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Attorneys for Plaintiff FRANCISCO RAMIREZ, on behalf of himself,  
all others similarly situated, and on behalf of the general public

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF STANISLAUS**

FRANCISCO RAMIREZ on behalf of  
himself, all others similarly situated, and  
on behalf of the general public,

Plaintiffs,

v.

MESSER LLC; and DOES 1-100,

Defendants.

Case No. CV-23-002006

**DECLARATION OF DAVID MARA, ESQ.,  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS AND PAGA ACTION  
SETTLEMENT, APPROVAL OF CLASS  
NOTICE, SETTING OF FINAL  
APPROVAL HEARING DATE**

Date: November 7, 2024

Time: 8:30 a.m.

Judge: Hon. John Freeland

Dept.: 23

Complaint Filed: April 14, 2023

Trial Date: None Set

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for Plaintiff and the putative  
3 class in this matter. I am duly admitted to practice before all the courts of the state of  
4 California. The following facts are within my personal knowledge and, if called to testify,  
5 I could and would competently testify thereto.
- 6 2. I graduated from California Western School of Law and was admitted to practice law in  
7 California in May 2004.
- 8 3. I extensively handle employment cases which involve violations of the California Labor  
9 Code and Industrial Welfare Commission Wage Orders, such as wage and hour class actions  
10 and cases alleging violations of the Private Attorneys General Act of 2004 (“PAGA”). I have  
11 litigated over three hundred and fifty (350) class action and PAGA lawsuits over the course  
12 of approximately 20 years.
- 13 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County  
14 Superior Court, Case No. GIC834348) which was the underlying case in the California  
15 Supreme Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012)  
16 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer  
17 obligations to provide, and employee rights to receive, meal and rest periods under  
18 California law.
- 19 5. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer  
20 Attorneys of California (“CAOC”). For example, I authored the Amicus Curiae briefs on  
21 behalf of CAOC in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The  
22 California Supreme Court ruling that, like meal periods, employers must relieve  
23 employees of all duty and relinquish all control to satisfactorily discharge its obligation to  
24 authorize and permit rest periods.); *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038 (The  
25 California Supreme Court ruling that the time spent on the employer’s premises waiting  
26 for, and undergoing, required exit searches of packages, bags, or personal technology  
27 devices voluntarily brought to work is compensable hours worked within the meaning of  
28

1 the Wage Orders.); *Oliver v. Superior Court* (2021) California Court of Appeal Case No.  
2 H049185 (A brief asking the California Court of Appeal for the Sixth Appellate District  
3 to determine whether mandatory drive time of personal vehicles should be considered  
4 hours worked within the meaning of the Wage Orders' suffered or permitted test.).  
5 *Davidson v. O'Reilly Auto Enterprises, LLC* (9th Cir., 2020; Docket No. 18-56188)(a brief  
6 seeking Review *En Banc* of an order denying class certification in a wage and hour  
7 matter).

8 6. I am also a member of CAOC's Amicus Committee that determines the cases in which  
9 the organization will agree to provide amicus support.

10 7. I have also lectured as a panelist for California Employment Lawyers Association  
11 regarding a host of wage and hour issues.

12 8. I have been named as class counsel in the following certified cases as a result of the court  
13 granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.*  
14 (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald*  
15 *Schroeder v. YRC, Inc.; et al.* (Central District of California, Case No. 12-cv-01374-TJH);  
16 *John Martin v. Sysco Corporation, et al.* (Eastern District of California, Case No. 1:16-  
17 cv-00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.*  
18 (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San  
19 Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL); *Denson Sales,*  
20 *et al. v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-  
21 08404-JST), *Eric Mendez v. M&N Consulting, Inc. dba A-Line Messenger Service* (San  
22 Bernardino County Superior Court, Case No. CIVDS1923624); *Denson Sales v.*  
23 *Professional Auto Transport, Inc. et al.* (San Bernardino County Superior Court, Case No.  
24 CIVDS2010153); *Bobby Williams v. Mohsen Transport, Inc.* (San Diego County Superior  
25 Court, Case No. 37-2019-00063361-CU-OE-CTL); and *Ashton Harden v. Mushiana*  
26 *Transport Inc.* (Sacramento County Superior Court, Case No. 34-2021-00301950-CU-  
27 OE-GDS).

1 9. I have also been named as class counsel in numerous cases during the settlement process.  
2 Here is a non-exhaustive list of cases where I have been named as class counsel in cases  
3 during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior  
4 Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern  
5 County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage*  
6 *Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz v. Altura*  
7 *Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577); *George*  
8 *Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No.  
9 RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County  
10 Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare*  
11 *Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-  
12 CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of  
13 California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.*  
14 (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass*  
15 *Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy*  
16 *Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case  
17 No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County  
18 Superior Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San  
19 Mateo County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron,*  
20 *LLC; et al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v.*  
21 *California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No.  
22 CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San  
23 Bernardino County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega*  
24 *Velazquez v. Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case  
25 No. CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside  
26 County Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba*  
27 *NCI Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO);  
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1 *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case  
2 No. 30-2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San  
3 Bernardino County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw*  
4 *Industries, Inc.; et al.* (San Bernardino County Superior Court, Case No.  
5 CIVSB2024674); *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.* (Los  
6 Angeles County Superior Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro*  
7 *Flat Glass, LLC* (Kern County Superior Court, Case No. BCV-21-101357).

8 10. A class action complaint was filed by Plaintiff on April 14, 2023, in Stanislaus County  
9 Superior Court (Case No. CV-23-002006). The complaint alleges the following claims:  
10 (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3)  
11 Failure to Adopt a Complaint Sick Pay Policy, (4) Knowing and Intentional Failure to  
12 Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Pay All  
13 Wages Due at the Time of Termination of Employment, and (6) Violation of Unfair  
14 Competition Law (Business & Professions Code § 17200, *et seq.*). Defendant filed an  
15 answer to Plaintiff's class action complaint on May 17, 2023.

16 11. Plaintiff provided notice to the Labor and Workforce Development Agency ("LWDA")  
17 and Defendant in accordance with the Private Attorneys General Act of 2004 ("PAGA")  
18 on April 10, 2023. On July 27, 2023, Plaintiff filed a PAGA complaint in the Stanislaus  
19 County Superior Court (Case No. CV-23-004196). The complaint alleges the following  
20 PAGA claims: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime  
21 Wages, (3) Failure to Pay All Wages Due at the Time of Termination of Employment, (4)  
22 Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement  
23 Provisions, (5) Failure to Adopt a Complaint Sick Pay Policy. Defendant filed an answer  
24 to Plaintiff's PAGA complaint on November 14, 2023.

25 12. On September 20, 2024, Plaintiff provided an amended notice to the LWDA and  
26 Defendant. On October 14, 2024, the Parties filed a stipulation for leave to allow Plaintiff  
27 to file a First Amended PAGA Complaint adding in a cause of action pursuant to  
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1 California Labor Code § 213, which was granted by the Court on the same day. Plaintiff  
2 filed his First Amended PAGA Complaint on October 14, 2024.

3 13. On October 14, 2024, the Parties stipulated to consolidate Plaintiff's class and PAGA  
4 actions with the class action as the lead case. The Court granted this stipulation on the  
5 same day.

6 14. After filing, the Parties engaged in informal discovery. These discovery efforts led to  
7 Defendant producing hundreds of pages of policy documents such as employee handbooks  
8 and Collective Bargaining Agreements that covered Class Members' employment.  
9 Defendant further produced a sampling of time and pay records for Class Members.  
10 Defendant also produced Plaintiff's personnel file and time and pay records. Plaintiff also  
11 requested, and Defendant produced, data surrounding the number of current and former  
12 employees, as well as the number of workweeks worked by Class Members during the  
13 relevant time period, to establish a potential exposure model in preparation for mediation.  
14 From this discovery, Plaintiff and his Counsel were able to analyze Defendant's liability  
15 in this action and prepare a realistic damage model.

16 15. The Parties attended an all-day mediation presided over by wage and hour mediator Steve  
17 Serratore on May 17, 2024. This mediation was successful. The Parties then met and  
18 conferred over all the terms of the settlement and finalized their settlement in the Parties'  
19 Agreement. The Parties' Agreement is attached hereto as **Exhibit 1**.

20 16. Plaintiff contends that Defendant does not pay drivers for all time worked. Employees  
21 must be paid for all "hours worked," as that phrase is defined in the Wage Order and  
22 interpreted by California courts. Hours worked is defined in the Wage Order as "the time  
23 during which an employee is subject to the control of an employer and includes all the  
24 time the employee is suffered or permitted to work, whether or not required to do so."  
25 Wage Order 9-2001, Subd. 2(H); *see also Mendiola v. CPS Security Solutions, Inc.* (2015)  
26 60 Cal.4th 833. Under the control standard, "it is only necessary that the worker be subject  
27 to the control of the employer in order to be entitled to compensation." *Morillion v. Royal*

1       *Packing Co.* (2000) 22 Cal. 4th 575, 584. The *Morillion* Court reasoned that an employee  
2       is under the employer’s control and entitled to compensation when the employer “directs,  
3       commands or restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (*quoting Bono*  
4       *Enterprises, Inc. v. Bradshaw* (1995) 32 Cal. App. 4th 968, 975). Here, Plaintiff contends  
5       that drivers do not receive duty and control free meal periods and, thus, are owed wages  
6       for this time. Plaintiff asserts that Defendant requires drivers to stay with their trucks at  
7       all times, including during meal periods due to the nature of the gases being transported.  
8       As such, Plaintiff alleges that drivers cannot leave their trucks unattended, including  
9       during unpaid meal periods.

10      17. Defendant contends that drivers are paid for all hours worked and that drivers do not need  
11       to stay with their trucks during meal periods. Defendant contends that gases being  
12       transported by drivers are class 2 gases that do not have to be attended at all times.  
13       Defendant asserts that under the federal regulation that applies to the gases being  
14       transported by drivers, drivers do not have to remain with the load at all times and can  
15       take duty and control free meal periods. As such, there is a dispute about whether drivers  
16       must remain with their load at all times, including during unpaid meal periods.

17      18. Plaintiff also pursued claims for failure to provide accurate itemized wage statements and  
18       waiting time penalty claims. These claims are derivative of Plaintiff’s unpaid wages claim.  
19       Should Plaintiff’s unpaid wages claim fail, these claims would also fail.

20      19. In addition, Defendant contends that even if Plaintiff were successful in his unpaid wage  
21       claim, he would have to prove Defendant “willfully” failed to pay employees the  
22       appropriate wages due upon separation of employment. “A willful failure to pay wages  
23       within the meaning of Labor Code Section 203 occurs when an employer intentionally  
24       fails to pay wages to an employee when those wages are due. However, a good faith  
25       dispute that any wages are due will preclude imposition of waiting time penalties under  
26       Section 203.” Cal. Code Regs. Tit. 8 § 13520. “A ‘good faith dispute’ that any wages are  
27       due occurs when an employer presents a defense, based in law or fact, which would  
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1 preclude any recovery on the part of the employee. The fact that a defense is ultimately  
2 unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.*

3 20. Defendant contends that any failure to pay wages due at the separate of employment was  
4 not willful. Defendant argues that it would not be liable for waiting time penalties because  
5 a “good faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8  
6 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

7 21. Further, Defendant contends that Plaintiff would also have to prove that Defendant  
8 “knowingly and intentionally” failed to comply with the wage statement requirements  
9 under Labor Code § 226. *See Naranjo v. Spectrum Security Services, Inc.* (2024) 15  
10 Cal.5th 1056. Defendant maintains that it reasonably, and in good faith believes that it  
11 was providing a complete and accurate wage statement in compliance with California law.

12 22. Defendant also argues that Plaintiff’s unpaid wages claims cannot form the basis of his  
13 wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.*  
14 (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer injury under  
15 California Labor Code § 226(a) so long as the wage statements correctly reflected the  
16 hours worked and the pay received even if the pay is later determined to be inaccurate.

17 23. Plaintiff also seeks PAGA penalties for the claims outlined above and for Defendant’s  
18 alleged violation of California Labor § 213. PAGA allows the private enforcement of  
19 certain California Labor Code sections relating to wage and hour violations. The statute  
20 of limitations for PAGA violations goes back one year. To the extend that Plaintiff’s  
21 PAGA claims are based on the same alleged unlawful conduct as his class claims,  
22 Plaintiff’s PAGA claims are subject to the same risks on the merits as Plaintiff’s class  
23 claims.

24 24. In addition, Plaintiff alleges a cause of action pursuant to the PAGA for Defendant’s  
25 alleged violation of California Labor Code § 213. Plaintiff asserts that Defendant required  
26 employees to receive wages by direct deposit. Under California Labor Code § 213, an  
27 employer cannot force an employee to participate in its direct deposit program. Rather,  
28

1 wages can only be direct deposited if “the employee has voluntarily authorized that  
2 deposit.” Cal. Lab. Code § 213(d). Plaintiff contends that Defendant requires employees  
3 to participate in its direct deposit program.

4 25. Defendant contends that it does not require employees to participate in its direct deposit  
5 program. Defendant asserts that a Collective Bargaining Agreement entered into by a  
6 predecessor company which covered some of the Aggrieved Employees provided that  
7 Aggrieved Employees would join the direct deposit program, but Defendant did not  
8 enforce this policy and allowed employees to choose how they wanted to receive their  
9 wages. Moreover, the number of Aggrieved Employees that were covered by this policy  
10 is only a fraction of the total Aggrieved Employees. As such, a dispute exists as to whether  
11 employees were required to enroll in Defendant’s direct deposit program.

12 26. Further, Defendant maintains that Plaintiff’s PAGA claims face manageability concerns  
13 consistent with the class certification challenges. Specifically, Defendant has due process  
14 rights which would not permit Plaintiff to attempt to generalize violations from disparate  
15 anecdotal evidence. *Duran v. U.S. Bank National Assn.*, 59 Cal.4th 1 (2014). Further,  
16 Defendant asserts that Plaintiff cannot stack multiple PAGA penalties for the same  
17 underlying conduct, i.e., failure to pay minimum wages/failure to pay all wages or  
18 overtime. *Plotnik v. Meihaus* (2014) 208 Cal.App.4th 1590, 1612.

19 27. In addition, the Court may reduce any PAGA penalties awarded under Section 2699,  
20 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to  
21 the Aggrieved Employees – assuming liability is proven as to each of Plaintiff’s claims –  
22 is higher in this case where these same individuals may also be receiving money for the  
23 same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D.  
24 Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142  
25 \*17 (“Because the PAGA penalties sought are at least partially duplicative of penalties  
26 granted by the underlying Labor Code violations, *see, e.g.*, Cal. Lab. Code §§  
27 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what  
28

1 amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes  
2 that the potential PAGA penalties are highly uncertain.”). As such, the Court will likely  
3 reduce any PAGA penalty amount awarded to the Aggrieved Employees.

4 28. The settlement encompasses 15,494 workweeks.<sup>1</sup> This equates to approximately 77,470  
5 shifts. Employees earned approximately \$33.52 per hour on average.

6 29. Plaintiff alleges that Defendant failed to pay employees all wages owed because  
7 employees are not free of all duties and controls during unpaid meal periods. Plaintiff  
8 asserts that drivers transport hazardous gases and, therefore, have to remain with their  
9 trucks throughout their shifts, including during meal periods. If Plaintiff were to prevail  
10 on this claim, Plaintiff and the Class Members would be entitled to the following potential  
11 damages: \$1,298,397 (77,470 shifts x \$33.52 x 0.5 hours = \$1,298,397.20).

12 30. Plaintiff alleges that Defendant does not provide accurate itemized wage statements to  
13 employees. This claim is derivative of Plaintiff’s unpaid wages claim. Under California  
14 Labor Code § 226(e)(1), the damages for breach of this section are fifty dollars (\$50) for  
15 the initial pay period in which a violation occurs and one hundred dollars (\$100) per  
16 employee for each violation in a subsequent pay period, not to exceed an aggregate penalty  
17 of four thousand dollars (\$4,000). If Plaintiff were to prevail on this claim, Plaintiff and  
18 the Class Members would be entitled to the following potential damages: \$388,000 (97  
19 employees x \$4,000 maximum penalty = \$388,000).

20 31. If Plaintiff were to prevail on his unpaid wages claim, he and the Class Members may also  
21 be entitled to waiting time penalties. Plaintiff calculates the potential exposure under his  
22 waiting time penalties cause of action as \$386,150 (48 former drivers in the three-year  
23 statute of limitations x 8 hours per day x \$33.52 x 30 days = \$386,150.40).

24 32. Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain  
25 California Labor Code sections relating to wage and hour violations. The statute of  
26 limitations for PAGA violations go back one year. The maximum potential damages under

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27 <sup>1</sup> Exhibit 1 at Paragraphs 51 and 56.1.  
28

1 Plaintiff's PAGA claim is: \$687,500 (\$100 x 3 PAGA violations (unpaid wages, § 213,  
2 and wage statements) x 6,970 pay periods = \$2,091,000 plus \$100 x 1 PAGA violation  
3 (waiting time penalties) x 48 pay periods = \$4,800).

4 33. Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if  
5 he were successful in his core claim for unpaid wages, Defendant's exposure would be  
6 approximately \$1,298,397. If the fact finder were to side with Defendant on this claim,  
7 Plaintiff and the Class Members would not be entitled to any damages for wage  
8 statements, waiting time penalties, or PAGA penalties that are derivative of and dependent  
9 on Plaintiff prevailing on his unpaid wages claim. If Plaintiff is successful in his unpaid  
10 wages claim, and is able to prove that Defendant's wage statement violations were  
11 knowing and intentional and that the waiting time penalties violations were willful, he and  
12 the Class may also be entitled to damages for wage statements and waiting time penalties  
13 in the amount of \$774,150 [\$388,000 (wage statements) and \$386,150 (waiting time  
14 penalties) = \$774,150]. Plaintiff and the Aggrieved Employees may also be entitled to  
15 PAGA penalties in the amount of \$2,095,800, subject to Court reduction.

16 34. In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the  
17 settlement amount of \$450,000 – with an average settlement share amount estimated at  
18 \$1,856.06 – is a reasonable and fair settlement amount.

19 35. The preliminary approval motion and supporting documents were uploaded to the Labor  
20 Workforce Development Agency. Attached hereto as **Exhibit 2** is a confirmation received  
21 as a result of this upload.

22 I declare under penalty of perjury under the laws of the State of California that all the  
23 foregoing is true and correct.

24 **MARA LAW FIRM, PC**

25 Date: October 17, 2024

26 Signed:  \_\_\_\_\_  
27 David Mara, Esq.

# Exhibit 1

## JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this settlement agreement is made between Plaintiff Francisco Ramirez (hereinafter “Plaintiff”) on behalf of himself and the Class and Defendant Messer LLC (“Defendant” or “Messer”) (collectively Plaintiff and Defendant are referred to in this Agreement as the “Parties”). This agreement is intended to settle the cases entitled *Francisco Ramirez v. Messer LLC*, Stanislaus County Superior Court Case Nos. CV-23-002006 (“the Class Action”) and CV-23-004196 (“the PAGA Action”) (collectively the “Complaints”, “Actions” or “Lawsuits”).

### I. DEFINITIONS

In addition to the other terms defined in this agreement, the terms below have the following meaning:

1. **Administration Costs**: The costs incurred by the Settlement Administrator, Simpluris, to administer this Settlement, which shall not exceed \$10,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
2. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
3. **Amended PAGA Notice and PAGA Complaint**: As part of the Settlement, Class Counsel will update the letter to the LWDA to assert claims under California Labor Code § 213, as raised in mediation. Class Counsel will also amend their PAGA complaint to effectuate a full-release of claims discussed during mediation.
4. **Attorneys Fee Award**: The amount of attorneys’ fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed \$150,000 (33 1/3% of the Gross Settlement Amount). The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
5. **Class**: All persons employed by Defendant in California as a non-exempt driver from April 14, 2019 through August 15, 2024.
6. **Class Counsel**: David Mara and Jill Vecchi of Mara Law Firm, PC.

7. **Class Data:** The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks during which the Class Member performed work during the Class Period. The Class Data shall be based on Defendant's time clock data and other business records.
8. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
9. **Class Notice:** The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
10. **Class Period:** April 14, 2019 through August 15, 2024.
11. **Class Representative or Plaintiff:** Francisco Ramirez.
12. **Class Representative Enhancement Payments:** The amount the Court awards to Plaintiff, which will not exceed \$5,000. This payment shall be paid from the Gross Settlement Amount. This payment is being offered in consideration for Plaintiff executing a release that is broader than any Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for Plaintiff's actions in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiff put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
13. **Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$20,000. The Cost Award will be paid from the Gross Settlement Amount. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
14. **Counsel for Defendant:** Nathan W. Austin and Evan D. Beecher of Jackson Lewis P.C.
15. **Court:** Superior Court of California for the County of Stanislaus.
16. **Defendant:** Messer LLC.

17. **Disbursement of the Settlement:** Within fourteen (14) days after the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; and (6) the LWDA Payment to the LWDA.
18. **Effective Final Settlement Date:** The effective date of this settlement will be when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the Court enters judgment granting final approval of the settlement.
19. **Employer Taxes:** Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities.
20. **Final Judgment or Final Approval:** The final order entered by the Court approving this Agreement.
21. **Funding of Settlement:** Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later than thirty (30) days of the Effective Final Settlement Date.
22. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary \$450,000. This is the gross amount Defendant can be required to pay under this Settlement Agreement, with the exception of if the Escalator Provision is triggered. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) Employer Taxes; and (6) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
23. **Individual Class Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Class Settlement Shares pursuant to this Agreement. Rather,

Participating Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.

24. **Individual PAGA Settlement Share(s)**: The amount payable to each Aggrieved Employee under the terms of this Settlement Agreement. Aggrieved Employees are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Also, even if an Aggrieved Employee requests exclusion from the Class Settlement as described in this Agreement, the Aggrieved Employee will receive an Individual PAGA Settlement Share. Therefore, Aggrieved Employees will receive an Individual PAGA Settlement Share automatically, without the return of a claim form and regardless of whether they request to be excluded from the Class Settlement.
25. **LWDA**: California Labor and Workforce Development Agency (“LWDA”). The LWDA is empowered to enforce the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*, and has delegated such authority to Plaintiff with regard to the claim in the PAGA Action through the procedural mechanisms provided for by statute.
26. **LWDA Payment**: Refers to the Seventy-five percent (75%) of the PAGA Payment of \$20,000 (*i.e.*, \$15,000) that is to be paid to the LWDA as described in this Settlement.
27. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payment, the PAGA Payment, Employer Taxes, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the tax liability for the share for the portion of the settlement shares allocated as wages.
28. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
29. **PAGA Aggrieved Employees**: All individuals employed by Defendant in California from April 10, 2022 through August 15, 2024.
30. **PAGA Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks the total number of weeks during which the Aggrieved Employee performed work

during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be based on Defendant's time clock data and other business records.

31. **PAGA Payment**: Refers to the \$20,000 the Parties have agreed to settle the PAGA claims. 75% of this amount, or \$15,000, shall be paid to the LWDA. The remaining 25% or \$5,000, shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees.
32. **PAGA Period**: April 10, 2022 through August 15, 2024.
33. **PAGA Settlement**: Refers to the settlement of claims included in the Released PAGA Claims, for which Aggrieved Employees will receive an Individual PAGA Settlement Share payment.
34. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
35. **Parties**: Plaintiff Francisco Ramirez, as an individual and as a Class Representative, and Defendant Messer LLC.
36. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the Class Settlement.
37. **Released Class Claims**: The Released Class Claims include all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Actions, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 204, 210, 213, 218, 218.5, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, and 1197, California Industrial Welfare Commission Wage Orders, California Code of Regulations, Title. 8, section 11040, 11090, and 3395 *et seq.*, Business and Professions Code sections 17200 *et seq.*, California Code of Civil Procedure section 1021.5, and including all claims for or related to alleged unpaid wages, minimum wages, hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, timely payment of wages during employment, timely payment of wages at separation, wage statements, payroll records and recordkeeping, meal periods and meal period premiums, rest breaks and rest break premiums, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, declaratory relief, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Actions (collectively "Released Class Claims"), during the Class Period. Expressly excluded from the release are claims for retaliation, discrimination,

unemployment insurance, disability, workers compensation, and claims outside the Released Class Claims.

38. **Released PAGA Claims:** PAGA Aggrieved Employees are deemed to release all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Actions and/or the LWDA letter, including but not limited to all claims arising under the California Labor Code including, but not limited to sections 201, 202, 203, 204, 210, 213, 218, 221, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 246, 246.5, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, 1197, and 1197.1, as alleged in the PAGA Action complaint, and the California Industrial Welfare Commission Wage Orders based on the facts alleged in the Actions (collectively “Released PAGA Claims”). The Settlement shall release, and bar, all Released PAGA Claims by or on behalf of Plaintiff and all PAGA Members during the PAGA Period. PAGA Members cannot and do not have the right to opt out of the release of their PAGA claims against the Released Parties.
39. **Released Parties:** Collectively: (i) Defendant; (ii) each of Defendant’s respective past and present parents, subsidiaries, partners, affiliates, brands, including, without limitation, Messer North America Inc., and any corporation, limited liability company, or partnership which could be jointly liable with Defendant for the claims alleged; (iii) the past and present board members, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing which could be jointly liable with Defendant for the claims alleged; and (iv) any individual or entity which could be jointly liable with Defendant for the claims alleged.
40. **Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Class Notices.
41. **Settlement Administration:** The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address resulting from the search of the National Change of Address Database. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.

42. **Settlement Administrator**: The third party administrator agreed upon by Parties to administer this Settlement is Simpluris.

## II. **RECITALS**

43. A class action complaint was filed by Plaintiff Francisco Ramirez on April 14, 2023, in Stanislaus County Superior Court (Case No. CV-23-002006). The complaint alleges the following claims: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Adopt a Complaint Sick Pay Policy, (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Pay All Wages Due at the Time of Termination of Employment, and (6) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*).
44. Defendant filed an answer to Plaintiff's class action complaint on May 17, 2023.
45. Plaintiff Francisco Ramirez submitted his Notice of Labor Code Violations to the LWDA on April 10, 2023.
46. On July 27, 2023, Plaintiff Francisco Ramirez filed a PAGA complaint in the Stanislaus County Superior Court (Case No. CV-23-004196). The complaint alleges the following PAGA claims: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Pay All Wages Due at the Time of Termination of Employment, (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Adopt a Complaint Sick Pay Policy.
47. Defendant filed an answer to Plaintiff's PAGA complaint on November 14, 2023.
48. Prior to the mediation, Defendant produced hundreds of pages of policy documents such as employee handbooks and Collective Bargaining Agreements that covered Class Members' employment. Defendant further produced a sampling of time and pay records for Class Members. In addition, Defendant provided class-wide data and information permitting Plaintiff and his lawyers to fully evaluate class-wide exposure.
49. On May 17, 2024, the parties participated in a full-day mediation with wage and hour mediator, Steve Serratore, which resulted in the settlement that is reflected in this Agreement.
50. As part of this settlement, Class Counsel agrees to update the letter to the LWDA to assert claims under California Labor Code § 213, as raised in mediation. Class Counsel will also amend their PAGA complaint to effectuate a full-release of claims discussed during mediation.

- 51. Number of Class Members and Aggrieved Employees.** It was estimated for purposes of mediation that there are approximately 132 Class Members who worked approximately 15,494 workweeks that are part of this settlement. It was estimated for purposes of mediation that there are approximately 97 Aggrieved Employees who worked approximately 6,413 pay periods that are part of this settlement.
- 52. Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- 53. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant has been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- 54. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Actions are not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Actions. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- 55. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or

defenses asserted, or lack thereof, in the Actions. However, in the event that this Settlement is finally approved by the Court, the Plaintiff, Participating Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Participating Class Members have resolved and are forever barred from re-litigating the claims released under this Agreement.

### **III. SETTLEMENT TERMS AND CONDITIONS**

- 56. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendant is obligated to pay under this Settlement Agreement is \$450,000. The Gross Settlement Amount includes: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) Employer Taxes; and (6) the PAGA Payment, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

**56.1 Escalator Provision:** At mediation, it was Plaintiff's understanding that Class Members have worked a total of approximately 15,494 workweeks from April 14, 2019, through the date of mediation. Should the number of workweeks worked during the Class Period exceed more than 10% of this amount, Defendant, at its option, can either choose to: (1) cut off the end date for the class release as of the date on which the number of workweeks reaches 17,044; or (2) increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in number of workweeks worked by the Class Members above the 10% amount (*i.e.* if there was a 11% increase in the number of workweeks during the Class Period, Defendant would agree to increase the Maximum Settlement Amount by 1%).

- 57. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- 58. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not

become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in these Actions or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

- 59. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Francisco Ramirez shall be appointed as representative for the Class.
- 60. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- 61. Individual Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Class Settlement Share from the Net Settlement Amount to each Participating Class Member.

#### **61.1 Calculation.**

**61.1.1 Individual Class Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

**61.1.2 Workweek Calculation.** Defendant will calculate the number of workweeks worked by all Class Members during the Class Period based on time clock data, and the amount to be paid to Class Members per workweek based on time clock data. The workweeks will be calculated by Defendant for each Class Member during the Class Period based on time clock data. Defendant's workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible written evidence. Defendant will provide time clock data to the Settlement Administrator for resolution of any workweek disputes by a particular Class Member. All workweek disputes will be resolved and decided by the

Settlement Administrator, and the Settlement Administrator's decision on all workweek disputes will be final and non-appealable.

**61.1.3 Workweek Value.** The amount to be paid per workweek to eligible Class Members will be calculated by the Settlement Administrator by dividing the Net Settlement Amount by the total number of workweeks for all Class Members; any person who opts out of the Settlement is not a Class Member.

**61.2 Tax Withholdings.** Each Class Member's Individual Settlement Share will be apportioned as follows: one tenth (1/10) will be allocated to alleged unpaid wages for which IRS Forms W-2 will issue; nine tenths (9/10) will be allocated to alleged unpaid penalties and interest. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

**62. Individual PAGA Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual PAGA Settlement Share from the Net PAGA Settlement Amount to each Aggrieved Employee.

**62.1 Calculation.**

**62.1.1 Individual PAGA Settlement Share Calculation.** Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of workweeks he or she worked for Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of workweeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of workweeks that he or she worked during the PAGA Period.

**62.1.2 Workweek Calculation.** Defendant will calculate the number of workweeks worked by the PAGA Members during the PAGA Period based on time clock data. The workweeks will be calculated by Defendant for each PAGA Member based on the time clock data during the Class

Period. Partial workweeks will not be counted; however, if a PAGA Member worked only one day as a PAGA Member, such PAGA Member will be credited with having worked one workweek for purposes of the Settlement. Defendant's workweek data will be presumed to be correct, unless a particular PAGA Member proves otherwise to the Settlement Administrator by credible written evidence. Defendant will provide time clock data to the Settlement Administrator for resolution of any workweek disputes by a particular PAGA Member. All workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all workweek disputes will be final and non-appealable.

**62.1.3 Workweek Value.** The amount to be paid per workweek to PAGA Members will be calculated by the Settlement Administrator by dividing the Net PAGA Settlement Amount by the aggregate number of weeks worked by PAGA Members.

**62.2 Tax Withholdings.** Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100% penalties. The Individual PAGA Settlement Shares shall therefore be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

**63. Constituents of Gross Settlement Amount Disbursement.** Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the Gross Settlement Amount as directed later on herein to the following:

**63.1 To the Named Plaintiff:** In addition to their Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Francisco Ramirez, will receive up to \$5,000 in consideration for providing Defendant a release that is broader than the claims released by Participating Class Members. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to his Class Representative Enhancement Payment.

**63.2 To Class Counsel.** At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys Fee Award not to exceed 33

1/3% of the GSA (\$150,000) and a Cost Award not to exceed \$20,000. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the entirety of the application for the Attorneys Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

- 63.3 To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members and Defendants portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. The Settlement Administrator will calculate the amount of payroll withholding taxes and will forward the amount to the appropriate taxing authorities.
- 63.4 To the Settlement Administrator.** The Settlement Administrator – Simpluris – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$10,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 63.5 To the LWDA and Aggrieved Employees.** The Settlement Administrator will pay 75% of the PAGA Payment (\$15,000) to the LWDA. The remaining 25% of the PAGA Payment (\$5,000) shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees
- 63.6 To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members and Aggrieved Employees shall be made from the Gross Settlement Amount.

**64. Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Simpluris shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to Class Members and Aggrieved Employees; performing skip traces and re-mailing notices to Class Members and Aggrieved Employees; calling Class Members and Aggrieved Employees with undeliverable notices to obtain accurate addresses; keeping track of any objections or requests for exclusion from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's and Aggrieved Employee's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and re-mailing Individual Settlement Shares to Participating Class Members and Aggrieved Employees; calculating and mailing the LWDA Payment to the LWDA; distributing the Attorneys Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members, Aggrieved Employees, and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds associated with any uncashed checks to The United Way, which is a non-profit organization that supports projects that benefit employees and applicants throughout the State of California.

**65. Procedure for Approving Settlement.**

**65.1 Cooperation.**

**65.1.1** All Parties and their counsel shall support the Settlement and take such steps as are reasonably necessary to effectuate the Settlement.

**65.1.2** The class notice to be sent to the Class Members, preliminary approval order and final approval order are to be mutually agreed upon by the Parties and presented for approval to the Court.

**65.2 Amended Complaint and Amended PAGA Notice.**

**65.2.2** Class Counsel agrees to update the letter to the LWDA to assert Labor Code 213 claims, as raised in mediation. Class Counsel will also amend their PAGA complaint to effectuate a full-release of claims discussed during mediation.

**66. Motion for Preliminary Approval and Conditional Certification.**

- 66.1** Plaintiff will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval hearing; and (4) approving the Class Notice.
- 66.2** At the same time that Plaintiff files his Motion for Preliminary Approval, Plaintiff shall send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA.
- 66.3** At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- 66.4 Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment.

**67. Notice to Class Members and Aggrieved Employees.** After the Court enters its Preliminary Approval Order, every Class Member and Aggrieved Employee will be provided with the Class Notice in accordance with the following procedure:

- 67.1 Delivery of Class and PAGA Data.** Within thirty (30) days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA Data. If any or all of this information is

unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Class Data and PAGA Data shall be based on Defendant's time clock data and other business records. The Settlement Administrator shall maintain the Class and PAGA Data and all information contained within the Class and PAGA Data as private and confidential.

**67.2 Preparation of Class Notices.** Based on the information in the Class and PAGA Data and the formulae set forth in Paragraphs 61.1 and 62.1, above, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share and Individual PAGA Settlement Share for every Class Member and Aggrieved Employee, to be included in the individualized Class Notices to be sent to that Class Member and/or Aggrieved Employee, and shall prepare and mail a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) days before mailing the Class Notices to Class Members and Aggrieved Employees. The Class Notices will inform each Class Member of his/her right to do nothing, dispute the number of work weeks worked, opt out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.

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

update the recipients' mailing addresses using the National Change of Address Database.

- 67.4 Mailing of Class Notices.** Within fifteen (15) days after receipt of the Class and PAGA Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class Members and Aggrieved Employees using the mailing address information provided by Defendant and the results of the search of the National Change of Address Database on all Class Members and Aggrieved Employees.
- 67.5 Returned Notices.** If a Class Notice is returned because of an incorrect address, within three (3) business days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.
- 67.6** If the Administrator or any Party is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or U.S. mail, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later. Individuals asserting that they should be included as a Class Member shall have until the Response Deadline to make such a request.
- 67.7 Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of

Notices re-mailed, and the number of requests for exclusion or objections received.

**67.8 Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

**68. Objections to Settlement.** Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

**68.1 Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.

**68.2 Notice of Intent to Appear.** Objecting Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. Objecting Class Members are permitted to appear regardless of whether they submitted a written objection.

**69. Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and the last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention

to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.

**69.1 Effect of “Opt-Out.”** Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement. If the Class Member is also an Aggrieved Employee as defined in this Agreement, however, he or she will still receive an Individual PAGA Settlement Share payment as approved by the Court. Aggrieved Employees have no right to opt-out of the PAGA Settlement.

**69.2 Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member’s identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

**69.3 Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

**69.4 Defendant’s Option to Terminate.** The number of opt-outs by Class Members is not to exceed five percent (5%), or Defendant may terminate the Settlement; however, Defendant shall not be required to terminate the Settlement. Defendant agrees to notify Class Counsel of any such decision no later than fourteen (14) calendar days following the opt-out deadline and agrees to pay all claims administration costs incurred through such date.

**70. Class Member and Aggrieved Employee Disputes.** If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee may notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member or Aggrieved Employee contends he or she worked for Defendant during the Class or PAGA Period. The Settlement Administrator shall then provide the documentation provided by the Class Member or Aggrieved Employee to Defendant. Defendant shall review its records, the documentation provided by the Class Member or Aggrieved Employee, and shall provide information to the Settlement Administrator in response to any such disputed claim within seven (7) business days. Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member or Aggrieved Employee and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding.

**71. No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

**72. Motion for Final Approval.**

**72.1** No later than sixteen (16) court days before the Final Approval Hearing, Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Class and PAGA Claims of the Participating Class Members and LWDA.

**72.2 Denial or Appeal of Final Approval.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties

agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorneys Fee Award, Cost Award, and Administration Costs award will not constitute a material modification to the Settlement within the meaning of this paragraph.

**72.3 Proposed Order and Judgment.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

**73. Waiver of Right to Appeal.** Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

**74. Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement Agreement, and that Court's decision is not completely reversed and the judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

**75. Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

**81.1 Funding the Settlement:** Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount not later than thirty (30) days from the Effective Final Settlement Date.

**81.2 Disbursement:** Within fourteen (14) days after the Defendant provides the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to be Paid to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; (6) the LWDA Payment to the LWDA; and (7) Defendant's portion of payroll taxes as the Class Members' current or former employer.

**81.3 Qualified Settlement Fund or QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.468B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

**76. Settlement Administrator's Final Report.** Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator will provide any supplemental declaration required by the Court or the Parties.

**77. Uncashed Checks.** Participating Class Members and Aggrieved Employees must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

**83.1 Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

**83.2** If any checks remain uncashed or not deposited by the expiration of the ninety (90) day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining uncashed shall be sent to The United Way, which is a non-profit organization that supports projects that benefits employees and applicants throughout the State of California, thereby leaving no “unpaid residue” subject to the requirements of Code of Civil Procedure section 384, subdivision (b). The Parties agree that designating The United Way as the *cy pres* beneficiary will further the purposes of the underlying class proceedings in this action will promote justice for all Californians.

**78. Release of Class Claims.** As of the Effective Final Settlement Date, Participating Class Members shall release the Released Parties from the Released Class Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims.

**79. Release of PAGA Claims.** As of the Effective Final Settlement Date, the Released Parties shall be entitled to a release from the LWDA and Plaintiff (as representative of the State of California, the LWDA, and the general public) as to all Released PAGA Claims. The Released Parties will also be entitled to assert claim or issue preclusion or other effects of this Settlement if any PAGA Aggrieved Employees bring a subsequent claim on behalf of the LWDA concerning the Released PAGA Claims. PAGA Aggrieved Employees may not opt out of the PAGA Settlement.

**80. Plaintiff's Release of Claims.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the named Plaintiff in an amount not to exceed \$5,000, Plaintiff shall give the following general release of claims for himself and his respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

**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.**

This release excludes any release of any claims not permitted to be released by law. This release also excludes Plaintiff's claims for wrongful termination, harassment, retaliation, and discrimination and any damages associated therewith which shall not be released.

## **81. Miscellaneous Terms**

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

**88.2 Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any

judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

**88.3 No Effect on Employee Benefits.** The Class Representative Enhancement Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members and/or Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members or Aggrieved Employees. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Class Members and/or Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff’s or Participating Class Members’ and/or Aggrieved Employees’ previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered “compensation” in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

**88.4 Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

**88.5 Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant’s Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement.

The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- 88.6 Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 88.7 Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Actions in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 88.8 Press.** The Parties and their Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount, or terms of the settlement. If Counsel engages in any advertising or distributes any marketing materials relating to the settlement of this case, including but not limited to any postings on any websites maintained by Class Counsel, the advertising will not identify the case name or case number, any Defendant's name, or any names of putative class members.
- 88.9 Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 88.10 Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 88.11 No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any

person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

**88.12 Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

**88.13 Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Actions and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

**88.14 No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members and Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members and Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member or Aggrieved Employee, such Class Member assumes all responsibility for the payment of such taxes.

**88.15 Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

**88.16 Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

- 88.17 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.
- 88.18 Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Actions and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 88.19 Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 88.20 Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 88.21 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.
- 88.22 Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff Francisco Ramirez:

David Mara, Esq.  
dmara@maralawfirm.com  
Jill Vecchi, Esq.  
jvecchi@maralawfirm.com  
MARA LAW FIRM, PC  
2650 Camino Del Rio North, Suite 302  
San Diego, California 92108  
Telephone: (619) 234-2833  
Facsimile: (619) 234-4048

To Defendant Messer LLC:

Nathan W. Austin, Esq.  
nathan.austin@jacksonlewis.com  
Evan D. Beecher, Esq.  
evan.beecher@jacksonlewis.com  
JACKSON LEWIS P.C.  
400 Capital Mall, Suite 1600  
Sacramento, California 95814  
Telephone: (916) 341-0404

**88.23 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.

#### IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 9/20/2024

**FRANCISCO RAMIREZ**

Signed by:  
  
D4DAC1ABB6B46D...

Dated: 9/26/2024

**MESSER LLC**



By: Richard Lingg  
Title: Senior Counsel

Dated: 9/17/2024

**MARA LAW FIRM, PC**

DocuSigned by:



~~David Mara~~, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff and the Proposed  
Class/Aggrieved Employees

Dated: 9/26/2024

**JACKSON LEWIS P.C.**



Nathan W. Austin, Esq.

Evan D. Beecher, Esq.

Attorneys for Defendant Messer LLC

# Exhibit A

CALIFORNIA SUPERIOR COURT, COUNTY OF STANISLAUS  
*Francisco Ramirez, on behalf of himself, all others similarly situated, and on behalf of the general public,*  
*Plaintiff, v. Messer LLC, Defendant*  
Case No. CV-23-002006 and Case No. CV-23-004196 (“Complaints” or “Action”)

**NOTICE OF CLASS ACTION SETTLEMENT**

*A court authorized this notice. This is not a solicitation.  
This is not a lawsuit against you and you are not being sued.  
However, your legal rights are affected by whether you act or don’t act.*

**TO: All persons employed by Messer LLC in California as a non-exempt driver from April 14, 2019 through August 15, 2024.**

The California Superior Court, County of Stanislaus has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned actions (“Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (“Class” or “Class Members”):

All persons employed by Messer LLC in California as a non-exempt driver from April 14, 2019 through August 15, 2024.

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

**WHAT INFORMATION IS IN THIS NOTICE**

|                                                                                       |        |
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**1. Why Have I Received This Notice?**

Messer LLC’s (hereinafter referred to as “Defendant” or “Messer”) records indicate that you may be a Class Member. The settlement will resolve all Class Members’ Released Claims, as described in Section No. 9 below, from April 14, 2019 through August 15, 2024 (the “Class Period”).

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the California Superior Court, County of Stanislaus. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval hearing], 2024 at [time a.m./p.m.], before Judge John R. Mayne, located at 801 10th Street, Modesto, California 95354, Department 21.

## **2. What Is This Case About?**

A class action complaint was filed by Plaintiff Francisco Ramirez on April 14, 2023, in Stanislaus County Superior Court (Case No. CV-23-002006). The complaint alleges the following claims against Defendant: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Adopt a Complaint Sick Pay Policy, (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Pay All Wages Due at the Time of Termination of Employment, and (6) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*).

On July 27, 2023, Plaintiff Francisco Ramirez filed a PAGA complaint in the Stanislaus County Superior Court (Case No. CV-23-004196). The complaint alleges the following PAGA claims against Defendant: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Pay All Wages Due at the Time of Termination of Employment, (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Adopt a Complaint Sick Pay Policy.

The Court has not made any determination as to whether the claims advanced by the Plaintiff have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

Defendant expressly denies that it did anything wrong or that it violated the law and further deny any liability whatsoever to Plaintiff or to the Class.

## **3. Am I A Class Member? Am I An Aggrieved Employee?**

You are a Class Member if you were employed by Defendant in California as a non-exempt driver from April 14, 2019 through August 15, 2024.

If you were employed by Defendant in California from April 10, 2022 through August 15, 2024, you are also an “Aggrieved Employee” under the settlement.

## **4. How Does This Class Action Settlement Work?**

Plaintiff Francisco Ramirez brings this action behalf of himself and all other similarly situated individuals who worked for Defendant as non-exempt drivers in California at any time during the Class Period. Plaintiff and these other individuals comprise a “Class” and are “Class Members.” The settlement of this Action resolves the Released Claims of all Class Members, as defined in the Settlement Agreement and Final Judgment, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the settlement and determine if it is fair and reasonable to the Class. The Court file has the settlement documents, which explain the settlement in greater detail. The pleadings and other records in this litigation may be examined online on the Stanislaus County Superior Court's website at <https://stanportal.stanct.org/>

After arriving at the website, click the "Search" tab at the top of the page and select "Case Information." Then enter the case number and click "Search." You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

#### **5. Who Are the Attorneys Representing the Parties?**

| <b>Attorneys for Plaintiff and the Class ("Class Counsel")</b>                                                                                                                                                                     | <b>Attorneys for Messer LLC</b>                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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The Court has decided that Mara Law Firm, PC, is qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

#### **6. What Are My Options?**

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

**Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.**

- DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims as defined in Section No. 9 below.
- OPT OUT:** If you do not want to participate as a Class Member, you may "opt out," which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendant and the Released Parties for the Released Class Claims. If you

are an Aggrieved Employee, you will receive a portion of the PAGA, even if you opt-out of the settlement.

- **OBJECT:** You may assert a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

#### **7. *How Do I Opt Out Or Exclude Myself From This Settlement?***

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline].

If the Court approves the Settlement at the Final Approval Hearing, the Court will enter a Judgment. If you do not request exclusion from the Settlement, the Judgment will bind you to the terms of the Settlement. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment, even if you opt-out of the settlement.

#### **8. *How Do I Object To The Settlement?***

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than [the Response Deadline]. The objection must state: (a) your full name, address, and telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) you may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval hearing.

Class Members may appear at the Final Approval Hearing, either in person or through the objector’s own counsel. If the Court rejects the objection, he/she will receive an Individual Settlement Share payment and will be bound by the terms of the Settlement.

#### **9. *How Does This Settlement Affect My Rights? What are the Released Claims?***

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release Defendant and the Released Parties<sup>1</sup> from the Released Class Claims:

The Released Class Claims include all claims under state, federal and local law that were or could

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<sup>1</sup> “Released Parties” means, collectively, (i) Defendant; (ii) each of Defendant’s respective past and present parents, subsidiaries, partners, affiliates, brands, including, without limitation, Messer North America Inc., and any corporation, limited liability company, or partnership which could be jointly liable with Defendant for the claims alleged; (iii) the past and present board members, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing which could be jointly liable with Defendant for the claims alleged; and (iv) any individual or entity which could be jointly liable with Defendant for the claims alleged.

have been asserted based on the facts and allegations made in the Actions, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 204, 210, 213, 218, 218.5, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, and 1197, California Industrial Welfare Commission Wage Orders, California Code of Regulations, Title. 8, section 11040, 11090, and 3395 *et seq.*, Business and Professions Code sections 17200 *et seq.*, California Code of Civil Procedure section 1021.5, and including all claims for or related to alleged unpaid wages, minimum wages, hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, timely payment of wages during employment, timely payment of wages at separation, wage statements, payroll records and recordkeeping, meal periods and meal period premiums, rest breaks and rest break premiums, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, declaratory relief, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Actions (collectively “Released Class Claims”), during the Class Period. Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims outside the Released Class Claims.

Additionally, the LWDA will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include:

PAGA Aggrieved Employees are deemed to release all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Actions and/or the LWDA letter, including but not limited to all claims arising under the California Labor Code including, but not limited to sections 201, 202, 203, 204, 210, 213, 218, 221, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 246, 246.5, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, 1197, and 1197.1, as alleged in the PAGA Action complaint, and the California Industrial Welfare Commission Wage Orders based on the facts alleged in the Actions (collectively “Released PAGA Claims”). The Settlement shall release, and bar, all Released PAGA Claims by or on behalf of Plaintiff and all PAGA Members during the PAGA Period. PAGA Members cannot and do not have the right to opt out of the release of their PAGA claims against the Released Parties.

#### **10. *How Much Can I Expect to Receive From This Settlement?***

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$450,000 (“Gross Settlement Amount” or “GSA”).

##### **A. Deductions from the Settlement**

The “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement Amount, available for distribution to Class Members after the deduction of (1) the Class Representative Enhance Payment to the named Plaintiff in an amount up to \$5,000, for prosecution of the Action, risks undertaken for the payment of attorneys’

fees and costs, and a broader release of claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$**INSERT**; (3) a payment of \$20,000 allocated to the PAGA claims; (4) Employer Taxes; and (5) payment to Class Counsel in an amount not to exceed \$150,000 (33 1/3% of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$20,000 for litigation costs. All of these payments are subject to court approval.

#### B. How Class Member Settlement Payments are Calculated

After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionately distributed amongst all Class Members who have not opted out. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked during the Class Period (April 14, 2019 through August 15, 2024).

#### C. How Aggrieved Employee Settlement Payments are Calculated

If you are an Aggrieved Employee under the settlement, you will also receive a portion of the PAGA Payment. Pursuant to PAGA, the LWDA will receive a payment of \$15,000 (75% of the \$20,000 total PAGA Payment). The remaining \$5,000 is the "Net PAGA Settlement Amount" and will be proportionately distributed amongst all Aggrieved Employees. Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of workweeks he or she worked for Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of workweeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of workweeks that he or she worked during the PAGA Period (April 10, 2022 through August 15, 2024).

#### D. Your Estimated Settlement Payment

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$, less taxes. This is based on the Class Data which shows you worked  workweeks during the period of April 14, 2019 through August 15, 2024.

If you are also an Aggrieved Employee, you will receive a share of the Net PAGA Settlement Amount. Based upon the calculation above, your approximate share of the Net PAGA Settlement Amount, is as follows: \$. This is based on the PAGA Data which shows you worked  pay periods during the period of April 10, 2022 through August 15, 2024.

If you believe the number of workweeks attributed to you is incorrect, you must call the Settlement Administrator at **[PHONE NUMBER]** no later than **[RESPONSE DEADLINE]** or mail documentation to the to the Settlement Administrator at **[ADDRESS]** that is postmarked no later than **[RESPONSE DEADLINE]**. You should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates you contend you worked for Messer during the Class or PAGA Period.

#### E. Tax Treatment of Your Settlement Payments

Ten percent (10%) of each Individual Class Settlement Share is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual Class Settlement Share.

Ninety percent (90%) of the Individual Class Settlement Share is intended to settle each Class Member's claims for interest and penalties/other payments. The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Class Settlement Share.

If you are an Aggrieved Employee, your Individual PAGA Settlement Share will be apportioned as 100% penalties. This will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Aggrieved Employee an IRS Form 1099 with respect to his/her Individual PAGA Settlement Share.

F. What Happens If You Don't Cash Your Check?

**Please note that you must cash or deposit your settlement check within 180 calendar days after the check is mailed to you. If your check was lost or misplaced or you have changed your address, please contact the Settlement Administrator at [PHONE NUMBER].** If any checks remain uncashed or not deposited by the expiration of the 180-day period, the Settlement Administrator will pay over the amount represented by the check to The United Way.

***11. How Will the Attorneys for the Class and the Class Representatives Be Paid?***

The attorneys for Plaintiff and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiff and the Class shall be paid an amount not to exceed 33 1/3% of the Gross Settlement Amount (\$150,000) for attorney fees and \$20,000 for litigation costs.

Defendant has paid all of their own attorneys' fees and costs.

Plaintiff will also be paid, subject to Court approval, an amount not to exceed \$5,000, as an enhancement for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a broader release of claims.

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Messer Class Action Settlement.

**PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.**

# Exhibit 2