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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

**SUPPLEMENTAL DECLARATION OF H.
SCOTT LEVIANT IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: July 1, 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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1 SUPPLEMENTAL DECLARATION OF H. SCOTT LEVIANT

2 I, H. Scott Leviant, declare as follows:

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

11 2. I am employed as a Senior Counsel at the law firm of Moon Law Group, PC (formerly
12 Moon & Yang, APC). My business address is 725 S. Figueroa St., 31st Floor, Los Angeles, California
13 90017 and my business telephone number is (213) 232-3128. I am counsel for Plaintiffs AGUSTIN
14 UMANA VILLATORO and BRYAN HERNANDEZ ("Plaintiffs"), and I am proposed counsel for the
15 Settlement Class.

16 3. This Supplemental Declaration is submitted in support of Plaintiffs' Notice of Motion
17 and Motion for Preliminary Approval of Class and Representative Action Settlement and in response to
18 the Court's Order of May 27, 2025.

19
20 THE COURT'S MAY 27, 2025 ORDER

21 4. Plaintiffs filed a Motion for Preliminary Approval of Class and Representative Action
22 Settlement. The Court considered Plaintiffs' Motion and issued an Order directing the Parties to correct
23 several issues identified by the Court. The corrections required by the Court are as follows:

- 24 (a) The scope of the LWDA's release must be limited to the scope of the PAGA
25 notice letter, but, in the original settlement agreement, the text of Paragraph 5.3
26 stated that the LWDA's release is of claims that "were alleged or reasonably
27 could have been alleged in the Operative Complaint and/or in the PAGA Notice."

28 The Court found this language to be inadequate.

- (b) The original settlement agreement stated that uncashed check funds would go to the California Controller's Unclaimed Property Fund. Counsel were directed to identify a beneficiary consistent with Code of Civil Procedure § 384, and submit the information required by Code of Civil Procedure § 382.4.
- (c) The Court required a clear instruction that prohibits the settlement administrator from distributing any funds to the *cy pres* beneficiary until after the court approves the final accounting.
- (d) The Court found that a check cashing period of 180 days was unnecessarily long and should be shortened to 120 days so as to not unnecessarily delay the final accounting and the associated determinations of whether there should be a second distribution and whether to release funds to the *cy pres* beneficiary and to counsel.
- (e) The Court found that ten percent of any fee award should be held by the settlement administrator until the completion of the distribution process and the Court's approval of the final accounting.
- (f) The proposed class notice form must be amended if settlement terms are changed.

THE PARTIES' RESPONSE TO THE COURT'S MAY 27, 2025 ORDER

5. The Parties received and reviewed the Court's May 27, 2025 Order. In response to the directions of the Court, the settlement agreement ("Agreement") and proposed class notice were both amended.¹ In addition, the proposed class notice was revised to improve clarity. Those revisions are summarized as follows:

- (a) The scope of the LWDA's release is limited to the scope of the PAGA notice letter: "Plaintiff Umana Villatoro, on his own behalf, and on behalf of the State of California, releases the Released Parties from all claims for civil penalties

¹ As identified below, the Agreement and amended proposed class notice form are attached hereto in both final form and redlined form.

1 under PAGA, based on the facts and Labor Code sections that arose during the
2 PAGA Period and were alleged in the PAGA Notice letters, including but not
3 limited to claims for civil penalties arising from the alleged violation of
4 California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.3,
5 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and
6 2802.” (Agreement, ¶ 5.3.)

7 (b) The funds represented by uncashed checks will be issued to a *cy pres* recipient
8 after Court approval to do so: “For any Class Member whose Individual Class
9 Payment check or Individual PAGA Payment check is uncashed and cancelled
10 after the void date, the Administrator shall transmit the funds represented by such
11 checks to the following *cy pres* recipient: the California State Bar’s Greg E. Knoll
12 Justice Gap Fund.” (Agreement, ¶ 4.4.3.)

13 (c) The *cy pres* distribution will not occur until the Court authorizes the distribution:
14 “This distribution to the *cy pres* recipient by the Administrator shall not happen
15 until approved by the Court following the final accounting hearing.”
16 (Agreement, ¶ 4.4.3.)

17 (d) The check cashing period has been reduced to 120 days. (Agreement, ¶ 4.4.1.)

18 (e) The Agreement specifies that ten percent of Class Counsel’s fees will be held
19 back until after the Court approves the final accounting: “Ten percent of the
20 awarded Class Counsel Fees Payment shall be kept in the administrator's trust
21 fund until the completion of the distribution process and Court approval of a final
22 accounting.” (Agreement, ¶ 3.2.2.)

23 (f) The Class Notice has been amended to include both required corrections and
24 voluntary improvements as follows:

- 25 1) The PAGA release language has been modified to match the amended
26 release in the Agreement.
- 27 2) The estimated payment(s) to each Class Member are highlighted in a
28 chart on the first page of the Notice.

- 1 3) The location of the final approval hearing is included on the first page of
2 the Notice.
- 3 4) The redundant, partial summary of options at the end of page 1 of the
4 Notice was removed so as to not create confusion. Instead, the end of the
5 first page directs Class Members to read the complete summary of
6 options contained in the chart on page 2 of the Notice.
- 7 5) Numbered paragraphs were changed to letter-based lists so that Section
8 numbers and Paragraph numbers will not be confused with each other
9 where the Notice directs Class Members to certain numbered Sections.
- 10 6) The summary of the alleged claims was corrected to include the UCL
11 claim.
- 12 7) Some inconsistent references to defined terms were corrected.

13

14 EXHIBITS

15 6. A true and correct copy of the first amended CLASS ACTION AND PAGA
16 SETTLEMENT AGREEMENT AND CLASS NOTICE is attached hereto as **Exhibit “3.”** The
17 Settlement includes amended Exhibit A (the “Notice”).

18 7. A true and correct copy of the amended Notice, in redlined format as compared to the
19 original, is attached hereto as **Exhibit “4.”**

20 8. A true and correct copy of the first amended CLASS ACTION AND PAGA
21 SETTLEMENT AGREEMENT, in redlined format as compared to the original, is attached hereto as
22 **Exhibit “5.”**

23 9. Attached hereto as **Exhibit “6”** is a true and correct copy of confirmation of the
24 submission of the amended settlement to the Department of Industrial Relations, through its online
25 submission portal.

26

27 PAGA SETTLEMENT NOTIFICATION TO DIR

28 10. Counsel for Plaintiffs provided notice of the requested approval of the PAGA settlement

1 through the online submission portal.

3 THE PROPOSED CY PRES RECIPIENT

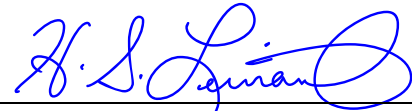
4 11. In response to the Court's instructions, the Parties have selected the California State Bar's
5 Greg E. Knoll Justice Gap Fund as the proposed *cy pres* recipient for funds represented by uncashed
6 settlement checks. According to the State Bar, the Greg E. Knoll Justice Gap Fund is one of three
7 significant sources of funding for about 100 legal aid organizations across the state providing free civil
8 legal services to low-income Californians. The other two sources are the Interest on Lawyers' Trust
9 Accounts (IOLTA) and the state Equal Access Fund (EAF). The State Bar's Office of Access &
10 Inclusion administers all three programs. The Greg E. Knoll Justice Gap Fund helps the public in many
11 ways, including:

- 12 (a) Providing legal assistance to victims of domestic violence and elder abuse;
- 13 (b) Helping to keep families intact by avoiding homelessness and establishing
14 guardianships;
- 15 (c) Ensuring that low-income children receive needed health care and special
16 education services; and
- 17 (d) Protecting the rights of consumers and workers to avoid fraud and exploitation.

18 Additional information is available at: [https://www.calbar.ca.gov/Access-to-Justice/Grants/Greg-E-](https://www.calbar.ca.gov/Access-to-Justice/Grants/Greg-E-Knoll-Justice-Gap-Fund)
19 [Knoll-Justice-Gap-Fund](https://www.calbar.ca.gov/Access-to-Justice/Grants/Greg-E-Knoll-Justice-Gap-Fund).

20 12. Counsel for all Parties are signatories to the Agreement, which, as amended, now states,
21 "Other than the fact that counsel for the Parties are members of the State Bar, no counsel for any Party
22 has any relationship with the California State Bar's Greg E. Knoll Justice Gap Fund." I can further
23 confirm that no attorney at Moon Law Group, PC, has any supervisory, managerial, advisory, or other
24 oversight relationship with the California State Bar's Greg E. Knoll Justice Gap Fund or the State Bar's
25 Legal Services Trust Fund Commission. The current membership of the Legal Services Trust Fund
26 Commission, which oversees legal aid programs, including the California State Bar's Greg E. Knoll
27 Justice Gap Fund, is available here: [https://www.calbar.ca.gov/About-Us/Who-We-](https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Legal-Services-Trust-Fund-Commission/Roster)
28 [Are/Committees/Legal-Services-Trust-Fund-Commission/Roster](https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Legal-Services-Trust-Fund-Commission/Roster).

1 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
2 true and correct. Executed June 24, 2025, at Los Angeles, California.

3
4 

5 _____
H. Scott Leviant, "Declarant"

Exhibit “3”

Kane Moon (SBN 249834)
H. Scott Leviant (SBN 200834)
Sandy Pham (SBN 352753)
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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. Somnath Raj Chatterjee,
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. **DEFINITIONS.**

- 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. **RECITALS.**

- 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

1 to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit
2 Rest Breaks (Cal. Lab. Code §§ 226.7); (5) Failure to Indemnify Necessary Business
3 Expenses (Cal. Lab. Code §2802); (6) Failure to Timely Pay Final Wages at Termination
4 (Cal. Lab. Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements
5 (Cal. Lab. Code § 226); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200,
6 et seq.). On August 1, 2023, Plaintiff Becerra filed a First Amended Complaint (1) clarifying
7 Plaintiff Becerra’s claims; (2) adding Plaintiff Umana Villatoro and Plaintiff Hernandez as
8 additional plaintiffs and class representatives; and (3) alleging Plaintiff Umana Villatoro’s
9 causes of action against Defendant for civil penalties under the Private Attorneys General
10 Act (“PAGA”). On March 11, 2025, Plaintiff Becerra, Plaintiff Umana Villatoro, and
11 Plaintiff Hernandez filed a Second Amended Complaint (1) dismissing Plaintiff Becerra’s
12 claims and (2) alleging Defendant failed to include all non-discretionary compensation
13 within the regular rate of pay. The Second Amended Complaint is the operative complaint
14 in the Action (the “Operative Complaint.”). Defendant denies the allegations in the
15 Operative Complaint, denies any failure to comply with the laws identified in in the
16 Operative Complaint, and denies any and all liability for the causes of action alleged.

17 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiffs gave timely written notices to Defendant and
18 the LWDA by sending the PAGA Notice.

19 2.3. On September 25, 2024, the Parties participated in an all-day mediation presided over by a
20 professional and neutral mediator, Jeff Ross, Esq., which led to this Agreement to settle the
21 Action.

22 2.4. Prior to mediation, Plaintiffs obtained, through formal and informal discovery, electronic
23 time and pay periods, policy documents, and data about the class. Plaintiffs maintain their
24 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot*
25 *Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail,*
26 *Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) (“*Dunk/Kullar*”).

27 2.5. The Court has not granted class certification.

28 //

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

1 full responsibility and liability for employee taxes owed on the Class Representative
2 Service Payment.

3 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3)
4 of the Settlement amount, which is currently estimated to be \$263,333.33, subject to
5 the escalator clause, and a Class Counsel Litigation Expenses Payment of not more
6 than \$22,500.00. Defendant will not oppose requests for these payments provided
7 that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a
8 motion for Class Counsel Fees Payment and Class Litigation Expenses Payment
9 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees
10 Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts
11 requested, the Administrator will allocate the remainder to the Net Settlement
12 Amount. Released Parties shall have no liability to Class Counsel or any other
13 Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee
14 Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
15 will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses
16 Payment using one or more IRS 1099 Forms. Class Counsel assumes full
17 responsibility and liability for taxes owed on the Class Counsel Fees Payment and
18 the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and
19 indemnifies Defendant, from any dispute or controversy regarding any division or
20 sharing of any of these Payments. Ten percent of the awarded Class Counsel Fees
21 Payment shall be kept in the administrator's trust fund until the completion of the
22 distribution process and Court approval of a final accounting.

23 3.2.3. To the Administrator: An Administration Expenses Payment not to exceed
24 \$10,000.00, except for a showing of good cause and as approved by the Court. To
25 the extent the Administration expenses are less or the Court approves payment less
26 than \$10,000.00, the Administrator will retain the remainder in the Net Settlement
27 Amount.

28 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 120 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 returned 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

1 address provided or to an address ascertained through the Class Member Address
2 Search. The Administrator need not take further steps to deliver checks to Class
3 Members whose re-mailed checks are returned as undelivered. The Administrator
4 shall promptly send a replacement check to any Class Member whose original check
5 was lost or misplaced, requested by the Class Member prior to the void date.

6 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA
7 Payment check is uncashed and cancelled after the void date, the Administrator shall
8 transmit the funds represented by such checks to the following *cy pres* recipient: the
9 California State Bar's Greg E. Knoll Justice Gap Fund. This distribution to the *cy*
10 *pres* recipient by the Administrator shall not happen until approved by the Court
11 following the final accounting hearing. Other than the fact that counsel for the
12 Parties are members of the State Bar, no counsel for any Party has any relationship
13 with the California State Bar's Greg E. Knoll Justice Gap Fund.

14 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
15 not obligate Defendant to confer any additional benefits or make any additional
16 payments to Class Members (such as 401(k) contributions or bonuses).

17
18 **5. RELEASES OF CLAIMS.**

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

22 5.1. Plaintiffs' Release.

23 5.1.1. Scope of Plaintiffs' Release. Plaintiffs and their respective former and present
24 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
25 assigns generally, release and discharge Released Parties from all claims,
26 transactions, or occurrences, known or unknown, including, but not limited to: (a)
27 all claims that were, or reasonably could have been, alleged, based on the facts
28 contained, in the Operative Complaint and (b) all PAGA claims that were, or

1 reasonably could have been, alleged based on facts contained in Plaintiffs' PAGA
2 Notices. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims
3 or actions to enforce this Agreement, or to any claims for vested benefits,
4 unemployment benefits, disability benefits, social security benefits, workers'
5 compensation benefits that arose at any time, or based on occurrences outside the
6 Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law
7 different from, or in addition to, the facts or law that Plaintiffs now knows or believes
8 to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain
9 effective in all respects, notwithstanding such different or additional facts or
10 Plaintiffs' discovery of them.

11 5.1.2. Plaintiffs' Waiver of Rights Under California Civil Code § 1542. For purposes of
12 Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights,
13 and benefits, if any, of Section 1542 of the California Civil Code, which reads:

14 **A general release does not extend to claims that the creditor or**
15 **releasing party does not know or suspect to exist in his or her favor**
16 **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.

17 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of
18 themselves and their respective former and present representatives, agents, attorneys, heirs,
19 administrators, successors, and assigns, release Released Parties from all claims that arose
20 during the Class Period and that were alleged, or reasonably could have been alleged, based
21 on the facts stated in the Operative Complaint including, but not limited to, claims for: (1)
22 failure to pay minimum wages; (2) failure to pay overtime compensation; (3) failure to
23 provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify
24 necessary business expenses; (6) failure to timely pay final wages at termination; and (8)
25 related violation of California Business and Professions Code § 17200, *et. seq.* Excluded
26 from this portion of the release are claims for PAGA penalties that arose during the PAGA
27 Period and were alleged, or reasonably could have been alleged, based on the facts stated in
28 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, 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 in the PAGA Notice letters, 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.

1 7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator
2 shall notify Class Counsel that the list has been received and state the number of
3 Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class
4 Data.

5 7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen
6 (14) calendar days after receiving the Class Data, the Administrator will send to all
7 Class Members identified in the Class Data, via first-class USPS mail, the Class
8 Notice with Spanish translation, substantially in the form attached to this Agreement
9 as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar
10 amounts of each Individual Class Payment and/or Individual PAGA Payment
11 payable to the Class Member and/or Aggrieved Employee, and the number of
12 Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts.
13 Before mailing Class Notices, the Administrator shall update Class Member
14 addresses using the NCOA database.

15 7.4.3. Not later than three (3) business days after the Administrator's receipt of any Class
16 Notice returned by the USPS as undelivered, the Administrator shall re-mail the
17 Class Notice using any forwarding address provided by the USPS. If the USPS does
18 not provide a forwarding address, the Administrator shall conduct a Class Member
19 Address Search, and re-mail the Class Notice to the most current address obtained.
20 The Administrator has no obligation to make further attempts to locate or send Class
21 Notice to Class Members whose Class Notice is returned by the USPS a second time.

22 7.4.4. The deadlines for Class Members' written objections, challenges to Workweeks
23 and/or pay periods, and Requests for Exclusion will be extended an additional
24 fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided
25 in the Class Notice for all Class Members whose notices are re-mailed. The
26 Administrator will inform the Class Member of the extended deadline with the re-
27 mailed Class Notice.

28 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

1 fax, email, or mail. In the alternative, Participating Class Members may appear in
2 Court (or hire an attorney to appear in Court) to present verbal objections at the Final
3 Approval Hearing. A Participating Class Member who elects to send a written
4 objection to the Administrator must do so not later than sixty (60) calendar days after
5 the Administrator's mailing of the Class Notice (plus an additional fourteen (14)
6 calendar days for Class Members whose Class Notice was re-mailed).

7 7.7.3. Non-Participating Class Members have no right to object to any of the class action
8 components of the Settlement.

9 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
10 performed or observed by the Administrator contained in this Agreement or otherwise.

11 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
12 and maintain and use an internet website to post information of interest to Class
13 Members including the date, time and location for the Final Approval Hearing and
14 copies of the Settlement Agreement, Motion for Preliminary Approval, the
15 Preliminary Approval Order, the Class Notice, the motion for final approval, the
16 Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses
17 Payment and Class Representative Service Payments, the Final Approval Order and
18 the Judgment. The Administrator will also maintain and monitor an email address
19 and a toll-free telephone number to receive Class Member calls, faxes and emails.

20 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
21 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
22 Not later than five (5) calendar days after the expiration of the deadline for
23 submitting Requests for Exclusion, the Administrator shall email a list to Class
24 Counsel and Defense Counsel containing (a) the names and other identifying
25 information of Class Members who have timely submitted valid Requests for
26 Exclusion ("Exclusion List"); (b) the names and other identifying information of
27 Class Members who have submitted invalid Requests for Exclusion; (c) copies of all
28 Requests for Exclusion from Settlement submitted (whether valid or invalid).

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3 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports
4 to Class Counsel and Defense Counsel that, among other things, tally the number of:
5 Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
6 Exclusion (whether valid or invalid) received, objections received, and challenges to
7 Workweeks and/or PAGA Pay Periods received and/or resolved (“Weekly Report”).
8 The Weekly Reports must include provide the Administrator’s assessment of the
9 validity of Requests for Exclusion and attach copies of all Requests for Exclusion
10 and objections received. In addition to the Weekly Reports, the Administrator shall
11 report to the Parties when it has completed the initial distribution of the Individual
12 Class Payments and Individual PAGA Payments to all individuals with valid
13 addresses.

14 7.8.4. Administrator’s Declaration. Not later than fourteen (14) calendar days before the
15 date by which Plaintiffs are required to file the Motion for Final Approval of the
16 Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a
17 signed declaration suitable for filing in Court attesting to its due diligence and
18 compliance with all of its obligations under this Agreement, including, but not
19 limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the
20 re-mailing of Class Notices, attempts to locate Class Members, the total number of
21 Requests for Exclusion from Settlement it received (both valid or invalid), the
22 number of written objections and attach the Exclusion List. The Administrator will
23 supplement its declaration as needed or requested by the Parties and/or the Court.
24 Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

25 7.8.5. Final Report by Settlement Administrator. Within ten (10) calendar days after the
26 Administrator disburses all funds in the Gross Settlement Amount, the Administrator
27 will provide Class Counsel and Defense Counsel with a final report detailing its
28 disbursements by employee identification number only of all payments made under

1 this Agreement. At least fifteen (15) calendar days before any deadline set by the
2 Court, the Administrator will prepare, and submit to Class Counsel and Defense
3 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement
4 of all payments required under this Agreement. Class Counsel is responsible for
5 filing the Administrator's declaration in Court.
6

7 **8. ESCALATOR CLAUSE**

8 If the number of actual Workweeks at the close of the Class Period is more than ten percent (10%) higher
9 than the estimated Workweeks per Paragraph 4.1 (i.e., exceeds 28,302 Workweeks), Defendant may, at its
10 election, opt to (a) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase
11 in the number of workweeks worked by the Class Members above ten percent (10%) (e.g., if the number of
12 Workweeks increases by 11% to 28,559 Workweeks, the Gross Settlement Amount will increase by 1%);
13 or (b) end the Class Period on a date on which the total Workweeks does not exceed 28,302 . This election
14 must be made at the time the Class Data is delivered to the Administrator.
15

16 **9. DEFENDANT'S RIGHT TO WITHDRAW.**

17 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all
18 Class Members, Defendant may, but is not obligated to, withdraw from the Settlement. The Parties agree
19 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and
20 that neither Party will have any further obligation to perform under this Agreement; provided, however,
21 Defendant will remain responsible for paying all Settlement administration expenses incurred to that point.
22 Defendant must notify Class Counsel and the Court of its election to withdraw not later than ten (10) business
23 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no
24 effect.
25

26 **10. MOTION FOR FINAL APPROVAL.**

27 Plaintiffs will timely file in Court a motion for final approval of the Settlement that includes a request for
28 approval of the PAGA settlement under Labor Code § 2699(l), a Proposed final approval order and a

1 proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these
2 documents to Defense Counsel not later than seven (7) calendar days prior to filing the Motion for Final
3 Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in good faith, to resolve
4 any disagreements concerning the Motion for Final Approval.

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

9 10.2. Duty to Cooperate. If the Court does not issue a Final Approval Order or conditions the Final
10 Approval Order on any material change to the Settlement (including, but not limited to, the
11 scope of release to be granted by Class Members), the Parties will expeditiously work
12 together in good faith to address the Court’s concerns by revising the Agreement as
13 necessary to obtain Final Approval. The Court’s decision to award less than the amounts
14 requested for the Class Representative Service Payments, Class Counsel Fees Payment,
15 Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall
16 not constitute a material modification to the Agreement within the meaning of this
17 paragraph.

18 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
19 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes
20 of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration
21 matters, and (iii) addressing such post-Judgment matters as are permitted by law.

22 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
23 conditions of this Agreement, the Parties, their respective counsel, and all Participating Class
24 Members who did not object to the Settlement as provided in this Agreement, waive all
25 rights to appeal from the Judgment, including all rights to post-judgment and appellate
26 proceedings, the right to file motions to vacate judgment, motions for new trial,
27 extraordinary writs, and appeals. As this Agreement provides that the Court may award a
28 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: 6/20/2025

By:

Firmado por:

9964B99863674F4...

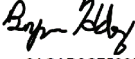
Augustin Umana Villatoro

Plaintiff & Class Representative:

PLAINTIFF, BRYAN HERNANDEZ

Dated: 6/23/2025

By:

Signed by:

3ACAD9C7596242E...

Bryan Hernandez

Defendant:

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

Dated: _____

By: _____

Print Name

Signature

Title

Plaintiffs' Counsel:

MOON LAW GROUP, PC

Dated: June 23, 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

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

2 Dated: _____ By: _____
3 Augustin Umana Villatoro

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

5 Dated: _____ By: _____
6 Bryan Hernandez

7
8 **Defendant:** **DEFENDANT, AMERICAN ASPHALT REPAIR
9 AND RESURFACING COMPANY, INC.**

10 Dated: 6/23/25 By: Steve Aguirre
11 Print Name

12 Steve Aguirre
13 Signature

14 V. P.
15 Title

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

17 Dated: _____ By: _____
18 Kane Moon, Esq.
19 H. Scott Leviant, Esq.
20 Sandy Pham, Esq.

21 *Attorneys for Plaintiffs*

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

23 Dated: June 23, 2025 By: Marlene Muraco
24 Marlene S. Muraco, Esq.
25 Adam J. Fiss, Esq.
26 Nicholas C. Lansdown, Esq.

27 *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 [REDACTED]); 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 [REDACTED]) (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”).

YOUR ESTIMATED SETTLEMENT PAYMENT

Individual Class Payment:	Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class Payment is estimated to be \$ [REDACTED] (less tax withholdings)
Individual PAGA Payment:	Based on Defendant’s records, and the Parties’ current assumptions, your individual share of the Individual PAGA Payment is estimated to be \$ [REDACTED]

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 [REDACTED] workweeks during the Class Period, and you worked [REDACTED] 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. The final approval hearing is scheduled to be held on [REDACTED] at [REDACTED] in Department 21 of the Alameda Superior Court, Rene C. Davidson Courthouse, located at 1225 Fallon Street, Oakland, CA 94612.

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

A summary of your options is contained in the chart on the next page.

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 these claims, Plaintiffs asserted a claim under the Unfair Competition Law (beginning at Business & Professions Code section 17200), and 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?

A. 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.

B. 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 (up to \$7,500.00 to each Plaintiff), 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.

C. 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.

D. 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.

E. 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.

F. Requests for Exclusion from the Class Settlement. You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing with a Request for Exclusion, not later than [REDACTED], 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.

G. 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.

H. 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’ Requests 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.

I. 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.

J. 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, 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 in Plaintiff VILLATORO’s PAGA Notice letters, 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?

A. 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.

B. 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.

C. 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 [REDACTED] 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?

A. 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.

B. 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 [REDACTED], 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 [REDACTED]. 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 [REDACTED] at [REDACTED] 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 [REDACTED]. 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.

Class Counsel:

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
kmoon@moonlawgroup.com
hleviant@moonlawgroup.com
spham@moonlawgroup.com

Defendant's Counsel:

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

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 “4”

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 [REDACTED]); 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 [REDACTED]) (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").

YOUR ESTIMATED SETTLEMENT PAYMENT

<u>Individual Class Payment:</u>	Based on Defendant's records, and the Parties' current assumptions, your Individual Class Payment is estimated to be \$ [REDACTED] (less tax withholdings)
<u>Individual PAGA Payment:</u>	Based on Defendant's records, and the Parties' current assumptions, your individual share of the Individual PAGA Payment is estimated to be \$ [REDACTED]

~~Based on Defendant's records, and the Parties' current assumptions, your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your individual share of the Individual PAGA Payment is estimated to be \$ [REDACTED]. 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 [REDACTED] workweeks during the Class Period, and you worked [REDACTED] 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. The final approval hearing is scheduled to be held on [REDACTED] at [REDACTED] in Department 21 of the Alameda Superior Court, Rene C. Davidson Courthouse, located at 1225 Fallon Street, Oakland, CA 94612.

~~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~~

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

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~~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.

[A summary of your options is contained in the chart on the next page.](#)

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 [REDACTED]	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 [REDACTED]	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 [REDACTED] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [REDACTED]. 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 [REDACTED]	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 [REDACTED]. 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~~ these claims, Plaintiffs asserted a claim under the Unfair Competition Law (beginning at Business & Professions Code section 17200); Plaintiffs have also asserted and 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?

A4. 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.

B2. 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 (up to \$7,500.00 to each Plaintiff), 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.

C3. 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.

D4. 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.

E5. 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.

F6. 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 with a Request for Exclusion, not later than [REDACTED], 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.

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G7. 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.

H8. 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’ Requests 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.

I9. 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.

J40. 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, ~~and 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~~ Notice letter, 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?

A1. 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.

B2. 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.

C3. 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 [REDACTED] 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?

A4. 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.

B2. 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 [REDACTED], 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 [REDACTED]. 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 [REDACTED] at [REDACTED] 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 [REDACTED]. 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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H. Scott Leviant, Esq.
Sandy Pham, Esq.
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E-mail: nlansdown@littler.com

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 “5”

Kane Moon (SBN 249834)
H. Scott Leviant (SBN 200834)
Sandy Pham (SBN 352753)
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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. DEFINITIONS.

- 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. **RECITALS.**

- 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

1 to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit
2 Rest Breaks (Cal. Lab. Code §§ 226.7); (5) Failure to Indemnify Necessary Business
3 Expenses (Cal. Lab. Code §2802); (6) Failure to Timely Pay Final Wages at Termination
4 (Cal. Lab. Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements
5 (Cal. Lab. Code § 226); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200,
6 et seq.). On August 1, 2023, Plaintiff Becerra filed a First Amended Complaint (1) clarifying
7 Plaintiff Becerra’s claims; (2) adding Plaintiff Umana Villatoro and Plaintiff Hernandez as
8 additional plaintiffs and class representatives; and (3) alleging Plaintiff Umana Villatoro’s
9 causes of action against Defendant for civil penalties under the Private Attorneys General
10 Act (“PAGA”). On March 11, 2025, Plaintiff Becerra, Plaintiff Umana Villatoro, and
11 Plaintiff Hernandez filed a Second Amended Complaint (1) dismissing Plaintiff Becerra’s
12 claims and (2) alleging Defendant failed to include all non-discretionary compensation
13 within the regular rate of pay. The Second Amended Complaint is the operative complaint
14 in the Action (the “Operative Complaint.”). Defendant denies the allegations in the
15 Operative Complaint, denies any failure to comply with the laws identified in in the
16 Operative Complaint, and denies any and all liability for the causes of action alleged.

17 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiffs gave timely written notices to Defendant and
18 the LWDA by sending the PAGA Notice.

19 2.3. On September 25, 2024, the Parties participated in an all-day mediation presided over by a
20 professional and neutral mediator, Jeff Ross, Esq., which led to this Agreement to settle the
21 Action.

22 2.4. Prior to mediation, Plaintiffs obtained, through formal and informal discovery, electronic
23 time and pay periods, policy documents, and data about the class. Plaintiffs maintain their
24 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot*
25 *Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail,*
26 *Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) (“*Dunk/Kullar*”).

27 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

1 full responsibility and liability for employee taxes owed on the Class Representative
2 Service Payment.

3 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3)
4 of the Settlement amount, which is currently estimated to be \$263,333.33, subject to
5 the escalator clause, and a Class Counsel Litigation Expenses Payment of not more
6 than \$22,500.00. Defendant will not oppose requests for these payments provided
7 that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a
8 motion for Class Counsel Fees Payment and Class Litigation Expenses Payment
9 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees
10 Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts
11 requested, the Administrator will allocate the remainder to the Net Settlement
12 Amount. Released Parties shall have no liability to Class Counsel or any other
13 Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee
14 Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
15 will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses
16 Payment using one or more IRS 1099 Forms. Class Counsel assumes full
17 responsibility and liability for taxes owed on the Class Counsel Fees Payment and
18 the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and
19 indemnifies Defendant, from any dispute or controversy regarding any division or
20 sharing of any of these Payments. Ten percent of the awarded Class Counsel Fees
21 Payment shall be kept in the administrator's trust fund until the completion of the
22 distribution process and Court approval of a final accounting.

23 3.2.3. To the Administrator: An Administration Expenses Payment not to exceed
24 \$10,000.00, except for a showing of good cause and as approved by the Court. To
25 the extent the Administration expenses are less or the Court approves payment less
26 than \$10,000.00, the Administrator will retain the remainder in the Net Settlement
27 Amount.

28 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~~-120 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 returned 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

1 address provided or to an address ascertained through the Class Member Address
2 Search. The Administrator need not take further steps to deliver checks to Class
3 Members whose re-mailed checks are returned as undelivered. The Administrator
4 shall promptly send a replacement check to any Class Member whose original check
5 was lost or misplaced, requested by the Class Member prior to the void date.

6 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA
7 Payment check is uncashed and cancelled after the void date, the Administrator shall
8 transmit the funds represented by such checks to the following *cy pres* recipient: the
9 California ~~Controller's Unclaimed Property Fund~~ State Bar's Greg E. Knoll Justice
10 Gap Fund in the name of the Class Member thereby leaving no "unpaid residue"
11 subject to the requirements of California Code of Civil Procedure § 384(b). This
12 distribution to the *cy pres* recipient by the Administrator shall not happen until
13 approved by the Court following the final accounting hearing. Other than the fact
14 that counsel for the Parties are members of the State Bar, no counsel for any Party
15 has any relationship with the California State Bar's Greg E. Knoll Justice Gap Fund.

16 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
17 not obligate Defendant to confer any additional benefits or make any additional
18 payments to Class Members (such as 401(k) contributions or bonuses).

19
20 **5. RELEASES OF CLAIMS.**

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

24 5.1. Plaintiffs' Release.

25 5.1.1. Scope of Plaintiffs' Release. Plaintiffs and their respective former and present
26 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
27 assigns generally, release and discharge Released Parties from all claims,
28 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, and 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 letter, 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

1 filed between the execution of this Agreement and the filing of the Motion for Preliminary
2 Approval and become known to Defendant and/or Defense Counsel, Defense Counsel will
3 advise Class Counsel. If there are no actual or potential conflicts of interest with the
4 Administrator to disclose, or any pending matters to disclose, no declaration from Defendant
5 and/or Defense Counsel is required.

6 //

7 6.2. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel
8 documents necessary for obtaining a Preliminary Approval Order, including: (i) a draft of
9 the notice, and memorandum in support, of the Motion for Preliminary Approval that
10 includes an analysis of the Settlement under governing case law and a request for approval
11 of the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a draft Preliminary Approval
12 Order; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator
13 attaching its "not to exceed" bid for administering the Settlement and attesting to its
14 willingness to serve; competency; operative procedures for protecting the security of Class
15 Data; amounts of insurance coverage for any data breach, defalcation of funds or other
16 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class
17 Members; and the nature and extent of any financial relationship with Plaintiffs, Class
18 Counsel, Defendant, or Defense Counsel; (v) a signed declaration from Plaintiffs confirming
19 willingness and competency to serve and disclosing all facts relevant to any actual or
20 potential conflicts of interest with Class Members, and/or the Administrator; and, (vi) a
21 signed declaration from each Class Counsel firm attesting to its competency to represent the
22 Class Members; its timely transmission to the LWDA of all necessary PAGA documents;
23 and, all facts relevant to any actual or potential conflict of interest with Class Members, the
24 Administrator. Class Counsel shall aver that they are not aware of any other pending matter
25 or action asserting claims that will be extinguished or adversely affected by the Settlement
26 or disclose the existence of any such pending matters. Alternatively, if such other actions
27 are filed between the execution of this Agreement and the filing of the Motion for
28 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.

1 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
2 the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation §
3 468B-1.

4 7.4. Notice to Class Members.

5 7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator
6 shall notify Class Counsel that the list has been received and state the number of
7 Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class
8 Data.

9 7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen
10 (14) calendar days after receiving the Class Data, the Administrator will send to all
11 Class Members identified in the Class Data, via first-class USPS mail, the Class
12 Notice with Spanish translation, substantially in the form attached to this Agreement
13 as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar
14 amounts of each Individual Class Payment and/or Individual PAGA Payment
15 payable to the Class Member and/or Aggrieved Employee, and the number of
16 Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts.
17 Before mailing Class Notices, the Administrator shall update Class Member
18 addresses using the NCOA database.

19 7.4.3. Not later than three (3) business days after the Administrator’s receipt of any Class
20 Notice returned by the USPS as undelivered, the Administrator shall re-mail the
21 Class Notice using any forwarding address provided by the USPS. If the USPS does
22 not provide a forwarding address, the Administrator shall conduct a Class Member
23 Address Search, and re-mail the Class Notice to the most current address obtained.
24 The Administrator has no obligation to make further attempts to locate or send Class
25 Notice to Class Members whose Class Notice is returned by the USPS a second time.

26 7.4.4. The deadlines for Class Members’ written objections, challenges to Workweeks
27 and/or pay periods, and Requests for Exclusion will be extended an additional
28 fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided

1 in the Class Notice for all Class Members whose notices are re-mailed. The
2 Administrator will inform the Class Member of the extended deadline with the re-
3 mailed Class Notice.

4 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
5 discovers any persons who believe they should have been included in the Class Data
6 and should have received Class Notice, the Parties will expeditiously meet and
7 confer in good faith. in an effort to agree on whether to include them as Class
8 Members. If the Parties agree, such persons will be Class Members entitled to the
9 same rights as other Class Members, and the Administrator will send, via email or
10 overnight delivery, a Class Notice requiring them to exercise options under this
11 Agreement not later than fourteen (14) calendar days after receipt of Class Notice,
12 or the deadline dates in the Class Notice, which ever are later.

13 7.5. Requests for Exclusion (Opt-Outs).

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

24 7.5.2. Every Class Member who does not submit a timely and valid Request for Exclusion
25 is deemed to be a Participating Class Member under this Agreement, entitled to all
26 benefits and bound by all terms and conditions of the Settlement, including the
27 Participating Class Members' Release under Paragraph 5.2 of this Agreement,
28 regardless whether the Participating Class Member actually receives the Class

1 Notice or objects to the Settlement.

2 7.5.3. Every Class Member who submits a valid and timely Request for Exclusion is a
3 Non-Participating Class Member and shall not receive an Individual Class Payment
4 or have the right to object to the class action components of the Settlement. Because
5 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
6 Participating Class Members who are Aggrieved Employees will still receive an
7 Individual PAGA Payment and will be subject to a claim preclusion defense if they
8 attempt to assert any of the Released PAGA Claims.

9 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) calendar
10 days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar
11 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class
12 Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class
13 Notice. The Class Member may challenge the allocation by communicating with the
14 Administrator via fax, email or mail. The Administrator must instruct the challenging Class
15 Member to submit supporting documentation. In the absence of any contrary
16 documentation, the Administrator is entitled to presume that the Workweeks contained in
17 the Class Notice are correct so long as they are consistent with the Class Data. The
18 Administrator's determination of each Class Member's allocation of Workweeks and/or
19 PAGA Pay Periods shall be final as to the Parties (although Defendant shall retain the right
20 to correct erroneous Class Data if subsequently discovered), but a Class Member whose
21 Workweek and/or Pay Period challenge is rejected by the Administrator may present the
22 same evidence supporting the Workweek and/or Pay Period challenge to the Court for
23 review. The Administrator shall promptly provide copies of any challenges to calculation of
24 Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel, along with
25 the Administrator's determinations regarding any challenges.

26 7.7. Objections to Settlement.

27 7.7.1. Only Participating Class Members may object to the class action components of the
28 Settlement and/or this Agreement, including contesting the fairness of the

1 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
2 Counsel Litigation Expenses Payment and/or Class Representative Service
3 Payment.

4 7.7.2. Participating Class Members may send written objections to the Administrator, by
5 fax, email, or mail. In the alternative, Participating Class Members may appear in
6 Court (or hire an attorney to appear in Court) to present verbal objections at the Final
7 Approval Hearing. A Participating Class Member who elects to send a written
8 objection to the Administrator must do so not later than sixty (60) calendar days after
9 the Administrator's mailing of the Class Notice (plus an additional fourteen (14)
10 calendar days for Class Members whose Class Notice was re-mailed).

11 7.7.3. Non-Participating Class Members have no right to object to any of the class action
12 components of the Settlement.

13 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
14 performed or observed by the Administrator contained in this Agreement or otherwise.

15 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
16 and maintain and use an internet website to post information of interest to Class
17 Members including the date, time and location for the Final Approval Hearing and
18 copies of the Settlement Agreement, Motion for Preliminary Approval, the
19 Preliminary Approval Order, the Class Notice, the motion for final approval, the
20 Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses
21 Payment and Class Representative Service Payments, the Final Approval Order and
22 the Judgment. The Administrator will also maintain and monitor an email address
23 and a toll-free telephone number to receive Class Member calls, faxes and emails.

24 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
25 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
26 Not later than five (5) calendar days after the expiration of the deadline for
27 submitting Requests for Exclusion, the Administrator shall email a list to Class
28 Counsel and Defense Counsel containing (a) the names and other identifying

1 information of Class Members who have timely submitted valid Requests for
2 Exclusion (“Exclusion List”); (b) the names and other identifying information of
3 Class Members who have submitted invalid Requests for Exclusion; (c) copies of all
4 Requests for Exclusion from Settlement submitted (whether valid or invalid).

5 //

6 //

7 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports
8 to Class Counsel and Defense Counsel that, among other things, tally the number of:
9 Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
10 Exclusion (whether valid or invalid) received, objections received, and challenges to
11 Workweeks and/or PAGA Pay Periods received and/or resolved (“Weekly Report”).
12 The Weekly Reports must include provide the Administrator’s assessment of the
13 validity of Requests for Exclusion and attach copies of all Requests for Exclusion
14 and objections received. In addition to the Weekly Reports, the Administrator shall
15 report to the Parties when it has completed the initial distribution of the Individual
16 Class Payments and Individual PAGA Payments to all individuals with valid
17 addresses.

18 7.8.4. Administrator’s Declaration. Not later than fourteen (14) calendar days before the
19 date by which Plaintiffs are required to file the Motion for Final Approval of the
20 Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a
21 signed declaration suitable for filing in Court attesting to its due diligence and
22 compliance with all of its obligations under this Agreement, including, but not
23 limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the
24 re-mailing of Class Notices, attempts to locate Class Members, the total number of
25 Requests for Exclusion from Settlement it received (both valid or invalid), the
26 number of written objections and attach the Exclusion List. The Administrator will
27 supplement its declaration as needed or requested by the Parties and/or the Court.
28 Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

1 7.8.5. Final Report by Settlement Administrator. Within ten (10) calendar days after the
2 Administrator disburses all funds in the Gross Settlement Amount, the Administrator
3 will provide Class Counsel and Defense Counsel with a final report detailing its
4 disbursements by employee identification number only of all payments made under
5 this Agreement. At least fifteen (15) calendar days before any deadline set by the
6 Court, the Administrator will prepare, and submit to Class Counsel and Defense
7 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement
8 of all payments required under this Agreement. Class Counsel is responsible for
9 filing the Administrator's declaration in Court.
10

11 **8. ESCALATOR CLAUSE**

12 If the number of actual Workweeks at the close of the Class Period is more than ten percent (10%) higher
13 than the estimated Workweeks per Paragraph 4.1 (i.e., exceeds 28,302 Workweeks), Defendant may, at its
14 election, opt to (a) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase
15 in the number of workweeks worked by the Class Members above ten percent (10%) (e.g., if the number of
16 Workweeks increases by 11% to 28,559 Workweeks, the Gross Settlement Amount will increase by 1%);
17 or (b) end the Class Period on a date on which the total Workweeks does not exceed 28,302 . This election
18 must be made at the time the Class Data is delivered to the Administrator.
19

20 **9. DEFENDANT'S RIGHT TO WITHDRAW.**

21 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all
22 Class Members, Defendant may, but is not obligated to, withdraw from the Settlement. The Parties agree
23 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and
24 that neither Party will have any further obligation to perform under this Agreement; provided, however,
25 Defendant will remain responsible for paying all Settlement administration expenses incurred to that point.
26 Defendant must notify Class Counsel and the Court of its election to withdraw not later than ten (10) business
27 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no
28 effect.

1
2 **10. MOTION FOR FINAL APPROVAL.**

3 Plaintiffs will timely file in Court a motion for final approval of the Settlement that includes a request for
4 approval of the PAGA settlement under Labor Code § 2699(l), a Proposed final approval order and a
5 proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these
6 documents to Defense Counsel not later than seven (7) calendar days prior to filing the Motion for Final
7 Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in good faith, to resolve
8 any disagreements concerning the Motion for Final Approval.

9 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a
10 Participating Class Member, including the right to file responsive documents in Court no
11 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
12 accepted by the Court.

13 10.2. Duty to Cooperate. If the Court does not issue a Final Approval Order or conditions the Final
14 Approval Order on any material change to the Settlement (including, but not limited to, the
15 scope of release to be granted by Class Members), the Parties will expeditiously work
16 together in good faith to address the Court’s concerns by revising the Agreement as
17 necessary to obtain Final Approval. The Court’s decision to award less than the amounts
18 requested for the Class Representative Service Payments, Class Counsel Fees Payment,
19 Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall
20 not constitute a material modification to the Agreement within the meaning of this
21 paragraph.

22 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
23 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes
24 of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration
25 matters, and (iii) addressing such post-Judgment matters as are permitted by law.

26 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
27 conditions of this Agreement, the Parties, their respective counsel, and all Participating Class
28 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

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

15 12.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and
16 Defense Counsel separately agree that, until the Motion for Preliminary Approval of
17 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
18 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
19 Agreement directly or indirectly, specifically or generally, to any person, corporation,
20 association, government agency, or other entity except: (1) to the Parties' attorneys,
21 accountants, or spouses, all of whom will be instructed to keep this Agreement confidential;
22 (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate
23 taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an
24 inquiry or subpoena issued by a state or federal government agency. Each Party agrees to
25 immediately notify each other Party of any judicial or agency order, inquiry, or subpoena
26 seeking such information. Plaintiffs, Class Counsel, Defendant and Defense Counsel
27 separately agree not to, directly or indirectly, initiate any conversation or other
28 communication, before the filing of the Motion for Preliminary Approval, with any third

1 party regarding this Agreement or the matters giving rise to this Agreement except to
2 respond only that “the matter was resolved,” or words to that effect. This paragraph does not
3 restrict Class Counsel’s ability to respond to communications received from Class Members
4 in accordance with Class Counsel’s ethical obligations owed to them *provided* Class Counsel
5 will not initiate such communications before the Motion for Preliminary Approval of
6 Settlement is filed.

7 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
8 employees will not solicit any Class Member to opt out of or object to the Settlement, or
9 appeal from the Judgment.

10 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
11 together with its attached exhibits shall constitute the entire agreement between the Parties
12 relating to the Settlement, superseding any and all oral representations, warranties,
13 covenants, or inducements made to or by any Party.

14 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
15 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all
16 appropriate action required or permitted to be taken by such Parties pursuant to this
17 Agreement to effectuate its terms, and to execute any other documents reasonably required
18 to effectuate the terms of this Agreement including any amendments to this Agreement.

19 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best
20 efforts, in good faith, to implement the Settlement by, among other things, modifying the
21 Settlement Agreement, submitting supplemental evidence and supplementing points and
22 authorities as requested by the Court. In the event the Parties are unable to agree upon the
23 form or content of any document necessary to implement the Settlement, or on any
24 modification of the Agreement that may become necessary to implement the Settlement, the
25 Parties will seek the assistance of a mediator and/or the Court for resolution.

26 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not
27 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
28 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

1 survive the execution of this Agreement.

2 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence
3 Code § 1152 or comparable laws, and all copies and summaries of the Class Data provided
4 to Class Counsel by Defendant in connection with the mediation, other settlement
5 negotiations, or in connection with the Settlement, may be used only with respect to this
6 Settlement, and no other purpose, and may not be used in any way that violates any existing
7 contractual agreement, statute, or rule of court. Not later than ninety (90) calendar days after
8 the date when the Court discharges the Administrator's obligation to provide a declaration
9 confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and
10 electronic versions of Class Data received from Defendant unless, prior to the Court's
11 discharge of the Administrator's obligation, Defendant makes a written request to Class
12 Counsel for the return, rather than the destruction, of Class Data in proper form.

13 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted
14 for convenience of reference only and does not constitute a part of this Agreement.

15 12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be
16 to calendar days. In the event any date or deadline set forth in this Agreement falls on a
17 weekend or federal legal holiday, such date or deadline shall be on the first business day
18 thereafter.

19 12.17. Notice. All notices, demands or other communications between the Parties in connection
20 with this Agreement will be in writing and deemed to have been duly given as of the third
21 business day after mailing by United States mail, or the day sent by email or messenger,
22 addressed as follows:

23
24 To Plaintiffs:

25 Kane Moon, Esq.
26 H. Scott Leviant, Esq.
27 Sandy Pham, Esq.
28 **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: _____

By: _____
Augustin Umana Villatoro

Plaintiff & Class Representative:

PLAINTIFF, BRYAN HERNANDEZ

Dated: _____

By: _____
Bryan Hernandez

Defendant:

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

Dated: _____

By: _____
Print Name

Signature

Title

Plaintiffs' Counsel:

MOON LAW GROUP, PC

Dated: _____

By: _____
Kane Moon, Esq.
H. Scott Leviant, Esq.
Sandy Pham, Esq.

Attorneys for Plaintiffs

1 **Defendant's Counsel:**

LITTLER MENDELSON, PC

2 Dated: _____

3 By: _____

4 Marlene S. Muraco, Esq.

5 Adam J. Fiss, Esq.

6 Nicholas C. Lansdown, Esq.

7 *Attorneys for Defendant*

Exhibit “6”