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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

EFRAIN JIMENEZ CORNEJO,

Plaintiff,

v.

NATIONAL CONSTRUCTION RENTALS,
INC., and DOES 1 to 50,

Defendants.

Case No.: 23STCV06238

Hon. Joseph Lipner, Dept. 72

Action Filed: 03/21/2023

NOTICE OF UNOPPOSED MOTION
AND MOTION FOR AN ORDER
APPROVING SETTLEMENT OF
CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
ZORIK MOORADIAN IN SUPPORT;
PROPOSED ORDER; & EXHIBITS
THRETO

Motion for PAGA Approval:

03/14/2024 @ 8:30 a.m.

Reservation ID: 544351746273

TO THE COURT, PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Cal. Lab. Code §2699, on March 14, 2024,
at 8:30 a.m. or as soon thereafter as the matter may be heard in Department 72 of the above-
entitled Court, the Honorable Joseph Lipner, presiding, Plaintiff Efrain Jimenez Cornejo

1 ("Plaintiff"), on behalf himself and other aggrieved employees, will and hereby does move this
2 Court for entry of an Order:

- 3 1. Approving the settlement entered into between Plaintiff Efrain Jimenez Cornejo and
4 Defendant National Construction Rentals, Inc. ("Defendant") for representative claims
5 under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), as reflected
6 by the duly executed PAGA Settlement Agreement ("Settlement Agreement" or
7 "SA"), Exhibit A to the Decl. of Zorik Mooradian ("ZM Decl."). ZM Decl. ¶2, Ex. A.
8 2. Approving distribution of a Gross Settlement Sum of \$240,000, as follows: 35% or
9 \$84,000 in agreed attorneys' fees; \$5,487.70 in litigation costs; \$6,500 to Phoenix
10 Class Action Administration Solutions ("Settlement Administrator"); \$5,000 as
11 enhancement payment to Plaintiff; and from remaining \$139,012.30, \$104,259.22 or
12 75% thereof to the State of California (LWDA) and \$34,753.07, balance or 25% to the
13 PAGA class (average payout of \$73.63). ZM Decl. ¶¶ 15 and 16.

14 The Court will keep jurisdiction of the case, and the case will be dismissed with prejudice
15 once the terms and conditions of the Court Order are fully complied with. In support are
16 Memorandum of Points and Authorities, declaration of Zorik Mooradian with Exhibits, and the
17 [Proposed] Order.
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19
20 Respectfully submitted,

21 DATED: February 20, 2024 **MOORADIAN LAW, APC**

22 The logo for Zorik Mooradian, featuring the name in a stylized blue font with a blue swoosh underline.

23 By: _____
24 Zorik Mooradian
25 Nanor Kamberian
26 Attorneys for Plaintiff Efrain Jimenez Cornejo
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1 **MEMORANDUM OF POINTS AND AUTHORITIE**

2 **I. INTRODUCTION**

3 Plaintiff Efrain Jimenez Cornejo hereby seeks court approval of a settlement of a pending
4 PAGA claim, which was initiated by Plaintiff's notice to LWDA, dated March 2, 2023, and
5 amended as of November 30, 2023, and as further set forth in the operative Second Amended
6 Complaint. The scope of the PAGA settlement is limited to civil penalties, does not include any
7 individual relief under Labor Code Section 558(a) (2-3), and does not act as a waiver to any
8 employee's individual claims.

9 The \$240,000 PAGA Settlement is for approximately 472 employees for the period of
10 03/02/2022 through the Effective date (the date of the signing of the approval Order by this Court)
11 The corresponding allocation for civil penalties therein, is more than fair, adequate, and
12 reasonable and constitutes a noteworthy recovery for what is a largely defensible PAGA claim
13 and is sufficient enough to deter any further violations and encourage compliance. This was the
14 second PAGA settlement of Defendant, who claims that the alleged violations had been resolved
15 pursuant to an earlier settled case for like allegations. The Parties reached their settlement at a
16 full day's mediation and follow up negotiations.

17 **II. PROCEDURAL HISTORY AND ANALYSIS**

18 1. The procedural calendar for the case started from March 2, 2023, when Plaintiff
19 submitted a Notice of his intention with State of California Labor and Workforce Development
20 Agency ("LWDA") to proceed with Labor Code violations under the Private Attorney General
21 Act ("PAGA") against Defendant National Construction Rentals, Inc. ("National Construction").
22 The Notice communicated an intention by Plaintiff to file a civil lawsuit in the State of California
23 pursuant to Labor Code § 2698 *et seq.* ZM Decl. ¶6

24 2. The Complaint was filed on 03/21/2023, alleging various individual wage and hour
25 causes of action against National Construction. The Complaint was amended, and a First
26 Amended Complaint ("FAC") was filed on 05/08/2023, by adding a cause of action for PAGA –
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upon expiration of the 65-day grace period. Thereafter, pursuant to the Stipulation and Order, Plaintiff filed his Second Amended Complaint (“SAC”) on 02/05/2024. ZM Decl. ¶7

3. The SAC is the operative complaint in the Action (the “Operative Complaint.”), and it is comprised of the following cause of action: (1) Failure to Pay Overtime; (2) Failure to Pay Minimum Wages; (3) Meal Period Violations; (4) Rest Break Violations; (5) Failure to Pay Vested Vacation Benefits; (6) Failure to Allow Sick Time and Benefits; (7) Failure to Pay Wages for All Time Worked; (8) Failure to Provide Accurate Wage Statements; (9) Failure to Timely Pay Wages at Separation; (10) Failure to Produce Employment Records; (11) Failure to Pay Regular Rate of Pay; (12) Failure to Maintain Accurate Payroll Records; (13) Unfair Business Practices; (14) Violation of Labor Laws Giving Rise to an Action Under the PAGA. ZM Decl. ¶8

4. Mr. Cornejo was first employed by National Construction in 1999. Defendant has been involved in the business of providing construction related rentals and services, including, but not limited to, temporary fencing, barricades, portable sanitation and storage containers, restroom trailers, temporary power and crowd control barriers, and related sanitation and construction services. ZM Decl. ¶9

5. Mr. Cornejo started his career with Defendant as a yard sweeper and maintenance employee and continued to work for Defendant in various capacities, including, but not limited to: Driving company vehicle on daily basis to various job sites, making frequent stops per day – as a sanitation pumper driver; Cleaning restrooms and porta potties, replenishing restroom papers, seat liners, paper towels, soap, water, and hand sanitizers; collecting and disposing trash and paper waste left over at porta potties and other rental facilities of the Defendant; cleaning, inspecting, and preparing the company Vehicle before leaving the yard to the designated locations; and following GPS and staying on the cellular phone for route, job location, assignment instructions and communications with the supervisors. Mr. Cornejo was employed with the company for 23 years but unfortunately he was hospitalized due to work-related stress on or about April 18, 2022, and was unable to return to work thereafter. ZM Decl. ¶10

1 6. Prior to the commencement of this Action, on Jan. 12, 2022, Hon. Brad Seligman
2 of Alameda County Superior Court, had entered an Order of Final Approval on Class and PAGA
3 Settlement with Defendant in the *Williams v. National Construction Rental, Inc.* Case No.
4 RG20075904 (“Williams’ Settlement”). The Order confirmed a set of Labor Code violations
5 which were equally pleaded in the Operative Complaint of Plaintiff Cornejo. Based on the Order,
6 the preliminary approval (class settlement period cutoff date) was on 8/30/2021. Defendant, in
7 accordance, claimed that by and large most of the alleged PAGA-related violations of Mr.
8 Cornejo had already been addressed and corrected. ZM Decl. ¶11

10 7. Nevertheless, due to the pending PAGA claims of Plaintiff, Defendant produced
11 70,000 lines of PAGA payroll records of the aggrieved employees (informal production for the
12 purpose of the Mediation). The received records revealed a series of alleged violations, which
13 Defendant disagreed with. To address the raised claims, therefore, the parties agreed to proceed
14 with private mediation. ZM Decl. ¶12

15 **III. SETTLEMENT AND DISTRIBUTION**

16 8. Fully prepared and having briefed the issues in advance, the parties participated in a full
17 day’s mediation on 11/17/2023, with Hon. George Hernandez. The case did not settle at the
18 mediation. The negotiations continued for a few days and a mediator’s proposal was accepted by
19 the parties on 11/20/2023. ZM Decl. ¶13

20 9. The parties, thereafter, entered into a Confidential Individual Settlement Agreement and
21 General Release (“Individual Settlement”) and PAGA Settlement Agreement (The “Settlement
22 Agreement” or “SA”), Exhibit A. The Settlement Agreement has 10 separate Provisions,
23 addressing, among other terms: Definitions (Provs. 1.1 – 1.28), Monetary Terms (Provs. 3.1 –
24 3.2.3.2), Settlement Funding and Payments (Provs. 4.1 – 4.4.4.), Releases of Claims (Provs. 5.1
25 – 5.3 – See Prov. 5.2 regarding Release by Aggrieved Employees), Settlement Administration
26 (Provs. 7.1 – 7.4). The Aggrieved Employee Size is estimated at 472, who worked 13,377 Pay
27 Periods during the PAGA period (Prov. 4.1). ZM Decl. ¶14
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10. The monetary terms may be summarized as follows: The Parties' settlement allocates **\$240,000.00**¹ for settlement of the Released PAGA Claims or the Gross Settlement Amount (SA, Prov. 3.1); the agreed attorneys' fees are up to 35% of the gross recovery or \$84,000 (SA, Prov. 3.2.1); the incurred litigations costs of Mooradian Law, APC is \$5,487.70²; \$6,500 is allocated to Phoenix Class Action Administration Solutions ("Settlement Administrator") pursuant to the attached administrative Bid, Exhibit B; and \$5,000 as enhancement payment to Plaintiff for representing the PAGA class. ZM Decl. ¶15

11. The above computation will leave a net balance of \$139,012.30, from which sum 75% or \$104,259.22 will be paid to the State of California (LWDA) and the remaining 25% or \$34,753.07 will be distributed to the PAGA class – the Aggrieved Employees – which may translate into an average payout to each member about \$73.63. Of course, the Administrator will adjust these figures before making the distributions in accordance with the Court's Order. ZM Decl. ¶16

12. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$34,753.07 or the amount to be approved by the court) 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. (SA, Prov. 3.2.2.1.) ZM Decl. ¶17

13. Within 15 days after entry of the Order, National Construction will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved

¹ In addition to the \$240,000 PAGA Settlement Sum, the Parties entered into a separate individual wage and hour settlement agreement for the individual Labor Code Violations of Mr. Cornejo for an amount far less which is subject to a confidentiality agreement.

² The costs, including the providers' electronic service charges, are - Complaint \$448.15, Service of Process \$63, 3 submissions to LWDA \$225, Motion and extension \$82.05, Copying and certified postage \$123, United Legal for all court filings in Central District \$151.50, and 50% of the mediator's fee to ADR (Judge Hernandez) \$4,395.

Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. (SA, Prov. 4.2.) ZM Decl. ¶18

14. National Construction shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date (the date the Court enters judgment). National Construction shall also fund at the same time its share of the employer's taxes on the Gross Settlement Amount. The distribution shall take place within 14 days after the funding. (SA, Provs. 4.3 and 4.4.) ZM Decl. ¶19

15. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (SA, Prov. 4.4.1.) ZM Decl. ¶20

16. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. (SA, Prov. 4.4.2.) ZM Decl. ¶21

17. The Settlement Administrator will compute the pro-rate share of each Aggrieved Employee in accordance with the work week factor set forth above and will mail the respective

share of the Aggrieved Employees together with a “Notice of Settlement,” explaining in detail and in conformity with the Settlement Agreement, Exhibit C, which, inter alia, provides notice of the following to each PAGA class member:

- What is this notice about?
- What is this lawsuit about?
- Who is included in this settlement?
- What will I receive from the settlement & the release?
- What are my rights & contact information?

ZM Decl. ¶22

IV. THE SETTLEMENT IS ADEQUATE, REASONABLE & FAIR

18. This case addresses violations of important employee protections embodied in the California Labor Code as follows: Defendants failed to pay Plaintiff and California non-exempt Aggrieved Employees all wages due including all overtime and minimum wages in violation of Labor Code §§ 510, 1194, and 1197; failed to provide legally compliant meal breaks and pay the corresponding premium penalties to Plaintiff and Aggrieved Employees in violation of Labor Code §§ 226.7 and 512; failed to provide legally compliant rest breaks and pay the corresponding premium penalties to Plaintiff and Aggrieved Employees in violation of Labor Code § 226.7; failed to pay Plaintiff and California non-exempt Aggrieved Employees their vested vacation benefits in violation of Labor Code § 227.3; failed to provide/pay Plaintiff and California non-exempt Aggrieved Employees their lawful sick leave benefits in violation of Labor Code §§ 233, 246 and 246.5; failed to timely pay Plaintiff and California non-exempt Aggrieved Employees their lawful wages in violation of Labor Code §§ 200 and 204; failed to provide Plaintiff and California non-exempt Aggrieved Employees accurate wage statements in violation of Labor Code §§ 226 (a) and 226.3; failed to provide/pay Plaintiff and California non-exempt Aggrieved Employees their lawful wages owed at the time of the separation in violation of Labor Code §§ 201-203; failed to provide Plaintiff and California non-exempt Aggrieved Employees their

1 employment records in violation of Labor Code § 226; failed to provide Plaintiff and California
2 non-exempt Aggrieved Employees their regular rate of pay in violation of Labor Code §§
3 226.7(c); failed to maintain accurate payroll records in violation of Labor Code §§ 1174 (c) and
4 (d); and failed to provide Plaintiff and California non-exempt Aggrieved Employees suitable
5 seating. ZM Decl. ¶23

6
7 19. Defendants' maximum theoretical exposure in this action, without stacking potentially
8 duplicative and oppressive penalties, totals approximately \$2,675,400 (13,377 pay periods times
9 \$200 penalty). *Since* there was a prior class wide and PAGA settlement that conceivably
10 addressed almost all the issues raised in the instant Action about seven (7) months before³,
11 Defendant took the position that the alleged violations had been corrected as a result of the
12 Williams' Settlement. Thus, aside from the court's discretionary reduction, the exposure if any
13 was drastically limited as a result. ZM Decl. ¶24

14 20. Defendant further contended that not every pay period at issue involved an alleged Labor
15 Code violation subject to civil penalties. Moreover, National Construction maintained that even
16 if the Court did award penalties, the Court could and would *substantially* reduce the penalties
17 awarded based on the discretionary factors contained in Labor Code § 2699(e)(2) ("In action by
18 an aggrieved employee . . . , a court may award a lesser amount than the maximum civil penalty
19 amount specified by this part if, based on the facts and circumstances of the particular case, to
20 do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").
21 ZM Decl. ¶25

22 21. Under PAGA the court has discretion to reduce penalties if they are found to be unjust,
23 arbitrary, oppressive, or confiscatory. There is an absence of legal authority guiding courts in this
24 determination. Courts rarely award 100% of the PAGA penalties proven at trial, a rare occurrence
25 in any event, and frequently reduce the collective penalties considerably. Defendants have made
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28 ³ The Class Prelim. Approval for Williams' Settlement was on 8/30/2021 and the PAGA period for the Cornejo
Action begun from 03/02/2022. The Final Approval of Williams' Settlement was on 01/12/2022, less than two
months from the Cornejo PAGA period.

1 clear if any penalties were awarded in this case, they would argue the penalties would be unjust,
2 arbitrary, and oppressive or confiscatory requesting the court award zero. ZM Decl. ¶26

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4 22. There is also lack of clear legal authority on how the penalties are calculated, including
5 whether multiple penalties can be awarded in the same pay period and when a “subsequent”
6 penalty can be assessed. In possession of this information, Plaintiff had to consider the extended
7 delay caused by resolving these novel legal issues and risking zero recovery even after a
8 successful trial. While Plaintiff maintains that his PAGA claims have merit, in reaching the
9 settlement, Plaintiff through counsel considered the strengths and weaknesses of each side’s
10 position and the uncertainty of how the case might have concluded as litigation continued, at
11 trial, and/or appeals. ZM Decl. ¶27

12 23. In addition to the factors presented above, the proposed Settlement does not possess any
13 obvious deficiencies. The Settlement contemplates entry of an order (submitted concurrently
14 herewith) which approves the Settlement and dismisses the Action with prejudice. ZM Decl. ¶28

15 24. PAGA settlement of \$240,000 is more than fair, reasonable, and adequate settlement due
16 to the above-described circumstance, especially considering the strong possibility there would be
17 no recovery without this settlement. Even if Plaintiff was to prevail on the underlying claim, he
18 would face the potential of discretionary reduction of maximum penalties by the Court and
19 reported cases. ZM Decl. ¶29

20 **V. ATTORNEYS’ FEES ARE REASONABLE**

21 25. Mooradian Law, APC (“ML”) is the PAGA counsel, and seeks a fee award calculated as
22 a percentage of the total value of the settlement for successful prosecution and resolution of all
23 existing claims. From 10/31/2022, two attorneys from our ML have worked on this matter for
24 the past 16 months, with a lodestar of 63.7 hours for attorney Zorik Mooradian (35 + years as a
25 practicing attorney in the state of California with an hourly rate of \$650) and 37.4 hours for
26 attorney Nanor Kamberian (7 years of practicing attorney in the State of California with an hourly
27 rate of \$350). These are reduced rates to those of the *Laffey Matrix* (for attorneys of like
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1 experience and years of practice in the Los Angeles County). The represented working hours
2 include the time spent with client, preparation of the file, drafting and filing of the complaint,
3 amending and filing First and Second Amended Complaints, meet and confer between counsel,
4 submittal of PAGA letter and amendment thereto, follow up with client regarding status, review
5 and analysis of the produced data, communications re follow up production, settlement
6 negotiations, preparation and participation at mediation, drafting settlement papers, review of
7 the terms with the client, as well as preparation of the approval papers. ZM Decl. ¶30

9 26. ML does not have any fee-splitting agreement with other counsel for this matter. There
10 is a signed retainer agreement with Plaintiff, which is for a contingency recovery of more than
11 35% of the gross recovery. Both California State and Federal Courts have recognized that an
12 appropriate method in determining an attorney fee award may be based on the percentage on the
13 total value of the benefits conferred by the settlement. *Serrano v. Priest* (1997) 20 Cal. 3d 25-34
14 [*Serrano III*]; *Boeing Company v. Van Gemert* (1980) 344 U.S. 472, 478; *Vincent v. Hughes*
15 *Airwest, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. ZM Decl. ¶31

16 27. The California Supreme Court endorsed a fee award as a percentage of the common
17 Fund. The Court clarified “that when an attorney fee is awarded out of a common fund preserved
18 or recovered by means of litigation (internal citation omitted), the award is not per se
19 unreasonable merely because it is calculated as a percentage of the common fund.” *Laffitte v.*
20 *Robert Half Int’l. Inc.* (2016) 1 Cal. 5th 480, 486. Also “[t]hat the recognized advantages of the
21 percentage method...convince us that the percentage method is a valuable tool that should not
22 be denied in our trial courts.” *Id.* at 503. ZM Decl. ¶32

23 28. The Common Fund Doctrine is predicated on the principle of preventing unjust
24 enrichment. When a litigant’s efforts create or preserve, or generate a fund from which others
25 derive benefits, he may require the passive beneficiaries to compensate those who created the
26 fund. Both California State and Federal Courts have embraced this Doctrine. *Serrano III*, *supra*,
27 at 35; *Vincent*, *supra*, at 769. Since *Serrano III*, *supra*, there has been a ground swell of support
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1 for mandating the percentage of the fund approach in common fund cases. Both State and Federal
2 Court have found the percentage approach preferable to the Lodestar because; (1) it aligns the
3 interest of counsel and absent parties (PAGA Counsel and the LWDA here); (2) it encourages
4 efficient resolution of the litigation by providing an incentive for early, yet reasonable,
5 settlement; and (3) it reduces the demand on judicial resources. In re Activision Sec. Litig. (N.D.
6 Cal. 1989) 723 F Supp. at 1378-79. ZM Decl. ¶33
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8 In accordance, therefore, the PAGA settlement is fair, adequate, reasonable, as are PAGA
9 Counsel's fees and costs, and request the Court enter Order in accordance.

10 **VI. CONCLUSION**

11 In light of the foregoing and other evidence which may be presented during the hearing
12 as called upon by the Court, Plaintiff submits that the PAGA settlement is fair, adequate and
13 reasonable and so too the requested distributions.

14 An Order in conformity is respectfully requested hereby.

15
16 **DATED:** February 20, 2024 **MOORADIAN LAW, APC**

17 The logo for Zorik Mooradian, featuring a stylized blue 'Z' followed by the name 'Zorik Mooradian' in a blue serif font.

18 By: _____
19 Zorik Mooradian
20 Nanor Kamberian
21 Attorneys for Plaintiff Efrain Jimenez Cornejo
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1 class actions, complex and multi-party matters.

2 4. The following is a sample index of class actions/PAGA and individual
3 employment/wage-and-hour cases, in which I have represented and/or continue to represent
4 the plaintiffs, mostly in the capacity of the lead counsel:

5 Fuentes v. Kamran Staffing/BC604535; Perez v. El Pollo Loco/BC624001; Perez v.
6 Quest Nutrition/BC630914; Escalante v. Friendly Hills Country Club/BC640583;
7 Serrano v. Noise Group/30-2017-00949440-CU-OE-CXC; Blandin v. Malibu Mgt.
8 Svcs., Inc./BC618629; Barrera v. Coast Composites, Inc./30-2017-00909572 CU-
9 OE-CJC; Aguilar v. Sweet Earth Café/19STCV13373; Avina v. Marriott/30-2017-
10 00945551; Azepita v. Eden Social Restaurants, Inc./30-2019-01077185; Balaguer v.
11 Eminent, Inc./19STCV16803; Barragan v. Golden Hotels Limited Partnership/30-
12 2018-01007420; Boch v. Merchants Building Maintenance/BC681320; Bueno v.
13 Proto Homes/19STCV20011; Cardenas v. Intercon Security/19STCV11259;
14 Castillo v. Robert's Waste/30-2018-01027486; Castro v. Bee Gee
15 Laboratories/BC712857; Contreras Teo v. Golden State Foods/BC708535;
16 Contreras Teo v. Golden State Foods/BC722540; Corona v. Del Amo
17 Hospital/19STCV24741; Cruz Ventura v. WSON-55/19STCV22958; Cruel v.
18 Andreas Elsenhans/19STCV35496; Espinoza v. Don Chava Mgt./19STCV27068;
19 Galvan v. Property Mgt. Associates/BC722781; Godoy v. UCLA/19STCV04634;
20 Gonzalez v. Toyon Catering, Inc./19STCV11369; Gonzalez v. FMS Mgt./30-2019-
21 01065563; Gutierrez v. Anaheim Denn/30-2019-01092546; Guzman v. Millennium
22 Shoes/19STCV33166; Hernandez v. Township Retail Services/18STCV06709;
23 Hernandez v. Resource Employment Solutions/30-2019-01084740; Herrera v. Color
24 Spot Nurseries/30-2017-00933249; Leon v. Island Hospitality Mgt./30-2019-
25 01060719; Martinez v. Snakerz/19STCV02674; Mendoza v. Savage Service
26 Corp./18STCV04798; Martinez v. Riviera Beverages/ 30-2019-01056796; Mendoza
27 v. United Production Framing/30-2019-01104255; Morales Cano v. Coordinated
28 Staffing/19STCV29817; Enriquez v. Johnny Rockets Group/19STCV43986; Ibarra
v. DCX-CHOL Enterprises/19STCV26247; Contoran Najera v. TOPH I, LLC/30-
2018-00999474; Nunez v. Wonderland Montessori, LLC/18STCV06042; Olmos v.
Mall Food Mgt. Associates/30-2019-01096292; Pallares - Mercado v. MB Santa
Ana Restaurants/30-2019-01047135; Perez v. First Rate Staffing/18STCV02057;
Popoca v. Denim Technologies/ 19STCV11434; Rosales v. DBR
Premium/19STCV32726; Salceda v. GBG USA, Inc./ 18STCV10004; Salceda v.
GBG USA, Inc./ 18STCV04778; Torres v. Metro Security/19STCV21114; Cazarez
v. S. Carrol Massie, Inc./23STCV23844; Cazarez v. Southern California Pizza Co.,
LLC/23STCV23179; Cervantez v. DRE Workforce/22STCV270670; Diaz v. Paris
Valley/22CVP-0244; Enrique v. Johnny Rockets Group, Inc./19STCV43986;
Esquivel v. Bodega Latina Corp./22STCV02622/Felipe v. One Stop Employment
Services/21STCV39327; Fernandez v. World Flight Services/23STCV23197;
Garcia v. Fresh Grill/22STCV08228; Hernandez v. N.W. Hotel Corp./30-2023-
01310267; Jimenez v. Cargo/21STCV15258; Lemus v. PDA Group/21STCV40242;
Maldenado v. McKessons/22STCV41086; Martinez v. Pharaoh Staffing,
LLC/22STCV41086; Mendez v. ABM/23STCV11446; Mendoza v. Big Lot/30-
2019-01047135; Merino v. Coast Sign, Inc./30-2023-01305781; Morales v. Phenix

1 Enterprises, Inc./23STCV06594; Muniz v. Lot Management/22STCV32901;
2 Ramirez v. H Mart Logistics/23STCV06670; Romero v. Partners
3 Personnel/22STCV22509; Salazar v. Staffmark/21STCV39663 and 21STCV31753;
4 Sanchez v. Recessroom/30-2022-01244194; Sepulveda v. Walmart/30-2022-
5 01278658; Toledo v. Universal Molding Company/22STCV06965; Vargas v.
6 Sincere Orient Commercial Corp./22STCV08311; Zapeta v. HR Service
7 Group/22STCV07872; Panduro v. Inland Fuels Corp./23STCV04486; and
8 Rodriguez v. Relentless Landcare/30-2023-01366648.

9 5. I am familiar with California wage and hour law and the laws governing
10 employment wage and hour violations, including but not limited to: California Labor Code
11 Sections 201 – 204, 206.5, 210, 226, 221, 224, 226.7, 227.3, 233, 350, 351, 245.5, 246,
12 246.5, 500, 510, 512, 516, 1174, 1194, 1194.2, 1198, 1198.5, 2698, 2699, 2800 and 2802,
13 California Business and Profession Codes 17200 et. seq., the Orders of the Industrial
14 Welfare Commission, and the Private Attorneys General Act.

15 **Procedural History and Analysis**

16 6. The procedural calendar for the case started from March 2, 2023, when Plaintiff
17 submitted a Notice of his intention with State of California Labor and Workforce
18 Development Agency (“LWDA”) to proceed with Labor Code violations under the Private
19 Attorney General Act (“PAGA”) against Defendant National Construction Rentals, Inc.
20 (“National Construction”). The Notice communicated an intention by Plaintiff to file a civil
21 lawsuit in the State of California pursuant to Labor Code § 2698 *et seq.*

22 7. The Complaint was filed on 03/21/2023, alleging various individual wage and hour
23 causes of action against National Construction. The Complaint was amended, and a First
24 Amended Complaint (“FAC”) was filed on 05/08/2023, by adding a cause of action for
25 PAGA – upon expiration of the 65-day grace period. Thereafter, pursuant to the Stipulation
26 and Order, Plaintiff filed his Second Amended Complaint (“SAC”) on 02/05/2024.

27 8. The SAC is the operative complaint in the Action (the “Operative Complaint.”), and
28 it is comprised of the following cause of action: (1) Failure to Pay Overtime; (2) Failure to
Pay Minimum Wages; (3) Meal Period Violations; (4) Rest Break Violations; (5) Failure to
Pay Vested Vacation Benefits; (6) Failure to Allow Sick Time and Benefits; (7) Failure to
Pay Wages for All Time Worked; (8) Failure to Provide Accurate Wage Statements; (9)

1 Failure to Timely Pay Wages at Separation; (10) Failure to Produce Employment Records;
2 (11) Failure to Pay Regular Rate of Pay; (12) Failure to Maintain Accurate Payroll Records;
3 (13) Unfair Business Practices; and (14) Violation of Labor Laws Giving Rise to an Action
4 Under the PAGA.

5 9. Mr. Cornejo was first employed by National Construction in 1999. Defendant has
6 been involved in the business of providing construction related rentals and services,
7 including, but not limited to, temporary fencing, barricades, portable sanitation and storage
8 containers, restroom trailers, temporary power and crowd control barriers, and related
9 sanitation and construction services.

10 10. Mr. Cornejo started his career with Defendant as a yard sweeper and maintenance
11 employee and continued to work for Defendant in various capacities, including, but not
12 limited to: Driving company vehicle on daily basis to various job sites, making frequent stops
13 per day – as a sanitation pumper driver; Cleaning restrooms and porta potties, replenishing
14 restroom papers, seat liners, paper towels, soap, water, and hand sanitizers; collecting and
15 disposing trash and paper waste left over at porta potties and other rental facilities of the
16 Defendant; cleaning, inspecting, and preparing the company Vehicle before leaving the yard
17 to the designated locations; and following GPS and staying on the cellular phone for route,
18 job location, assignment instructions and communications with the supervisors. Mr. Cornejo
19 was employed with the company for 23 years but unfortunately was hospitalized due to work-
20 related stress on or about April 18, 2022, and was unable to return to work thereafter.

21 11. Prior to the commencement of this Action, on Jan. 12, 2022, Hon. Brad Seligman
22 of Alameda County Superior Court, had entered an Order of Final Approval on Class and
23 PAGA Settlement with Defendant in the *Williams v. National Construction Rental, Inc.* Case
24 No. RG20075904 (“Williams’ Settlement”). The Order confirmed a set of Labor Code
25 violations which were equally pleaded in the Operative Complaint of Plaintiff Cornejo. Based
26 on the Order, the preliminary approval (class settlement period cutoff date) was on 8/30/2021.
27 Defendant, in accordance, claimed that by and large most of the alleged PAGA-related
28 violations of Mr. Cornejo had already been addressed and corrected.

1 12. Nevertheless, due to the pending PAGA claims of Plaintiff, Defendant produced
2 70,000 lines of PAGA payroll records of the aggrieved employees (informal production for
3 the purpose of the Mediation). The received records revealed a series of alleged violations,
4 which Defendant disagreed with. To address the raised claims, therefore, the parties agreed
5 to proceed with private mediation.

6 **Settlement and Distribution**

7 13. Thus, being fully prepared and having briefed the issues in advance, the parties
8 participated in a full day's mediation on 11/17/2023, with Hon. George Hernandez. After a
9 full-day's session, the case did not settle at the mediation. The negotiations continued for a
10 few days and a mediator's proposal was accepted by the parties on 11/20/2023.

11 14. The parties, thereafter, entered into a Confidential Individual Settlement Agreement
12 and General Release ("Individual Settlement") and PAGA Settlement Agreement (The
13 "Settlement Agreement" or "SA"), Exhibit A. The Settlement Agreement has 10 separate
14 Provisions, addressing, among other terms: Definitions (Provs. 1.1 – 1.28), Monetary Terms
15 (Provs. 3.1 – 3.2.3.2), Settlement Funding and Payments (Provs. 4.1 – 4.4.4.), Releases of
16 Claims (Provs. 5.1 – 5.3 – See Prov. 5.2 regarding Release by Aggrieved Employees),
17 Settlement Administration (Provs. 7.1 – 7.4). The Aggrieved Employee Size is estimated at
18 472, who worked 13,377 Pay Periods during the PAGA period (Prov. 4.1).

19 15. The monetary terms may be summarized as follows: The Parties' settlement allocates
20 **\$240,000.00¹** for settlement of the Released PAGA Claims or the Gross Settlement Amount
21 (SA, Prov. 3.1); the agreed attorneys' fees are up to 35% of the gross recovery or \$84,000
22 (SA, Prov. 3.2.1); the incurred litigations costs of Mooradian Law, APC is \$5,487.70²; \$6,500
23 is allocated to Phoenix Class Action Administration Solutions ("Settlement Administrator")
24 pursuant to the attached administrative Bid, Exhibit B; and \$5,000 as enhancement payment

25 _____
26 ¹ In addition to the \$240,000 PAGA Settlement Sum, the Parties entered into a separate individual wage and
27 hour settlement agreement for the individual Labor Code Violations of Mr. Cornejo for an amount far less
28 which is subject to a confidentiality agreement.

² The costs, including the providers' electronic service charges, are - Complaint \$448.15, Service of Process
\$63, 3 submissions to LWDA \$225, Motion and extension \$82.05, Copying and certified postage \$123,
United Legal for all court filings in Central District \$151.50, and 50% of the mediator's fee to ADR (Judge
Hernandez) \$4,395.

1 to Plaintiff for representing the PAGA class.

2 16. The above computation will leave a net balance of \$139,012.30, from which sum 75%
3 or \$104,259.22 will be paid to the State of California (LWDA) and the remaining 25% or
4 \$34,753.07 will be distributed to the PAGA class – the Aggrieved Employees – which may
5 translate into \$73.63, an average payout to each member. Of course, the Administrator will
6 adjust these figures before making the distributions in accordance with the Court’s Order.

7 17. The Administrator will calculate each Individual PAGA Payment by (a) dividing the
8 amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$34,753.07 or the
9 amount to be approved by the court) by the total number of PAGA Period Pay Periods worked
10 by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each
11 Aggrieved Employee’s PAGA Period Pay Periods. Aggrieved Employees assume full
12 responsibility and liability for any taxes owed on their Individual PAGA Payment. (SA, Prov.
13 3.2.2.1.)

14 18. Within 15 days after entry of the Order, National Construction will simultaneously
15 deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel
16 spreadsheet. To protect Aggrieved Employee’ privacy rights, the Administrator must
17 maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data
18 only for purposes of this Settlement and for no other purpose, and restrict access to the
19 Aggrieved Employee Data to Administrator employees who need access to the Aggrieved
20 Employee Data to effect and perform under this Agreement. (SA, Prov. 4.2.)

21 19. National Construction shall fully fund the Gross Settlement Amount by transmitting
22 the funds to the Administrator no later than 14 days after the Effective Date (the date the
23 Court enters judgment). National Construction shall also fund at the same time its share of
24 the employer’s taxes on the Gross Settlement Amount. The distribution shall take place
25 within 14 days after the funding. (SA, Provs. 4.3 and 4.4.)

26 20. The Administrator will issue checks for the Individual PAGA Payments and send
27 them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of
28 each check shall prominently state the date (not less than 180 days after the date of mailing)

1 when the check will be voided. The Administrator will cancel all checks not cashed by the
2 void date. Before mailing any checks, the Settlement Administrator must update the
3 recipients' mailing addresses using the National Change of Address Database. (SA, Prov.
4 4.4.1.)

5 21. The Administrator must conduct an Aggrieved Employee Address Search for all
6 Aggrieved Employees whose checks are returned undelivered without USPS forwarding
7 address. Within 7 days of receiving a returned check the Administrator must re-mail checks
8 to the USPS forwarding address provided or to an address ascertained through the Aggrieved
9 Employee Address Search. The Administrator need not take further steps to deliver checks
10 to Aggrieved Employees whose re-mailed checks are returned as undelivered. The
11 Administrator shall promptly send a replacement check to any Aggrieved Employee whose
12 original check was lost or misplaced, requested by the Aggrieved Employee prior to the void
13 date. (SA, Prov. 4.4.2.)

14 22. The Settlement Administrator will compute the pro-rate share of each Aggrieved
15 Employee in accordance with the work week factor set forth above and will mail the
16 respective share of the Aggrieved Employees together with a "Notice of Settlement,"
17 explaining in detail and in conformity with the Settlement Agreement, Exhibit C, which, inter
18 alia, provides notice of the following to each PAGA class member:

- 19 ➤ What is this notice about?
- 20 ➤ What is this lawsuit about?
- 21 ➤ Who is included in this settlement?
- 22 ➤ What will I receive from the settlement & the release?
- 23 ➤ What are my rights & contact information?

24 **The Proposed Settlement is Adequate, Reasonable and Fair**

25 23. This case addresses violations of important employee protections embodied in the
26 California Labor Code as follows: Defendants failed to pay Plaintiff and California non-
27 exempt Aggrieved Employees all wages due including all overtime and minimum wages in
28 violation of Labor Code §§ 510, 1194, and 1197; failed to provide legally compliant meal

1 breaks and pay the corresponding premium penalties to Plaintiff and Aggrieved Employees
2 in violation of Labor Code §§ 226.7 and 512; failed to provide legally compliant rest breaks
3 and pay the corresponding premium penalties to Plaintiff and Aggrieved Employees in
4 violation of Labor Code § 226.7; failed to pay Plaintiff and California non-exempt Aggrieved
5 Employees their vested vacation benefits in violation of Labor Code § 227.3; failed to
6 provide/pay Plaintiff and California non-exempt Aggrieved Employees their lawful sick
7 leave benefits in violation of Labor Code §§ 233, 246 and 246.5; failed to timely pay Plaintiff
8 and California non-exempt Aggrieved Employees their lawful wages in violation of Labor
9 Code §§ 200 and 204; failed to provide Plaintiff and California non-exempt Aggrieved
10 Employees accurate wage statements in violation of Labor Code §§ 226 (a) and 226.3; failed
11 to provide/pay Plaintiff and California non-exempt Aggrieved Employees their lawful wages
12 owed at the time of the separation in violation of Labor Code §§ 201-203; failed to provide
13 Plaintiff and California non-exempt Aggrieved Employees their employment records in
14 violation of Labor Code § 226; failed to provide Plaintiff and California non-exempt
15 Aggrieved Employees their regular rate of pay in violation of Labor Code §§ 226.7(c); failed
16 to maintain accurate payroll records in violation of Labor Code §§ 1174 (c) and (d); and failed
17 to provide Plaintiff and California non-exempt Aggrieved Employees suitable seating.

18 24. Defendant's maximum theoretical exposure in this action, without stacking
19 potentially duplicative and oppressive penalties, totals approximately \$2,675,400 (13,377
20 pay periods times \$200 penalty). *Since* there was a prior class wide and PAGA settlement
21 that conceivably addressed almost all the issues raised in the instant Action about seven (7)
22 months before³, Defendant took the position that the alleged violations had been corrected as
23 a result of the Williams' Settlement. Thus, aside from the court's discretionary reduction, the
24 exposure if any was drastically limited as a result.

25 25. Defendant further contended that not every pay period at issue involved an alleged
26 Labor Code violation subject to civil penalties. Moreover, National Construction maintained

27 _____
28 ³ The Class Prelim. Approval for Williams' Settlement was on 8/30/2021 and the PAGA period for the
Cornejo Action begun from 03/02/2022. The Final Approval of Williams' Settlement was on 01/12/2022, less
than two months from the Cornejo PAGA period.

1 that even if the Court did award penalties, the Court could and would *substantially* reduce
2 the penalties awarded based on the discretionary factors contained in Labor Code §
3 2699(e)(2) (“In action by an aggrieved employee . . . , a court may award a lesser amount
4 than the maximum civil penalty amount specified by this part if, based on the facts and
5 circumstances of the particular case, to do otherwise would result in an award that is unjust,
6 arbitrary and oppressive, or confiscatory.”).

7 26. Under PAGA the court has discretion to reduce penalties if they are found to be unjust,
8 arbitrary, oppressive, or confiscatory. There is an absence of legal authority guiding courts
9 in this determination. Courts rarely award 100% of the PAGA penalties proven at trial, a rare
10 occurrence in any event, and frequently reduce the collective penalties considerably.
11 Defendant has made clear if any penalties were awarded in this case, they would argue the
12 penalties would be unjust, arbitrary, and oppressive or confiscatory requesting the court
13 award zero.

14 27. There is also lack of clear legal authority on how the penalties are calculated,
15 including whether multiple penalties can be awarded in the same pay period and when a
16 “subsequent” penalty can be assessed. In possession of this information, Plaintiff had to
17 consider the extended delay caused by resolving these novel legal issues and risking zero
18 recovery even after a successful trial. While Plaintiff maintains that his PAGA claims have
19 merit, in reaching the settlement, Plaintiff through counsel considered the strengths and
20 weaknesses of each side’s position and the uncertainty of how the case might have concluded
21 as litigation continued, at trial, and/or appeals.

22 28. In addition to the factors presented above, the proposed Settlement does not possess
23 any obvious deficiencies. The Settlement contemplates entry of an order (submitted
24 concurrently herewith) which approves the Settlement and dismisses the Action with
25 prejudice.

26 29. In my experience, a gross PAGA settlement of \$240,000 is more than fair, reasonable,
27 and adequate settlement due to the above-described circumstance, especially considering the
28 strong possibility there would be no recovery without this settlement. Even if Plaintiff was to

1 prevail on the underlying claim, he would face the potential of discretionary reduction of
2 maximum penalties by the Court and reported cases.

3 30. As to the attorneys' fees, our office intake form is dated 10/31/2022, which is the first
4 attention to the matter pursuant to the contact from the client. Two attorneys from our office
5 have worked on this matter for the past 16 months, with a lodestar of 63.7 hours for attorney
6 Zorik Mooradian (35 + years as a practicing attorney in the state of California with an hourly
7 rate of \$650) and 37.4 hours for attorney Nanor Kamberian (7 years of practicing attorney in
8 the State of California with an hourly rate of \$350). These are reduced rates to those of the
9 *Laffey Matrix* (for attorneys of like experience and years of practice in the Los Angeles
10 County). The represented working hours include the time spent with client, preparation of the
11 file, drafting and filing of the complaint, amending and filing First and Second Amended
12 Complaints, meet and confer between counsel, submittal of PAGA letter and amendment
13 thereto, follow up with client regarding status, review and analysis of the produced data,
14 communications re follow up production, settlement negotiations, preparation and
15 participation at mediation, drafting settlement papers, review of the terms with the client, as
16 well as preparation of the approval papers.

17 31. Mooradian Law, APC does not have any fee-splitting agreement with other counsel
18 for this matter. There is a signed retainer agreement with Plaintiff, which is for a contingency
19 recovery of more than 35% of the gross recovery. Mooradian Law, APC, as the PAGA
20 counsel, seeks a fee award calculated as a percentage of the total value of the settlement for
21 successful prosecution and resolution of all existing claims. Both California State and Federal
22 Courts have recognized that an appropriate method in determining an attorney fee award may
23 be based on the percentage on the total value of the benefits conferred by the settlement.
24 *Serrano v. Priest* (1997) 20 Cal. 3d 25-34 [Serrano III]; *Boeing Company v. Van Gemert*
25 (1980) 344 U.S. 472, 478; *Vincent v. Hughes Airwest, Inc.* (9th Cir. 1977) 557 F.2d 759,
26 769.

27 32. The California Supreme Court endorsed a fee award as a percentage of the common
28 Fund. The Court clarified "that when an attorney fee is awarded out of a common fund

1 preserved or recovered by means of litigation (internal citation omitted), the award is not per
2 se unreasonable merely because it is calculated as a percentage of the common fund.” Laffitte
3 v. Robert Half Int’l. Inc. (2016) 1 Cal. 5th 480, 486. Also “[t]hat the recognized advantages
4 of the percentage method...convince us that the percentage method is a valuable tool that
5 should not be denied in our trial courts.” Id. at 503.

6 33. The Common Fund Doctrine is predicated on the principle of preventing unjust
7 enrichment. When a litigant’s efforts create or preserve, or generate a fund from which others
8 derive benefits, he may require the passive beneficiaries to compensate those who created the
9 fund. Both California State and Federal Courts have embraced this Doctrine. Serrano III,
10 supra, at 35; Vincent, supra, at 769. Since Serrano III, supra, there has been a ground swell
11 of support for mandating the percentage of the fund approach in common fund cases. Both
12 State and Federal Court have found the percentage approach preferable to the Lodestar
13 because; (1) it aligns the interest of counsel and absent parties (PAGA Counsel and the
14 LWDA here); (2) it encourages efficient resolution of the litigation by providing an incentive
15 for early, yet reasonable, settlement; and (3) it reduces the demand on judicial resources. In
16 re Activision Sec. Litig. (N.D. Cal. 1989) 723 F Supp. at 1378-79.

17 34. I submit the PAGA settlement is fair, adequate, reasonable, and so too are PAGA
18 Counsel’s fees and costs. It is respectfully requested by this Court to enter Order in
19 accordance.

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

22 Executed on February 20, 2024, at Calabasas, California.

23  Zorik Mooradian

24 Zorik Mooradian

EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Efrain Jimenez Cornejo (“Plaintiff” or “Mr. Cornejo”) and National Construction Rentals, Inc. (“Defendant” or “National Construction”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against National Construction, captioned Efrain Jimenez Cornejo v. National Construction Rentals, Inc., initiated on March 21, 2023, and pending in Superior Court of the State of California, County of Los Angeles - LASC Case No. 23STCV06238.

1.2. “Administrator” means Phoenix Class Action and Administration Solutions, 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 approval of this Settlement.

1.4. “Aggrieved Employee” means a person employed by National Construction in California and classified as a non-exempt employee who worked for National Construction during the PAGA Period].

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in National Construction’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. “Court” means the Superior Court of California, County of Los Angeles, Department 72.

1.8. “Defense Counsel” means attorneys David Fishman and Janet Soultanian of BALLARD ROSENBERG GOLPER & SAVITT, LLP.

1.9. “Effective Date” means the date the Judgment is final. The Judgment is final as of the day the Court enters Judgment.

1.10. “Gross Settlement Amount” means \$235,000 which is the total amount NATIONAL CONSTRUCTION agrees to pay under the Settlement except as provided in Paragraph 9 below.

The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

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

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

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

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

1.15. "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, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Incentive Award to Plaintiff, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means Zorik Mooradian and Nanor Kamberian of MOORADIAN LAW, APC, the attorneys representing the Plaintiff in the Action.

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

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for NATIONAL CONSTRUCTION for at least one day during the PAGA Period.

1.19. "PAGA Period" means the period from March 2, 2022, to the date of Approval Order.

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

1.21. "PAGA Notice" means Plaintiff's March 2, 2023, and November 30, 2023, letters to National Construction and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a) - LWDA-CM-939627-23.

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$34,125) and the 75% to LWDA (\$102,375) in settlement of PAGA claims.

1.23. "Plaintiff" means Efrain Jimenez Cornejo, the named plaintiff in the Action.

1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.26. "Released Parties" means: National Construction and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

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

1.28. "National Construction" means National Construction Rentals, Inc.

2.RECITALS.

2.1. On March 21, 2023, Plaintiff commenced this Action by filing a Complaint alleging various individual wage and hour causes of action against National Construction. The Complaint was amended, and a First Amended Complaint ("FAC") was filed on May 8, 2023, by adding a cause of action for PAGA. The FAC is the operative complaint in the Action (the "Operative Complaint."), and it is comprised of the following cause of action: (1) Failure to Pay Overtime; (2) Failure to Pay Minimum Wages; (3) Meal Period Violations; (4) Rest Break Violations; (5) Failure to Pay Vested Vacation Benefits; (6) Failure to Allow Sick Time and Benefits; (7) Failure to Pay Wages for All Time Worked; (8) Failure to Provide Accurate Wage Statements; (9) Failure to Timely Pay Wages at Separation; (10) Failure to Produce Employment Records; (11) Unfair Business Practices; (12) Violation of Labor Laws Giving Rise to an Action Under the PAGA.

National Construction denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notices to National Construction and the LWDA by sending the PAGA Notices on March 2, 2023, and November 30, 2023.

2.3. On November 17, 2023, the Parties participated in an all-day mediation presided over by Hon. George Hernandez (Ret.), which led to this Agreement to settle the Action. This was a full day's mediation, which was followed by a series of communications through the weekend and the week after, by and among counsel for the parties and continued active participation of Judge Hernandez.

2.4. Prior to the mediation and negotiations that lead to the Settlement, Plaintiff obtained, through informal discovery, personnel file of Plaintiff, more than 70,000 lines of PAGA data for the aggrieved employees, and records relevant to the *Williams v. National Construction Rentals*,

Inc. Class / PAGA lawsuit (Alameda County Superior Court Case No. RG20075904), including Order of Final Approval and Judgment entered on 01/12/2022.

2.5. As known, there is a pending action in the Santa Clara Superior Court, Case No. 23V418010 (*Jhonnatan Copto Flores v. National Construction Rentals, Inc.*), that was filed on June 21, 2023 (along with a PAGA notice letter dated April 14, 2023), and the claims set forth thereat are completely subsumed by the instant Action, which is the earlier filed case (March 21, 2023).

3.MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, National Construction promises to pay \$240,000 and no more as the Gross Settlement Amount. National Construction has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to National Construction.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval for PAGA Counsel Fees, PAGA Counsel Costs, the Administrator Expenses, Plaintiff's Incentive Award, and payments to LWDA and Aggrieved Employees. The amounts estimated to date which are subject to Approval Order are set forth in the following sections.

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 35% which is currently estimated to be \$84,000 and PAGA Counsel Litigation Expenses Payment of not more than \$8,000. National Construction will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds National Construction harmless, and indemnifies National Construction, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$6,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.3. To Plaintiff, LWDA and Aggrieved Employees: \$5,000 as an incentive award to Plaintiff. PAGA Penalties in the amount of \$102,375, which represents 75% allocation to LWDA from the Net Settlement Amount of \$136,500 [\$240,000 - \$103,500 (\$84,000 + \$8,000 + \$6,500 +

\$5,000)]. The balance of 25% of Net Settlement Amount or \$34,125 to be allocated to the Individual PAGA Payments. The Net Settlement Amount set forth here is approximate depending on the Approval Order.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$34,125) 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.

3.2.3.2. 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 Forms.

4.SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, National Construction estimates there are 472 Aggrieved Employees who worked a total 13,377 of PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 15 days, National Construction will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. National Construction has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which National Construction must send the Aggrieved Employee 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 Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. National Construction shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date. National Construction shall also fund at the same time its share of the employer's taxes on the Gross Settlement Amount.

4.4. Payments from the Gross Settlement Amount. Within 14 days after National Construction funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment and Plaintiff's incentive award. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate National Construction to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5.RELEASES OF CLAIMS. Effective on the date when National Construction fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, 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 the PAGA Notices ("Plaintiff's Release"). Plaintiff's 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 PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notices.

6.MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.

6.1 Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699 before filing of said records with the Court.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 60 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA 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 grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA 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 Class Action Administration Solutions to serve as the Administrator and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions 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 the purposes of calculating payroll tax withholdings and providing reports to the 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 section 468B-1.

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

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES : Based on its records, National Construction estimates that, as of the date of this Settlement Agreement, (1) there are 472 Aggrieved Employees who worked 13,377 Pay Periods during the PAGA Period.

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law, including, but not limited to, California Code of Civil Procedure Section 664.6.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel 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. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party 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, except as to matters that do not affect the amount of the Net Settlement Amount.

10.ADDITIONAL PROVISIONS.

10.1 No Admission of Liability 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 Phoenix Class Action Administration Solutions that any of the allegations in the Operative Complaint have merit or

that Phoenix Class Action Administration Solutions has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Phoenix Class Action Administration Solution's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Phoenix Class Action Administration Solutions reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Phoenix Class Action Administration Solution'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).

10.2 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.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and National Construction, 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.

10.4 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.

10.5 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.

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

10.7 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.

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

10.9 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.

10.10 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.

10.11 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.

10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by National Construction 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 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from National Construction unless, prior to the Administrator's payment of all Settlement Funds, National Construction makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13 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.

10.14 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.

10.15 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:

For Plaintiff Efran Jimenez Cornejo	For Defendant National Construction Rentals, Inc.
Zorik Mooradian, Esq.	David Fishman, Esq.
MOORADIAN LAW, APC	BALLARD ROSENBERG GOLPER & SAVITT, LLP
24007 Ventura Blvd., Suite 210	15760 Ventura Blvd., Eighteenth Floor
Calabasas, CA 91302	Encino, CA 91436
Telephone: (818) 487-1998	Telephone: (818) 508-3700
Facsimile: (888) 783-1030	Facsimile: (818) 506-4827
zorik@mooradianlaw.com	dfishman@brgslaw.com

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically, 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.

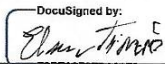
10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a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

10.18 Knowing and Voluntary Acceptance. In entering into this Agreement, the parties represent that they have relied upon the advice of their attorneys, who are attorneys of their own choice, and that the terms of this Agreement have been completely read, translated where necessary, and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by them.

PLEASE READ THIS AGREEMENT CAREFULLY. IT INCLUDES A GENERAL RELEASE AND WAIVER OF ALL KNOWN AND UNKNOWN CLAIMS.

By signing below, I voluntarily agree to the terms and conditions of this Agreement.

DATED: December __, 2023
12/8/2023

DocuSigned by:

Plaintiff Efrain Jimenez Cornejo

DATED: December 12, 2023


For Defendant National Construction Rentals, Inc.

EXHIBIT B



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	500
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	500
Subtotal Admin Only	\$6,500.00

Not-to-Exceed Total \$6,500.00

For 500 Class Members

Pricing Good for Scope of Estimate Only

November 29, 2023

Case: Cornejo v. National Construction Rentals, Inc., PAGA Admin wTranslation

Phoenix Contact: Jodey Lawrence

Contact Number: 800-523-5773

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Zorik Mooradian

Firm: MOORADIAN LAW, APC

Contact Number: 818.487.1998

Email: mooradianlaw@gmail.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
Estimate is based on **500** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$125.00	2	\$250.00
Programming Database & Setup	\$125.00	2	\$250.00
Toll Free Setup*	\$90.50	1	\$90.50
Call Center & Long Distance	\$2.00	13	\$25.00
NCOA (USPS)	\$200.00	1	\$200.00
Language Translation	\$250.00	1	\$250.00
Total			\$1,065.50

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.25	500	\$125.00
Notice and Check Packet	\$1.25	500	\$625.00
Estimated Postage (up to 1 oz.)*	\$0.64	500	\$320.00
Total			\$1,320.00

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	3	\$150.00
Skip Tracing Undeliverables	\$1.00	50	\$50.00
Remail Notice Packets	\$1.00	50	\$50.00
Estimated Postage	\$0.64	50	\$32.00
Programming Undeliverables	\$50.00	3	\$150.00
Total			\$432.00

Database Programming

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$125.00	2	\$250.00
Case Manager	\$85.00	2	\$170.00
Total			\$420.00

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

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	2	\$250.00
Disbursement Review	\$125.00	2	\$250.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$75.00	2	\$150.00
Check Run Setup & Printing	\$125.00	3	\$375.00
Total			\$1,215.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$125.00	3	\$375.00
Remail Undeliverable Checks (Postage Included)	\$2.65	50	\$132.50
Case Associate	\$75.00	3	\$225.00
Reconcile Uncashed Checks	\$95.00	3	\$285.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$80.00	1	\$80.00
Final Reporting & Declarations	\$100.00	2	\$200.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$550.00	1	\$550.00
Escheat to the CA State Controller	Inc.	Inc.	Inc.
Total			\$2,047.50

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

Estimate Total: \$6,500.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

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

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

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

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

Tax Reporting Requirements

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

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

EXHIBIT C

NOTICE OF SETTLEMENT

To: *All current and former non-exempt employees of National Construction Rentals, Inc. (“National Construction”) in California during the period from March 2, 2022, to the date that the Court approves this Settlement.*

PLEASE READ THIS NOTICE CAREFULLY

ACCORDING TO NATIONAL CONSTRUCTION’S RECORDS, YOU QUALIFY TO RECEIVE MONEY IN CONNECTION WITH A LEGAL SETTLEMENT, APPROVED BY THE COURT, IN CONNECTION WITH CALIFORNIA PRIVATE ATTORNEY GENERAL ACT.

WHAT IS THIS NOTICE ABOUT?

A settlement (the “Settlement”) has been reached between Plaintiff Efrain Jimenez Cornejo (“Plaintiff”) and Defendant National Construction Rentals, Inc. (“Defendant, or “National Construction”) in the action pending in the Court brought on behalf of the following individuals (the “Settlement Group”):

All current and former non-exempt employees of National Construction Rentals, Inc. in California during the period from March 2, 2022, to the date that the Court approves this Settlement.

The Court has approved the Settlement. You have received this Notice because National Construction’s records indicate that you are a member of the Settlement Group.

WHAT IS THIS LAWSUIT ABOUT?

On March 21, 2023, Plaintiff brought an action entitled “*Efrain Jimenez Cornejo v. National Construction Rentals, Inc. and DOES 1 to 50.*,” designated as No. 23STCV06238. The Action is pending in the Superior Court of California for the County of Los Angeles (the “Court”). The Complaint was subsequently amended twice, and the operative complaint is the Second Amended Complaint.

In the Action, Plaintiff alleged that Defendant failed to properly pay all wages due to aggrieved employees in California during the period of March 2, 2022, through *[date of court approval]* in violation Labor Code section 2699, *et seq.* claiming violations of specific sections of the Labor Code including sections 201-204, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 2698, 2699.3, and 2699.5. Plaintiff sued for civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab. Code § 2698 *et seq.* Under PAGA, any recovery of civil penalties is shared between the Labor and Workforce Development Agency (“LWDA”), which gets 75% of the penalties recovered, and the allegedly aggrieved employees, who get 25% of the penalties recovered.

Defendant denied and continues to deny all of Plaintiff’s material allegations. Specifically, Defendant contends that it complied with the requirements of the Labor Code and that civil penalties are not recoverable. After good faith negotiations in which both sides recognized the substantial risk of an uncertain outcome, Plaintiff and Defendant agreed to settle the Action pursuant to the terms and conditions of the Settlement. The Settlement represents a compromise and settlement of highly disputed claims.

WHO IS INCLUDED IN THE SETTLEMENT?

You are included in the Settlement if you fall within the following definition: *All current and former non-exempt employees of National Construction in California during the period from March 2, 2022, to the date that the Court approves this Settlement.* Defendant’s records indicate you are part of the Settlement Group.

WHAT WILL I RECEIVE FROM THE SETTLEMENT & THE RELEASE?

1. **Settlement Shares.** Pursuant to PAGA, 75% of the Net Settlement Amount will go to the LWDA (State of California). The remaining 25% of the Net Settlement Amount will be distributed to Settlement Group

Members as follows: Each Settlement Group Member shall receive a portion of the Net Settlement Amount “NSA” proportionate to the number of workweeks he or she worked during the PAGA Period, which will be calculated by multiplying the NSA by a fraction, the numerator of which is the Aggrieved Employee’s number of workweeks worked during the time period from March 2, 2022 through the Effective Date (the date that the Court approves the settlement), and the denominator of which is the total number of workweeks worked by all Settlement Group Members during the time period of March 2, 2022 through Effective Date.

2. **Funding and Payment of Settlement Shares.** National Construction shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date. National Construction shall also fund at the same time its share of the employer’s taxes on the Gross Settlement Amount. Within 14 days after National Construction funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment and Plaintiff’s incentive award. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients’ mailing addresses using the National Change of Address Database.
3. **Representative PAGA Release.** All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notices submitted to LWDA, which were dated March 2, 2023 and Nov. 30, 2023.

WHAT ARE MY RIGHTS & CONTACT INFORMATION?

1. **Participating in Settlement.** You are a part of the Settlement Group, and therefore, you will be bound by the terms of the Settlement and any final judgment that may be entered by the Court and you will be deemed to have released the PAGA claims against Defendant and the other released parties described above. As a member of the Settlement Group, you will not be responsible for the payment of attorneys’ fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys’ fees and expenses.
2. **Contact Information.** Should you have any questions or seek further information or clarification regarding any aspect of this Notice, your proportionate share of the distribution, or any other aspect of the settlement, you may contact the Settlement Administrator directly as follows:

Cornejo v. National Construction Rentals, Inc.
Jodey Lawrence
PHOENIX Class Action Administration Solutions
1411 N. Batavia St., Suite 105
Orange, CA 92867
1-800-523-5773
jodey@phoenixclassaction.com

The above is a summary of the basic terms of the Settlement. The pleadings and other records in this litigation including the Settlement Agreement, may be examined at the Office of the Clerk of the Court, Superior Court of California for Los Angeles at 111. N. Hill St. Los Angeles, 90012 during the Clerk’s normal business hours; or you may contact Plaintiff’s Counsel as follows: Zorik Mooradian, Mooradian Law, APC, 24007 Ventura Blvd., Suite 210, Calabasas, California 91302, (818) 487-1998. Or you may contact Defendant’s Counsel as follows: David Fishman, Ballard Rosenberg Golper & Savitt, LLP, 15760 Ventura Blvd. 18thFloor, Encino, CA 91436, (818) 508-3707.

Dated: _____, 2024.
By Order of the Court

EXHIBIT D

EXHIBIT E

MOORADIAN LAW, APC
24007 Ventura Blvd., Suite 210
Calabasas, California 91302
Mooradianlaw.com
Telephone 818-487-1998/Facsimile 888-783-1030

ZORIK MOORADIAN

E-mail: zorik@mooradianlaw.com

November 30, 2023

VIA USPS CERTIFIED MAIL

National Construction Rentals, Inc.
15319 Chatsworth Street
Mission Hills, CA 91345

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Re: Amended PAGA Notice Letter re California Wage & Hour Violations
Case No.: LWDA-CM-939627-23
Order No.: ORD-000212131
Original PAGA Notice Date: 03/02/2023

To Whom It May Concern:

This office represents Mr. Efrain Jimenez Cornejo (“Mr. Jimenez”) with respect to claims he is seeking under the Private Attorneys General Act (PAGA) for employment practices committed in violation of California law. This letter constitutes an amendment to the original PAGA notice, dated March 2, 2023, a true and correct copy of which is attached here as Exhibit A, and it is deemed as notice required by Labor Code § 2699.3.

Additional Violations/Supporting Facts and Theories

At all times herein, the Employer National Construction Rentals, Inc. (“Employer”) has been involved in the business of providing construction related rentals and services in the State of California and have employed/jointly employed Employees (including Mr. Jimenez) to perform work and services in furtherance of their business and joint enterprise interests. Going back for at least four years and continuing at the present time, the Employer has engaged in the following additional employment practices known to date.

Regular Rate of Pay

Employer has failed and continues to fail to take into consideration the “regular rate of pay,” encompassing all nondiscretionary payments, not just hourly wages, in its computation of premium pay for non-compliant meal, rest or recovery period under Labor Code Section 226.7(c) and *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal5th 858. Additionally, Employer failed and continues to fail to take into consideration the regular rate of pay in its computation of overtime pay pursuant to Labor Code Section 510(a). Mr. Jimenez and aggrieved employees

received non-discretionary bonuses at all times relevant here and were denied the appropriate adjustments to their wages based on the requisite regular rate analysis.

Failure to Maintain Accurate Payroll Records

Employer has failed and continues to fail record keeping practices in compliance with Labor Code Sections 1174 (c) and (d), which in pertinent part provide: “(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors. (d) Keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by, and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

It became evident after review of the payroll records and relevant data that record keeping practices were lawfully deficient for computation of wages, premium and overtime wages, regular rate of pay adjustments, PTO benefits, and reporting requirements for the wage statements. Employer’s wage statements do not accurately set forth all the hourly rates in effect to the pay period and/or the accurate corresponding number of hours worked at each hourly rate by Employees. The aggrieved employees were affected by said violations and none were provided the opportunity to examine their respective records at all times relevant here.

Conclusion

If the State of California intends to investigate the matters set forth here, please inform our offices as soon as possible as prompt administrative action will permit the identified unlawful practices to be rectified in prompt fashion. If the State of California does not send notification of its intent to investigate the alleged violations set forth herein, then pursuant to Labor Code § 2698 *et. seq.* (PAGA), Mr. Jimenez reserves the amend his PAGA cause of action in accordance with the additional violations set forth above, seeking all available damages, penalties, attorneys’ fees, interest, and costs against the Employer. Should the State of California require any additional information, please do not hesitate to contact the undersigned.

MOORADIAN LAW, APC



ZORIK MOORADIAN

Attorneys for Efrain Jimenez Cornejo

EXHIBIT A

MOORADIAN LAW, APC
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ZORIK MOORADIAN

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March 2, 2023

VIA USPS CERTIFIED MAIL

National Construction Rentals, Inc.
15319 Chatsworth Street
Mission Hills, CA 91345

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development
Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Re: PAGA Notice Letter re California Wage & Hour Violations

To Whom It May Concern:

This office represents Mr. Efrain Jimenez Cornejo (also referred to herein as Mr. Jimenez) with respect to claims he is seeking to bring under the Private Attorneys General Act (PAGA) for employment practices committed in violation of California law. This letter, which constitutes the notice required by Labor Code § 2699.3, is based on currently possessed information and belief. On December 27, 2022, and February 28, 2023, Certified letters with return receipts were mailed to National Construction Rentals, Inc., seeking the records of Mr. Jimenez from the inception of his employment to the date of his separation. As of the date of the submittal of this PAGA Notice, no records have been produced in response. Therefore, the information set forth in this Notice is subject to modification based on receipt of additional facts and information during the course of future proceedings.

Identity of “Employees”

Mr. Jimenez intends to pursue PAGA claims on his own behalf and on the behalf of other current and former employees of the entities/individuals referenced below who performed non-exempt work for said entities/individuals and were either: 1) classified as a non-exempt employee or 2) should have been classified as a non-exempt employee. Said employees are limited to employees performing work for said entities/individuals at any time during the following time period: One (1) year prior to the date of this PAGA Notice letter and continuing until the unlawful employment practices are stopped and/or a judgment is entered.

Said employees are collectively hereinafter referred to as “Employees.” The names of Employees (other than Mr. Jimenez) are contained within the personnel records of National Construction Rentals, Inc. (“Employer”)

Identity and Capacity of Employers/Joint Employers

Mr. Jimenez intends to pursue a PAGA action against his Employer (National Construction Rentals, Inc.) and its parent companies, subsidiaries, successors, owners, officers, directors, and managing agents (collectively referred to as “Employer” as well). Mr. Jimenez will seek to hold all owners, directors, officers and managing agents of his Employer personally liable for said violations to the extent permitted under Labor Code § 558 and/or Labor Code § 558.1.

All business entities referenced herein were the alter-egos of each and every other entity and individual referenced herein and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled, dominated, managed, and operated the business entities and have intermingled the assets of each to suit convenience. Further, each of the business entities are, and at all times mentioned herein were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist. Therefore, in the PAGA action, Mr. Jimenez will seek to hold each said individual and/or entity jointly and severally liable for any and/or all violations committed by the other above-referenced individuals and/or entities.

It should further be noted that the Employer and its parent companies, subsidiaries, successors, owners, officers, directors, and/or managing agents have been engaged in a joint enterprise. Moreover, said persons/individuals are joint employers of Employees for the following reasons: 1) Said entities/individuals directly and/or indirectly exercised control over the wages, hours or working conditions of Employees; 2) Said entities/individuals had knowledge (either personally or through officers, directors and/or managing agents) of the work Employees were doing for them while supposedly being employed by another entity/individual and failed to prevent the work from occurring; and 3) Said entities retained or assumed a general right of control over hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of Employees.

Violations/Supporting Facts and Theories

At all times herein, the Employer has been involved in the business of providing construction related rentals and services, including, but not limited to, temporary fencing, barricades, portable sanitation and storage containers, restroom trailers, temporary power and crowd control barriers in the State of California and have employed/jointly employed Employees (including Mr. Jimenez) to perform work and services in furtherance of their business and joint enterprise interests.

From 06/09/1991 Mr. Jimenez was hired by the Employer to work as a non-exempt, hourly wage employee in the State of California. He started as a yard sweeper and maintenance employee and continued to work for the Employer in various capacities, including, but not limited to, distributing portable toilets and sinks, repairs and cleaning bathrooms during his later years. He

was hospitalized due to the work-related stress on or about 04/18/2022 and was unable to return to work thereafter.

Going back for at least four years and continuing at the present time, the Employer has engaged in the following employment practices known to date to be in violation of California employment laws.

Misclassification Violations

Misclassifying Non-Exempt Employees as Exempt Employees: (Labor Code § 515, 8 CCR 11040, IWO No. 1 (Rule 1), and/or Other Applicable IWO): The Employer violated and continues to violate Labor Code § 515, 8 CCR 11040, IWO No. 1 (or other applicable law, wage order and/or regulation) by misclassifying current and former non-exempt employees as exempt employees and, thereby, has unlawfully denied said individuals the employment benefits owed to Employees under California law, including the following benefits: overtime pay, rest breaks, meal breaks, minimum wage rates, sick leave benefits and other benefits owed to non-exempt employees under California law.

Said misclassifications are evidenced by a number of factors, including but not limited to: Employees who primarily performed non-exempt work were classified as performing in executive and/or administrative capacities when said employees did not, in fact, qualify for such classification. For example: 1) Said employees did not customarily and/or regularly exercise discretion and independent judgment in the performance of their duties; instead, they followed the instructions and procedures given to them by others; 2) Said employees were not paid a monthly salary that was equivalent to no less than two times the state minimum wage for full-time employment (i.e., 40 hours per week).

Overtime Violations

The Employer has violated and continues to violate Labor Code §§ 500, 510, 1198, IWO No. 1 (or other applicable law, wage order and/or regulation) by failing to pay Employees overtime compensation as required under California law as follows:

- Employees working more than 8 hours in a workday have not been paid time and one-half. Instead, they either were not paid for the time they worked over 8 hours, or they were only paid regular wages rather than overtime wages.
- Employees working more than 40 hours in a workweek have not been paid time and one-half. Instead, they either were not paid for the time they worked over 40 hours in a week, or they were only paid regular wages rather than overtime wages.

The Employer's failure to pay Employees overtime wages in accordance with the Labor Code has been, in part, accomplished by wrongfully failing to include all of the times that Employees worked in calculating Employees' wages during each pay-period that Employees were employed. In part, this was accomplished via illegal rounding of work times which consistently worked to the advantage of the Employer.

Minimum Wage Violations

The Employer has violated and continues to violate Labor Code §§ 1182.12, 1194, 1198, IWO No. 1 (or other applicable law, wage order, regulation and/or local law/ordinance regulating the minimum wage owed to employees who work in the County of Los Angeles and its incorporated cities) by failing to pay Employees at least the minimum wage required under the law.

Specifically, because not all of the time worked by Employees has been/is being reported on the Employees' time records and/or paychecks, Employees have not been paid at least the minimum wage for all the time they actually worked for the Employer. For example, Employees have not been paid at least the minimum wage owed due to rounding of starting and stopping times which have consistently worked to the unfair advantage of the Employer. Employees have also not been paid for rest breaks.

Meal Period Violations

If not on a daily basis, then on multiple times during each pay period, The Employer has engaged, and continues to engage, in the business-wide practice of not providing Employees with legally compliant meal periods as mandated under California law as follows:

- a) In violation of Labor Code § 512 and the above-referenced IWO, The Employer has failed, and continues to fail, to provide Employees working 5.1 to 10 hours in their workday with at least one 30-minute unrestricted and uninterrupted meal period within the first 5 hours of their workday. Instead, Employees are provided their meal periods more than 5 hours after beginning their workday. Employees who were misclassified as exempt employees, were not provided meal periods or their meal periods were on-duty, were late and/or were interrupted. Additionally, in violation of Labor Code § 226.7, The Employer failed to pay said Employees one hour of pay (aka premium pay) for each day a legally compliant meal break was not provided.
- b) In violation of Labor Code § 512 and the above-referenced IWO, The Employer has failed, and continues to fail, to provide Employees working 10.1 to 14 hours in their workday with a second 30-minute, unrestricted and uninterrupted meal period within the first ten hours of their workday. Instead, Employees are either not provided with a meal period or, when they are provided a meal period, the meal period is not timely, it is interrupted, and/or the Employees are required to remain on duty. Additionally, in violation of Labor Code § 226.7, The Employer failed to pay said Employees one hour of pay (aka premium pay) for each day the required second meal period was not provided.

Based on the information known to date, it is believed that every Employee was denied at least one legally compliant meal period every pay period that they worked for the Employer. The total number of pay periods that each Employee was denied one or more meal periods can be determined via the time records of the Employees during the statutory time period. Mr. Jimenez was denied a legally compliant meal period multiple times every pay period. Indeed, he was denied a legally compliant meal period almost every workday. On the occasions when lunch

breaks were given, the Employees were required to have their meal in trucks so that they could be monitored by the Employer.

Rest Break Violations

If not on a daily basis, then on multiple times during each pay period, The Employer has engaged, and continues to engage, in the business-wide practice of not authorizing and/or permitting Employees to take the paid rest breaks they are entitled to under California law as follows:

- a) In violation of Labor Code § 512 and the above-referenced IWO, The Employer has failed, and continues to fail, to authorize and/or permit Employees working 3.5 to 6 hours in a workday to take at least one paid unrestricted and uninterrupted 10-minute net rest break in the middle of their daily work periods even though it was practical for Employees to take such rest breaks. Instead, rest breaks were not paid and/or were not provided in the middle of the work period. Additionally, in violation of Labor Code § 226.7, The Employer failed to pay said Employees one hour of pay (aka premium wages) for each day that required rest breaks were not authorized and/or permitted.
- b) In violation of Labor Code § 512 and the above-referenced IWO, The Employer has failed, and continues to fail, to authorize and/or permit Employees working 6.1 to 10 hours in a workday to take at least two paid unrestricted and uninterrupted 10-minute rest breaks in the middle of each of their daily work periods even though it was practical for Employees to take such rest breaks. Instead, Employees were either not given such rest breaks; or, when they were given rest breaks, the breaks were not in the middle of the work period, the breaks were interrupted and/or Employees were required to remain on-duty during their rest breaks. Additionally, in violation of Labor Code § 226.7, The Employer failed to pay said Employees one hour of pay (aka premium pay) for each day the required rest breaks were not authorized and/or permitted.

Based on the information known to date, it is believed that every Employee was denied one legally compliant rest break every pay period that they worked for the Employer. The total number of pay period violations that each Employees suffered from one or more rest break violations can be determined via the time records of the Employees during the statutory time period. Mr. Jimenez was denied a legally compliant rest break multiple times every pay period. Indeed, he was denied a legally compliant rest break almost every workday.

Seating Accommodation Violations

The Employer has adopted and continues to adopt a custom and practice of failing to provide its current and former Employees (including Mr. Jimenez) with: 1) Suitable seating when the nature of the Employees' work reasonably permits use of seats and 2) Suitable seating in reasonable proximity to Employee's work areas for use by Employees when a) they are not engaged in active duty, b) their work requires standing and c) such seats would not interfere with the performance of their duties. No such seating was provided.

Timely Wage Payment Violations

The Employer has violated and continues to violate Labor Code §§ 204-204b and the applicable wage order by failing to pay Employees the wages they were due within the timeframes set forth in Labor Code §§ 204-204b. Such failures occurred in at least the following ways:

- a) The Employer unfairly “rounds” the punch-in/out times of its Employees such that Employees are not paid for all the time they actually work. Moreover, the rounding has worked as an unfair monetary advantage to The Employer and to the detriment of the Employees.
- b) The Employer has not paid Employees overtime pay because the Employer has not included all the time Employees have actually worked in the Employees’ time records which are used to calculate Employees’ regular and overtime wages.
- c) Employees who are owed additional wages due to the Employer’s failure to comply with minimum wages laws have not been paid said wages.
- d) Employees have not been paid for their vested/accrued vacation benefits.
- e) Employees have not been paid for their accrued sick leave benefits.
- f) Employees have not been paid the premium pay wages owed by the Employer for missed, untimely, restricted, interrupted and/or short rest breaks.
- g) Employees have not been paid the premium pay wages owed by the Employer for missed, untimely, restricted, interrupted and/or short meal periods.
- h) Employees have not been paid minimum, regular and/or overtime wages for time worked but not included in the calculations of Employees’ wages included in the Employees’ paychecks and/or wage statements.
- i) Employees have not been paid minimum, regular and/or overtime wages owed for on-duty meal periods.
- j) Employees have not been paid minimum, regular and/or overtime wages owed due to rounding of clock-in times which have consistently worked to the unfair advantage of the Employer.
- k) Employees who have worked more than 8 hours to 12 hours in a workday have not been paid time and one-half.
- l) Employees who have worked more than 40 hours in a workweek have not been paid time and one-half.

Because Employees were not compensated for the above-referenced wages, Employees were not paid such wages within the timeframes set forth in Labor Code §§ 204-204b and Employees have not been paid the penalties set forth in § 210.

Wage Statement Violations

The Employer has adopted, and continues to adopt, a custom and practice of providing wage statements to Employees that fail to comply with Labor Code § 226 in the following ways:

- The Employer’s wage statements do not accurately record the total hours worked or the

gross/net wages earned by Employees for:

- Premium pay wages for missed, untimely, restricted, interrupted and/or short rest breaks as referenced above.
- Premium pay wages for missed, untimely, restricted, interrupted and/or short meal periods as referenced above.
- Regular and/or overtime wages for time worked but not reported on the Employer's time records.
- Regular and/or overtime wages for on-duty meal periods.
- Regular and/or overtime wages for rounding to the benefit of the Employer.
- Vacation time pay.
- Sick leave time pay.
- Earned overtime wages.
- Owed wages due to the Employer's failure to comply with minimum wages laws.
- The Employer's wage statements have not always accurately recorded all the deductions deducted from Employees' wages.
- The Employer's wage statements do not set forth the accurate name and/or address of the legal entity of the entity that employed Employees.
- The Employer's wage statements do not accurately set forth all the hourly rates in effect to the pay period and/or the accurate corresponding number of hours worked at each hourly rate by Employees.

Waiting Time Violations at Time of Separation

The Employer has violated and continues to violate Labor Code §§ 201-202 by failing to pay Employees who have become separated from the Employer the complete and correct amount of all wages owed to such Employees at the time of their separation within the timeframes mandated by Labor Code §§ 201-202 in the following ways:

- For Employees who have been terminated, The Employer has failed, and continues to fail, to pay said employees all wages due and payable immediately at the time of their termination.
- For Employees who have given at least 72-hours-notice of resigning or otherwise separating from the Employer, the Employer has failed (and continues to fail) to pay said Employees all wages due and payable on their last day of work.
- For Employees who have resigned or otherwise separated from the Employer and have not given at least 72 hours' notice, the Employer has failed (and continues to fail) to pay said Employees all wages due and payable within 72-hours.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid the premium pay wages owed at the time of separation for missed, untimely, restricted, interrupted and/or short rest breaks.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid the premium pay wages owed at the time of separation for missed, untimely, restricted, interrupted and/or short meal periods.

- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid regular and/or overtime wages owed at the time of separation for time worked but not reported on the Employer's time sheets and/or wage statements.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid regular and/or overtime wages owed at the time of separation for on-duty meal periods.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid regular and/or overtime wages owed at the time of separation for time unpaid due to rounding practices that unfairly worked to the benefit of the Employer.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid the overtime wages owed at the time of separation.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid wages owed due to the Employer failure to pay at least the minimum wage mandated by law.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid the wages they are owed for unpaid rest breaks.

Since none of the separated employees have been paid the entirety of the wages they were owed at the time of their separation, each such Employee is entitled to continuing wages for the 30-day maximum set forth in Labor Code § 203 (see below).

The number of pay period violations of Labor Code §§ 201-202 can be determined from information contained in the Employer's employment records including records which show when Employees became separated from employment with the Employer, when said Employees were paid their final wages from The Employer and what wages were paid as well as records regarding the total number of Employees who have become separated from employment during the statutory period (this number will continue to grow until the illegal practice is stopped).

Vacation Pay

The Employer has violated and continues to violate Labor Code § 227.3 by failing to pay employees vested vacation time at their time of separation from employment with Employer.

Payment/Use of Sick Time:

The Employer has violated and continues to violate Labor Code § 245.5 (definition of employee) and § 246 (mandated amounts of accrual of sick time) by failing to allow its past and present employees to accrue sick time in the amount required by law. As well, the Employer has violated and continues to violate Labor Code § 246.5 by failing to permit its past and present employees from using their accrued sick time for the purposes set forth under California law.

Conclusion

If the State of California intends to investigate the matters set forth herein, please inform our offices as soon as possible as prompt administrative action will permit the identified unlawful practices to be rectified in prompt fashion. If the State of California does not send notification of its intent to investigate the alleged violations set forth herein, then pursuant to Labor Code § 2698 *et. seq.* (PAGA), Mr. Jimenez reserves the right to file a PAGA cause of action seeking all available damages, penalties, and remedies as well as attorneys' fees, interest, and costs against the Employer, as permitted under the PAGA.

Should the State of California require any additional information, please do not hesitate to contact the undersigned.

MOORADIAN LAW, APC

A handwritten signature in blue ink, appearing to read 'Zorik Mooradian', is enclosed within a light gray rectangular border.

ZORIK MOORADIAN

Attorneys for Efrain Jimenez Cornejo

EXHIBIT F



Zorik Mooradian <mooradianlaw@gmail.com>

Thank you for your Court Complaint Submission.

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>

Mon, Feb 5, 2024 at 10:44 AM

To: Zorik@mooradianlaw.com

02/05/2024 10:44:08 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm