporting the Workweek and/or Pay Period challenge to the Court for review.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., Class Members who don't opt-out) and all Class Members who also qualify as Aggrieved Employees. The single check will combine the Individual Class Settlement Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single individual share of the PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member who is eligible as an Aggrieved Employee).

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

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

Submit a written and signed Request for Exclusion with your name, address and email address or telephone number, the last four digits of your Social Security Number, and a simple statement that you do not want to participate in the Settlement. Be sure to personally sign your Request for Exclusion and identify the Action in a way that is clear. You must make the request yourself. The Administrator must be sent your request to be excluded by ______________, or it will be invalid. Section **9** of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement, and they can do so in writing, in person at Court, or through an attorney. A Participating Class Member who disagrees with any aspect of the Settlement, the motion for final approval and for awards of fees, litigation expenses and service award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. The deadline for sending written objections to the Administrator is ______________. If you choose to submit a written objection, be sure to tell the Administrator in your written objection what you object to, why you object, and any facts that support your objection. If you submit a written objection, make sure you identify the Action (by including the case name and case number) and print your name, address and email address or telephone number and the last four digits of your Social Security Number and sign the objection. Section **9** of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on ______________ at ________ in Department 21 of the Alameda Superior Court, Rene C. Davidson Courthouse, located at 1225 Fallon Street, Oakland, CA 94612. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the GSA will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend).

It's possible the Court will reschedule the Final Approval Hearing. You should contact the Administrator to verify the date and time of the Final Approval Hearing if you are planning to attend the hearing or have your own lawyer attend.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at _______________________. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Alameda Superior Court website.

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

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Settlement Administrator:

Name of Company: Phoenix Settlement Administrators
Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check.

11. WHAT IF I CHANGE MY ADDRESS?

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

12. WHAT IS A PAGA PENALTY?

The Net Settlement is money paid to settle claims for Participating Class Members. But the PAGA claim is different. PAGA penalties were originally penalties that only the State of California could collect through an enforcement action brought by the State against an employer. In 2004, the State enacted PAGA, a law that allows employees to try to recover those penalties for the State. Under the version of PAGA in effect for this Settlement, the State agrees to share 25% of its penalties with the affected employees (here, the Aggrieved Employees). The PAGA settlement proposed as part of this Settlement is a settlement of the State's PAGA claim.

Exhibit "2"