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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

OSKAR LIZARRAGA, as an individual and
on behalf of all similarly situated employees,

Plaintiff,

v.

AMERICAN SCAFFOLD, LLC, and DOES 1
through 50, inclusive,

Defendant.

Case No.: 37-2022-00038496-CU-OE-CTL

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

Assigned to for all purposes:
Hon. Gregory W. Pollack, Dept. C-71

Complaint filed: September 27, 2022
Trial Date: None Yet Set

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

IT IS HEREBY STIPULATED, by and among Plaintiff OSKAR LIZARRAGA, on behalf of himself and the Settlement Class Members, on the one hand, and Defendant AMERICAN SCAFFOLD, LLC, on the other hand, and subject to the approval of the Court, that the above-captioned action is hereby being compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class Action Settlement and Release (the “Settlement”).

1. DEFINITIONS

Capitalized terms used in this Settlement shall have the meanings set forth below:

1.1. “Action” means the putative class action entitled *Lizarraga v. American Scaffold, LLC* pending in the Superior Court of the State of California, County of San Diego, and designated as Case No. 37-2022-00038496-CU-OE-CTL.

1.2. “Class Member” means all non-exempt, hourly paid employees currently and formerly employed by Defendant in the state of California from September 27, 2018 through November 30, 2023.

1.3. “PAGA Member” means all non-exempt, hourly paid employees currently and formerly employed by Defendant in the state of California from July 16, 2022 through November 30, 2023.

1.4. “Settlement Administrator” means Phoenix Settlement Administrators.

1.5. “Settlement Administration Costs” means the amount to be paid to the third-party Settlement Administrator from the Gross Settlement Amount for the administration of the Settlement. The Settlement Administration Costs amount is not to exceed Eleven Thousand Dollars (\$11,000.00). Any portion of the requested Settlement Administration Costs that is not awarded to the Settlement Administrator shall be part of the Net Settlement Amount.

1.6. “Class Counsel” means Kevin Mahoney and John A. Young of the Mahoney Law Group, APC.

1.7. “Class Counsel Fees” means reasonable attorneys’ fees for Class Counsel’s litigation and resolution of this Action, in the amount of Three Hundred Thirty Thousand Dollars (\$330,000.00) (or one-third of the Gross Settlement Amount). The Court shall determine the

1 amount of the Class Counsel Fees, and it shall be paid from the Gross Settlement Amount. Any
2 portion of the requested Class Counsel Fees that is not awarded to Class Counsel shall be part of
3 the Net Settlement Amount.

4 1.8. "Class Counsel Costs" means actual expenses incurred by Class Counsel for Class
5 Counsel's litigation and resolution of this Action, as supported by declaration, in an amount not
6 to exceed Fourteen Thousand Dollars (\$14,000.00). The Court shall determine the amount of the
7 Class Counsel Costs, and it shall be paid from the Gross Settlement Amount. Any portion of the
8 requested Class Counsel Costs that is not awarded to Class Counsel shall be part of the Net
9 Settlement Amount.

10 1.9. "Class Information" means information regarding Settlement Class Members that
11 Defendant will in good faith compile from its records and provide to the Settlement
12 Administrator. Class Information shall be provided as a Microsoft Excel spreadsheet and shall
13 include: each Settlement Class Member's full name; last known address; last known home
14 telephone number; social security number; all start and end dates of employment during the Class
15 Period, and the total number of weeks each Settlement Class Member worked for Defendant
16 during the Class Period. The number of weeks worked shall be calculated using Defendant's
17 payroll data during the Class Period whenever the hours worked for the work week was greater
18 than zero. Because social security numbers are included in the Class Information, the Settlement
19 Administrator shall maintain the Class Information in confidence; access shall be limited to those
20 with a need to use the Class Information as part of the administration of the Settlement, and
21 transmission shall be through use of a secure, password-protected file.

22 1.10. "Class Period" means the period from September 27, 2018 through November 30,
23 2023.

24 1.11. "PAGA Period" means the period from July 16, 2022 through November 30, 2023.

25 1.12. "PAGA Released Claims" shall mean all claims, demands, rights, liabilities and
26 causes of action for penalties under California Labor Code Private Attorneys General Act of 2004
27 against the Released Parties, based on the letter to the Labor & Workforce Development Agency
28 on September 20, 2023, that arose during the PAGA Period and were raised in the Action or could

1 have been raised based on the facts, conduct, and/or omissions alleged in the Action, including
2 but not limited to claims for civil penalties for violations of Labor Code 201, 202, 203, 204, 206,
3 210, 221, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
4 and 2802, 2698-2699.5, and claims under California Business & Professions Code section 17200,
5 and applicable Wage Orders of the Industrial Welfare Commission, and all related claims for
6 attorneys' fees and costs.

7 1.13. "Class Representative Service Award" means the amount that the Court authorizes
8 to be paid to Plaintiff, not to exceed Ten Thousand Dollars (\$10,000.00), in addition to Plaintiff's
9 Individual Settlement Payment. The Class Representative Service Award to Plaintiff is in
10 exchange for the Released Claims, Plaintiff's General Released Claims, and for Plaintiff's efforts
11 and risks in assisting with the prosecution of the Action. The Class Representative Service Award
12 shall be paid from the Gross Settlement Amount. Any portion of the requested Class
13 Representative Service Award that are not awarded to Plaintiff shall be part of the Net Settlement
14 Amount.

15 1.14. "Court" means the Superior Court of the State of California for the County of San
16 Diego.

17 1.15. "Defendant" means American Scaffold, LLC.

18 1.16. "Defendant's Counsel" means Aaron Buckley and Aaron Schu of Quarles & Brady
19 LLP.

20 1.17. "Effective Date" means the date that the Gross Settlement Amount is fully funded.

21 1.18. "Employee Taxes" means the employee's share of any and all applicable federal,
22 state, and local payroll taxes on the portion of Settlement Class Members' Individual Settlement
23 Payment that constitutes wages. The Employee Taxes shall be paid out of the Net Settlement
24 Amount.

25 1.19. "Employer Taxes" means the employer's share of any and all applicable federal,
26 state, and local payroll taxes on the portion of Settlement Class Members' Individual Settlement
27 Payment that constitutes wages. The Employer Taxes shall be paid by Defendant separately and
28 not out of the Gross Settlement Amount or Net Settlement Amount.

1 1.20. “Final Approval Hearing” means the hearing held on the motion for final approval
2 of the Settlement.

3 1.21. “Final Approval Date” means the date which the Court grants final approval of the
4 Settlement.

5 1.22. “Final Judgment” means the Court’s entry of an order of judgment in this Action
6 following the Court’s final approval of the Settlement.

7 1.23. “Gross Settlement Amount” means the maximum amount Defendant shall have to
8 pay in connection with this Settlement, by way of a common fund, which shall be inclusive of all
9 Individual Settlement Amounts to Settlement Class Members, Class Counsel Fees, Class Counsel
10 Costs, Settlement Administrator Costs, Class Representative Service Award, and PAGA
11 Allocation. Subject to Court approval and the terms of this Settlement, the Gross Settlement
12 Amount Defendant shall be required to pay is Nine Hundred Ninety Thousand Dollars
13 (\$990,000.00). No portion of the Gross Settlement Amount will revert to Defendant, and the
14 Settlement does not require Settlement Class Members to submit claims as a prerequisite to
15 receiving their Individual Settlement Payment. This settlement sum is based on Defendant’s
16 representation that the number of total Workweeks from January 11, 2020 through September 19,
17 2023 is estimated at Thirty-Three Thousand (33,000). Defendant shall not be required to pay
18 more than the Gross Settlement Amount unless the actual number of Workweeks from January
19 11, 2020 through November 30, 2023 is more than ten percent (10%) greater than Defendant’s
20 estimate. If the actual number of Workweeks from January 11, 2020 through November 30, 2023
21 is more than ten percent (10%) greater than the estimate – or 36,300 or more Workweeks – the
22 Gross Settlement Amount shall increase proportionately to the increase in the number of
23 Workweeks over the ten percent (10%) grace amount— e.g., if the number of Workweeks
24 increases by eleven percent (11%), the Gross Settlement Amount shall increase by one percent
25 (1%); if the number of Workweeks increases by twelve percent (12%), the Gross Settlement
26 Amount shall increase by two percent (2%), and so forth. Under no other circumstances shall
27 Defendant be required to pay more than the Gross Settlement Amount except as provided for in
28 this section of the Settlement Agreement.

1.24. "Individual Settlement Payment" means the amount payable to each Settlement Class Member, as calculated pursuant to Paragraph 3.12.1 of the Settlement, from the Net Settlement Amount. Checks for Individual Settlement Payments shall specifically indicate that they are void if not negotiated within one hundred eighty (180) days of their issuance.

1.25. "PAGA Allocation" means Twenty-Five Thousand Dollars (\$25,000.00), allocated from the Gross Settlement Amount for the compromise of claims brought under the Labor Code Private Attorney General Act of 2004 ("PAGA"). Per California Labor Code section 2699(i), Eighteen Thousand Seven Hundred and Fifty Dollars (\$18,750.00), representing 75% of the PAGA Allocation, shall be paid to California's Labor Workforce Development Agency. The remaining Six Thousand Two Hundred and Fifty Dollars (\$6,250.00), representing 25% of the PAGA Allocation, shall be part of the Net Settlement Amount and shall be distributed to PAGA Members.

1.26. "LWDA" shall mean the California Labor and Workforce Development Agency.

1.27. "LWDA PAGA Allocation" means Eighteen Thousand Seven Hundred and Fifty Dollars (\$18,750.00), representing 75% of the PAGA Allocation, and is the amount payable from the Gross Settlement Amount to California's Labor Workforce Development Agency.

1.28. "PAGA Member Allocation" means Six Thousand Two Hundred and Fifty Dollars (\$6,250.00), representing the PAGA Allocation, and is the amount payable to PAGA Members. The PAGA Member Allocation shall be distributed in its entirety to PAGA Class Members pursuant to paragraph 3.13.

1.29. "Net Settlement Amount" means the Gross Settlement Amount, less the Class Counsel Fees, the Class Counsel Costs, the Class Representative Service Award, the Settlement Administration Costs, the LWDA PAGA Allocation, and the PAGA Class Member Allocation. The Net Settlement Amount shall be distributed in its entirety to Settlement Class Members, as provided for in this Settlement.

1.30. "Notice of Objection" means a written statement of objection to the Settlement, made and signed by a Settlement Class Member and includes the following: (1) the full name of the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3)

1 the last four digits of the Settlement Class Member's Social Security number and/or the entire
2 Employee ID number; (4) the basis for the objection; and, (5) whether the Settlement Class
3 Member intends to appear at the Final Approval Hearing.

4 1.31. "Notice of Settlement" means the Notice of Proposed Class Action and Notice of
5 Private Attorney General Act Settlement (attached hereto as **Exhibit A**).

6 1.32. "Notice Packet" means the Notice of Proposed Class Action, Notice of Private
7 Attorney General Act Settlement, Class Workweek Dispute Form, and the Request for Exclusion
8 Form to be provided in English and Spanish.

9 1.33. "Settlement Class Members" means all Class Members who do not submit a valid
10 and timely Request for Exclusion. "Parties" means Plaintiff and Defendant collectively; and
11 "Party" shall mean Defendant or Plaintiff, individually.

12 1.34. "Plaintiff" means Oskar Lizarraga.

13 1.35. "Plaintiff's General Released Claims" means, in addition to the Released Claims,
14 Plaintiff, on behalf of himself, his respective, agents, spouses, executors, representatives, heirs,
15 successors, assigns, and estates, in exchange for the terms and conditions of this Settlement,
16 including the Class Representative Service Award requested or as otherwise authorized by the
17 Court, shall also, as of the Effective Date, fully and forever release the Released Parties, to the
18 full extent permitted by law, of and from any and all claims from the beginning of time to the
19 Effective Date, known and unknown, asserted and unasserted, which Plaintiff had or may have
20 had against the Released Parties, whether sounding in tort, in contract, in law, in equity or
21 otherwise, and including but not limited to all claims for violation of any local, state, or federal
22 statute, rule, or regulation. Plaintiff expressly waives and relinquishes all rights and benefits
23 afforded by section 1542 of the Civil Code of the State of California and do so understanding and
24 acknowledging the significance of such specific waiver of section 1542. Section 1542 of the Civil
25 Code of the State of California states as follows:

26 **A general release does not extend to claims that the creditor or releasing party does**
27 **not know or suspect to exist in his or her favor at the time of executing the release**
28 **and that, if known by him or her, would have materially affected his or her**

settlement with the debtor or released party.

Notwithstanding the above, Plaintiff's General Released Claims do not include any workers' compensation claims, claims that cannot be waived as a matter of law by signing this agreement, or claims to enforce this agreement.

1.36. "Preliminary Approval Date" means the date the Court enters the Preliminary Approval Order for the Settlement.

1.37. "Preliminary Approval Order" means the proposed order (filed concurrently with this Settlement and Plaintiff's motion for preliminary approval of the Settlement), as may be amended by the Court, for preliminary approval of the Settlement.

1.38. "Released Claims" means any and all claims during the Class Period which were or could have been raised based on the facts, conduct, and/or omissions alleged in the Action, including all wage and hour claims, demands, rights, liabilities, and causes of action for unpaid wages, including minimum wage payments, regular wages, overtime wages; failure to pay wages during employment; failure to pay all wages due upon separation of employment; meal and rest break violations; meal and rest break premiums, failure to reimburse for necessary business expenditures, violation of the Private Attorney General Act (California Labor Code section 2698, *et seq.*), civil and statutory penalties, interest, liquidated damages, attorney's fees and costs, claims under California Labor Code sections 90.5, 201-204, 225.5, 226, 510, 512, 1174, 1194, 1194.2, 1197, 1198, 2802, 2698-2699.5, and applicable Industrial Welfare Commission Wage Order, and claims under California Business & Professions Code sections 17200-17204. It is understood and agreed that Released Claims do not include claims for workers' compensation, unemployment, or disability benefits of any nature, nor any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code section 12940, *et seq.*; the Unruh Civil Rights Act, California Civil Code section 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et*

1 *seq.*; and all of their implementing regulations and interpretive guidelines.

2 1.39. “Released Parties” means American Scaffold, LLC, and each of its parent
3 companies, subsidiaries, related companies, affiliates, dbas, current and former management
4 employees, shareholders, members, predecessors, successors, and assigns, or any related entity that
5 was the “employer” of Class Members.

6 1.40. “Defendant’s Release of Claims Against Representative Plaintiff” means
7 Defendant, as defined herein, does hereby, for itself, and for its successors, predecessors,
8 attorneys, agents, representatives and assigns, forever releases the Representative Plaintiff from
9 any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
10 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and
11 expenses (including attorneys’ fees and costs actually incurred) of any nature whatsoever, from
12 the beginning of time through the date of its signature on this Settlement Agreement, known or
13 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
14 upon, or relating to Representative Plaintiff’s employment with Defendant and related to this
15 Lawsuit.

16 1.41. Defendant expressly waives and relinquishes all rights and benefits afforded by
17 section 1542 of the Civil Code of the State of California and does so understanding and
18 acknowledging the significance of such specific waiver of section 1542. Section 1542 of the Civil
19 Code of the State of California states as follows:

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

24 1.42. Thus, subject to and in accordance with this Settlement Agreement, even if
25 Released Parties may hereafter discover facts in addition to or different from those they now know
26 or believe to be true, Released Parties shall be deemed to have fully, finally, and forever settled
27 and released any and all claims against the Plaintiff that could have been alleged against him, as
28 well as any other claims, whether known or unknown, suspected or unsuspected, contingent or
non-contingent, that now exist, upon any theory of law or equity, including without limitation,
conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or

rule, without regard to the subsequent discovery or existence of such different or additional facts.

1.43. “Response Deadline” means the date forty-five (45) days after the Settlement Administrator mails the Notice Packets to Settlement Class Members, and shall be the last date on which Settlement Class Members may: (a) postmark Requests for Exclusion from the Settlement, or (b) postmark Objections to the Settlement.

1.44. “Settlement” means this Joint Stipulation of Class Action Settlement and Release.

1.45. “Settlement Class Member(s)” or “Settlement Class” means all non-exempt employees, currently and formerly employed by Defendant in the State of California at any time during the Class Period.

1.46. “Workweeks” shall mean the number of weeks each Class Member worked at American Scaffold, LLC as an hourly-paid and/or non-exempt employee in California during the Class Period.

2. RECITALS

2.1. Class Certification. The Parties stipulate and agree to the conditional certification of this Action for purposes of this Settlement only. Should, for whatever reason, the Settlement not become final and effective, conditional Class Certification shall immediately be set aside (subject to further proceedings on motion of any Party to certify or decertify thereafter). The Parties’ willingness to stipulate to conditional Class Certification as part of the Settlement shall have no bearing on and shall not be admissible or considered in connection with the issue of whether a class should be certified in a non-settlement context in this Action, and shall have no bearing on and shall not be admissible or considered in connection with the issue of whether a class should be certified in any other lawsuit. Defendant expressly reserves its right to oppose class certification should this Settlement be modified or reversed on appeal or otherwise not become final and effective for any reason.

2.2. Procedural History. On September 27, 2022, Plaintiff filed a lawsuit in the Superior Court of California for the County of San Diego as a proposed class action on behalf of all current and former non-exempt California employees of Defendant during the period of September 27, 2018 through the date of final judgment. In his initial complaint Plaintiff alleged

1 that Defendant (1) failed to pay wages, including minimum wage and overtime; (2) failed to
2 provide rest periods; (3) failed to provide meal periods; (4) failed to pay wages due at separation
3 of employment; (5) failure to reimburse for necessary business expenditures; and (6) violations
4 of Business and Professions Code Section 17200 et seq. Plaintiff sought recovery under the
5 California Labor Code, the applicable Industrial Welfare Commission Wage Order, and the
6 California Business & Professions Code. On October 24, 2023, Plaintiff filed a First Amended
7 Complaint adding a claim under the Labor Code Private Attorneys General Act of 2004
8 (“PAGA”).

9 2.3. Settlement Negotiations. On September 19, 2023, the Parties participated in a full-
10 day private mediation session with mediator Lou Marlin, Esq. Prior to the mediation, Defendant
11 provided time records and corresponding time records for a sample of putative class members, as
12 well as other documents, allowing Class Counsel to construct a damage analysis. Based on the
13 information obtained through informal discovery, the Parties reached an agreement in principal
14 to the basic terms of a class-action settlement agreement. The Settlement is the result of an
15 informed and detailed evaluation of the total exposure and potential liability, in relation to the
16 costs and risks associated with continued litigation of the Action. The Parties have engaged in
17 sufficient discovery and investigation to assess the relative merits of the claims, defenses, and
18 contentions of the Parties.

19 2.4. Benefits of Settlement to Settlement Class Members. Plaintiff and Class Counsel
20 recognize the length of continued proceedings necessary to litigate the Parties’ disputes through
21 certification, trial, and any possible appeal. Plaintiff and Class Counsel have also taken into
22 account the uncertainty and risk of the outcome of further litigation, the difficulties and delays
23 inherent in such litigation, including, but not limited to, the risks related to a contested motion for
24 class certification, potential motions for decertification, trial, and appeal. Plaintiff and Class
25 Counsel are also aware of the burdens of proof necessary to establish liability for the claims
26 asserted in the Action and the difficulties in establishing damages for the Class Members.
27 Plaintiff and Class Counsel have also taken into account Defendant’s agreement to enter into a
28 settlement that confers substantial relief upon Class Members. Based on the foregoing, Plaintiff

1 and Class Counsel have determined that this Settlement is fair, adequate, and reasonable, and is
2 in the best interests of the Class Members.

3 2.5. Defendant's Denial of Wrongdoing and Liability and Reasons for Settlement.

4 Defendant has denied and continue to deny each and all of the claims and contentions alleged in
5 the Action. Defendant has repeatedly asserted, and continue to assert, defenses thereto, and have
6 expressly denied, and continue to deny, any wrongdoing or legal liability arising out of any of the
7 facts, conduct, and/or omissions alleged in the Action. Defendant has also denied, and continue
8 to deny, *inter alia*, the allegations that the Class Members have suffered damage. Without limiting
9 the foregoing, Defendant contends that the Class Members were properly and timely paid all
10 wages owed, including, but not limited to, all straight and overtime pay; were provided timely
11 and uninterrupted meal and rest periods as required under California law; were properly and
12 timely paid all wages upon separation of employment or otherwise when due; were properly
13 reimbursed for any expenses required to incur; and that Defendant has not engaged in any
14 unlawful, unfair, or fraudulent business practices in violation of California law. However,
15 Defendant has concluded that any further defense of this litigation would be protracted and
16 expensive for all Parties. Substantial amounts of time, energy, and resources of Defendant has
17 been and, unless this Settlement is approved, will continue to be devoted to the defense of the
18 claims asserted by Plaintiff and Class Members. Defendant has also taken into account the
19 uncertainty and risks inherent in any litigation, especially in complex cases such as this Action.
20 Based on the foregoing, Defendant has concluded that it is desirable and beneficial that the Action
21 be fully and finally settled in the manner and upon the terms and conditions set forth in this
22 Settlement. This will allow Defendant to dispose of burdensome and protracted litigation, permit
23 the operation of Defendant's business without further expensive litigation, and put an end to the
24 distraction and diversion of its personnel regarding matters at issue in the Action.

25 2.6. No Admissions. The Parties understand and agree that this Settlement is the result
26 of a good faith compromise of disputed claims and allegations, and Defendant is entering into this
27 Settlement solely to resolve disputed matters. No part of this Settlement or any conduct or written
28 or oral statements made in connection with this Settlement, whether or not the Settlement is finally

1 approved and/or consummated, is or may be offered as or construed to be an admission or
2 concession of any kind by any of the Parties. In particular, but without limiting the generality of
3 the foregoing, nothing about this Settlement shall be offered or construed as an admission that
4 Defendant violated any of its obligations under the California Labor Code, applicable Industrial
5 Welfare Commission Wage Orders, Business and Professions Code or Private Attorney General
6 Act, or of liability in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever
7 on the part of Defendant and/or the Released Parties. In addition, this Settlement shall not be
8 offered or be admissible in evidence against any of the Parties or any of the Released Parties,
9 except in any action or proceeding brought by or against Plaintiff, Class Members, or Defendant
10 to enforce the Settlement's terms, or by Defendant in defense of any claims brought by Plaintiff
11 or Class Members. The provisions of this paragraph shall become effective when this Settlement
12 is signed by all Parties, and shall be binding on the Parties and their counsel regardless of whether
13 the Settlement is preliminarily and/or finally approved or terminated for any reason, or rendered
14 null and void.

15 2.7. Class Members' Claims. Plaintiff claims that the Released Claims have merit and
16 give rise to liability on the part of Defendant. This Settlement is a compromise of disputed claims.
17 Nothing contained in this Settlement, and no documents referred to herein, nor any action taken
18 to carry out this Settlement, may be construed or used as an admission by or against the Plaintiff,
19 Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in the
20 Action.

21 2.8. Defendant's Defenses. Defendant has denied and continue to deny each and all of
22 the allegations, claims, and contentions of wrongdoing alleged by Plaintiff in the Action.
23 Defendant has expressly denied and continues to deny all charges of wrongdoing or liability
24 against it arising out of any of the conduct, statements, acts, or omissions alleged in the Action.
25 Defendant contends that it complied in good faith with California and federal wage-and-hour laws
26 and has dealt legally and fairly with Plaintiff and Class Members. Defendant further denies that,
27 for any purpose other than settling this Action, these claims are appropriate for class or
28 representative treatment.

3. TERMS OF SETTLEMENT

The Parties agree as follows:

3.1. Binding Settlement. This Settlement shall bind the Parties and all Settlement Class Members, subject to the terms and conditions set forth in the Settlement and the Court's approval.

3.2. Release As To All Settlement Class Members and Plaintiff.

3.2.1. Release As To All Settlement Class Members. As of the Effective Date, all Settlement Class Members, including Plaintiff, will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties from the Released Claims during the Class Period. This release shall be binding on all Settlement Class Members, including each of their respective attorneys, agents, executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit of the Released Parties, who shall have no further or other liability or obligation to any Class Member with respect to the Released Claims, except as expressly provided herein. All PAGA Members, regardless of whether they submit timely and valid Requests for Exclusion from the Settlement, will release all PAGA Released Claims, as well as claims that could have been premised on the claims, causes of action or legal theories alleged in the Action, during the PAGA Class Period. Plaintiff on behalf of the State of California and the LWDA will also release all PAGA Released Claims.

3.2.2. Release As To Plaintiff. As of the Effective Date, Plaintiff will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of Plaintiff's General Released Claims against the Released Parties. With respect to the Plaintiff's General Released Claims only, Plaintiff shall be deemed to have, and by operation of the Final Judgment shall have, in light of his Class Representative Service Award, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the California Civil Code, which section provides:

A general release does not extend to claims which 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.

1 Plaintiff may hereafter discover facts in addition to or different from those he now knows
2 or believes to be true with respect to the subject matter of the Plaintiff's General Released Claims,
3 but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment
4 shall have, fully, finally, and forever settled and released any and all of the Plaintiff's General
5 Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-
6 contingent, which now exist, or heretofore have existed, upon any theory of law or equity now
7 existing or coming into existence in the future. Plaintiff agrees not to sue or otherwise make a
8 claim against any of the Released Parties for Plaintiff's General Released Claims.

9 3.3. Tax Liability. The Parties understand and agree that the Parties are not providing
10 tax or legal advice. Defendant shall be responsible for any Employer Taxes due as a result of the
11 Settlement. These payments shall be separate and shall not be made from the Gross Settlement
12 Amount or the Net Settlement Amount. Settlement Class Members shall remain responsible for
13 any Employee Taxes due as a result of the Settlement. Settlement Class Members will assume
14 any employee tax obligations or consequences that may arise from this Settlement and should
15 consult with a tax expert if they have questions. However, Individual Settlement Payments will
16 be allocated as follows: one third as wages (for which an IRS Form W-2 will be issued) and two-
17 thirds as interest and penalties (for which an IRS Form 1099 will be issued). Any required payroll
18 deductions will be based on this apportionment. The Parties agree that, in the event that any taxing
19 body determines that additional employee taxes are due from any Settlement Class Member, such
20 Settlement Class Member assumes all responsibility for the payment of such taxes.

21 3.4. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision
22 of this Settlement, and no written communication or disclosure between or among the Parties,
23 Class Counsel or Defendant's Counsel and other advisers, is or was intended to be, nor shall any
24 such communication or disclosure constitute or be construed, or be relied upon, as tax advice
25 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
26 amended); (2) the acknowledging Party (a) has relied exclusively upon his, her, or its own,
27 independent legal and tax counsel for advice (including tax advice) in connection with this
28 Settlement, (b) has not entered into this Settlement based upon the recommendation of any other

1 Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any
2 communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty
3 that may be imposed on the acknowledging Party; and (3) no attorney or advisor to any other
4 Party has imposed any limitation that protects the confidentiality of any such attorney's or
5 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure
6 by the acknowledging Party of the tax treatment or tax structure of any transaction, including any
7 transaction contemplated by this Settlement.

8 3.5. Settlement Approval and Implementation Procedures. As part of this Settlement,
9 the Parties agree to the following procedures for obtaining the Court's preliminary approval of
10 the Settlement: conditionally certifying the Settlement Class, notifying Settlement Class Members
11 of the Settlement and distributing the PAGA Payment, obtaining the Court's final approval of the
12 Settlement, and processing the Individual Settlement Payments, as set forth below.

13 3.5.1. Preliminary Approval and Certification. As soon as practicable after
14 execution of this Settlement, pending the Court's availability, Plaintiff will submit this Settlement
15 to the Court for preliminary approval of the Settlement, in accordance with California Rules of
16 Court, Rule 3.769(c). Such submission will include this Settlement, the proposed Notice Packet,
17 the proposed Preliminary Approval Order, and any memoranda and evidence as may be necessary
18 for the Court to determine that this Settlement is fair, adequate, and reasonable. The Parties agree
19 to request the Court to enter an order conditionally certifying the Settlement Class after the
20 preliminary approval hearing, in accordance with California Rules of Court, Rule 3.769(d).

21 3.5.2. Class Information. No more than fourteen (14) calendar days after the
22 entry of the Preliminary Approval Order by the Court, Defendant shall provide the Settlement
23 Administrator with the Class Information for purposes of mailing Notice Packets to Class
24 Members. Defendant shall also provide the Settlement Administrator a separate list of PAGA
25 Members and dates of PAGA Members' employment with Defendant.

26 3.5.3. Notice by First Class U.S. Mail. Upon receipt of the Class Information,
27 the Settlement Administrator will perform a search on the National Change of Address database
28 to update the Class Members' addresses. No more than ten (10) calendar days after receiving the

1 Class Information from Defendant, as provided herein, the Settlement Administrator shall mail
2 copies of the Notice Packet to all Settlement Class Members by regular First-Class U.S. Mail.
3 The Settlement Administrator shall exercise its best judgment to determine the current mailing
4 address for each Class Member. The address identified by the Settlement Administrator as the
5 current mailing address shall be presumed to be the best mailing address for each Class Member.
6 It will be conclusively presumed that if an envelope so mailed has not been returned within twenty
7 (20) days of the mailing that the Class Member received the Notice Packet.

8 3.5.4. Undeliverable Notices. Any Notice Packets returned to the Settlement
9 Administrator as undeliverable on or before the Response Deadline shall be re-mailed to the
10 forwarding address affixed thereto or as described in paragraph 3.5.5 of this Settlement.

11 3.5.5. For each Class Member whose Notice Packet is returned, and a forwarding
12 address is not affixed thereto, there will be one skip trace by the Settlement Administrator. If an
13 updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet
14 to the Class Member at the updated mailing address so identified. One supplemental Notice
15 Packet shall be mailed to each Class Member whose original Notice Packet is returned as
16 undeliverable to the Settlement Administrator, if a forwarding or updated address can be
17 identified. Such re-mailing shall be made within five (5) business days of the Settlement
18 Administrator receiving notice that the respective Notice Packet was undeliverable. Any requests
19 to Defendant's Counsel by the Settlement Administrator for documents or information from
20 Defendant must be responded to within a reasonable amount of time by Defendant's Counsel. It
21 is the intent of the Parties that reasonable means be used to locate the Class Members and apprise
22 them of their rights.

23 3.5.6. Class Members to whom Notice Packets are re-sent after having been
24 returned undeliverable to the Settlement Administrator shall have fourteen (14) calendar days
25 thereafter, or until the Response Deadline has expired, whichever is later, to mail the Request for
26 Exclusion or a Notice of Objection. Notice Packets that are resent shall inform the recipient of
27 this adjusted deadline. The date of the postmark on the return envelope shall be the exclusive
28 means used to determine whether a Class Member has returned his or her Request for Exclusion

on or before the adjusted deadline. It will be conclusively presumed that if an envelope so mailed has not been returned within thirty (30) days of the mailing, that the Class Member received the Notice Packet. If a Class Member's Notice Packet is returned to the Settlement Administrator more than once as undeliverable, then an additional Notice Packet shall not be re-mailed.

3.5.7. Compliance with the procedures specified in paragraphs 3.5.3 through 3.5.6 of this Settlement shall constitute due and sufficient notice to Class Members of this Settlement and shall satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, and Defendant's Counsel to provide notice of the proposed Settlement.

3.6. Disputes. Class Members will have the opportunity during the 45-day response period, should they disagree with Defendant's records regarding their weeks worked during the Class Period, to provide a completed Class Workweek Dispute Form (attached hereto as **Exhibit B**), documentation and/or an explanation to show contrary weeks worked. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Class Member and the Parties.

3.7. Exclusions (Opt-Outs). The Notice Packet shall state that Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion Form (attached hereto as **Exhibit C**) by the Response Deadline. A Class Member may submit a Request To Be Excluded From Settlement form or a writing that contains: (1) the name, address, and the last four digits of the Social Security number and/or the entire Employee ID number of the Class Member requesting exclusion; (2) a clear statement requesting to be excluded from the Class Settlement; (3) must be signed by the Class Member; and (4) must be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed a valid Request for Exclusion from this Settlement. The date of the postmark on the return mailing envelope shall

1 be the exclusive means used to determine whether a Request for Exclusion has been timely
2 submitted. Any Class Member who requests to be excluded from the Settlement in accordance
3 with the provisions of this paragraph will not be entitled to any recovery under the Settlement and
4 will not be bound by the terms of the Settlement. Class Members who receive a Notice Packet
5 but fail to submit a valid and timely Request for Exclusion on or before the Response Deadline,
6 which is forty-five (45) days from the date of the mailing of the Notice Packet, shall be bound by
7 all terms of the Settlement and any Final Judgment entered in this Action if the Settlement is
8 approved by the Court. Any Class Member who does not request exclusion as set forth above is
9 deemed to have released all claims, including Released Claims against Released Parties, as set
10 forth herein and therefore by operation will be deemed a Settlement Class Member. At no time
11 shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the
12 Class to submit Requests for Exclusion from the Settlement. Class Counsel shall not represent
13 any Class Member with respect to any such Request for Exclusion. Class Members who submit
14 a valid Request for Exclusion may not also submit a Notice of Objection. PAGA Members cannot
15 opt out or submit a Request for Exclusion

16 3.8. Objections. The Notice Packet shall state that Class Members who wish to object
17 to the Settlement shall submit a written statement of objection (“Notice of Objection”) by the
18 Response Deadline, which is forty-five (45) days from the date of the mailing of the Notice
19 Packet, to the Settlement Administrator. The Notice of Objection must be signed by the Class
20 Member and state: (1) the full name of the Class Member; (2) the dates of employment of the
21 Class Member; (3) the last four digits of the Class Member’s Social Security number and/or the
22 entire Employee ID number; (4) the basis for the objection; and, (5) whether the Class Member
23 intends to appear at the Final Approval Hearing. The Notice of Objection must be postmarked by
24 the Response Deadline and returned to the Settlement Administrator at the specified address.
25 Within five (5) days of receiving a Notice of Objection from a Settlement Class Member, the
26 Settlement Administrator shall forward the Notice of Objection to Class Counsel and Defendant’s
27 Counsel. The Parties shall thereafter lodge the Class Member’s Notice of Objection with the
28 Court. Class Members, regardless of whether or not they submit a timely Notice of Objection,

1 will have a right to appear at the Final Approval Hearing, with or without an attorney, and have
2 their objections heard by the Court. At no time shall any of the Parties or their counsel seek to
3 solicit or otherwise encourage Class Members to file or serve written objections to the Settlement
4 or to appeal from the Final Judgment. Class Counsel shall not represent any Class Member with
5 respect to any such objection.

6 3.9. Plaintiff's Participation. By executing this Settlement, Plaintiff hereby stipulates
7 he will not object to or exclude himself from the Settlement in any way.

8 3.10. No Solicitation of Settlement Objections or Exclusions. The Parties and their
9 counsel agree to use their best efforts to carry out the terms of this Settlement. At no time shall
10 any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit
11 Notices of Objection to the Settlement or Requests for Exclusion from the Settlement, or to appeal
12 from the Court's Final Judgment.

13 3.11. Funding of the Gross Settlement Amount. This is a non-reversionary Settlement
14 in which Defendant is required to pay the entire Gross Settlement Amount. No portion of the
15 Gross Settlement Amount will revert to Defendant. Defendant is separately and solely
16 responsible for any employer payroll taxes owed as a result of the Settlement. If no Class Member
17 objects to the Settlement, Defendant shall fund the Gross Settlement Amount no later than
18 fourteen (14) calendar days after Final Judgment. If one or more Class Members object to the
19 Settlement, Defendant shall fund the Gross Settlement Amount fourteen (14) calendar days after
20 the deadline for filing a notice of appeal from the Final Judgment. If one or more Class Members
21 appeals the Final Judgment, Defendant shall fund the Gross Settlement Amount fourteen (14)
22 calendar days after the appellate court affirms the Final Judgment and issues a remittitur. No
23 release in this Settlement shall be effective until the Gross Settlement Amount is fully funded.

24 3.11.1. No more than five (5) business days after Defendant makes the of the Gross
25 Settlement Amount payment, the Settlement Administrator shall provide the Parties with an
26 accounting of all anticipated payments from the Gross Settlement Amount. The Net Settlement
27 Amount shall be calculated by deducting from the Gross Settlement Amount the anticipated
28 payments for (1) Class Representative Service Awards, as specified in this Settlement and

1 approved by the Court; (2) Class Counsel Fees, as specified in this Settlement and approved by
2 the Court; (3) Class Counsel Costs, as specified in this Settlement and approved by the Court;
3 (4) Settlement Administration Costs, as specified in this Settlement and approved by the Court;
4 and (5) the LWDA PAGA Allocation, as specified in this Settlement and approved by the Court.
5 The Net Settlement Amount shall be distributed in Individual Settlement Payments in accordance
6 with Paragraphs 3.12, 3.12.1 and 3.13.

7 3.12. Individual Settlement Payments. Each Settlement Class Member shall be eligible
8 to receive an Individual Settlement Payment, which is a share of the Net Settlement Amount,
9 based on the number of weeks worked by the Settlement Class Member for Defendant during the
10 Class Period, as a proportion of all weeks worked by all Class Members for Defendant during the
11 Class Period. Individual Settlement Payments shall be paid by check pursuant to the formula set
12 forth in Paragraph 3.12.1 and 3.13 below. Individual Settlement Payments shall be mailed by
13 regular First-Class U.S. Mail to Settlement Class Members' last known mailing address no later
14 than fourteen (14) calendar days after Defendant makes the payment of the Gross Settlement
15 Amount. Individual Settlement Payments shall specifically indicate that they are void if not
16 negotiated within one hundred eighty (180) days of their issuance. Individual Settlement
17 Payments reflect settlement of a dispute regarding wages, interest, and penalties. Individual
18 Settlement Payments will be allocated as follows: twenty percent (20%) as wages; and eighty
19 percent (80%) as interest and penalties. The "wage" portion of each Individual Settlement
20 Payment will be reduced by any Employee Taxes. The Settlement Administrator shall issue the
21 appropriate tax documents associated with the Individual Settlement Payments, including an IRS
22 Form W-2 for the amounts allocated as "wages" and an IRS Form 1099 for the amounts allocated
23 as "interest" or "penalties."

24 3.12.1. Individual Settlement Payment Formula. After deducting the Class Counsel Fees
25 and Class Counsel Costs, the LWDA PAGA Allocation, Class Representative Service Award,
26 and Settlement Administration Costs, the remaining funds (the "Net Settlement Amount"), shall
27 be distributed as follows: (1) Ten percent (10%) of the Net Settlement Amount will be disbursed
28 to Settlement Class Members that worked from September 27, 2018 through January 10, 2020

1 based on the formula below; and (2) the remaining ninety percent (90%) of the Net Settlement
2 Amount will be disbursed to Settlement Class Members that worked from January 11, 2020
3 through November 30, 2023 based on the below formula. The Net Settlement distribution
4 formula is based on a prior class action settlement that encompassed all claims asserted in this
5 Action up to and including January 10, 2020, except for Plaintiff's claims under Labor Code
6 section 2802 (*Macias-Lopez v. Amscaff, LLC, et al.*, Superior Court of California, San Diego
7 County, Case Number: 37-2018-00017800-CU-OE-CTL). The Settlement Administrator shall
8 divide the Net Settlement Amount by the total number of workweeks Class Members worked
9 for Defendant during the Class Period in order to determine the amount each Settlement Class
10 Member is entitled to for each workweek he or she worked for Defendant (the "Weekly
11 Amount") during the Class Period. The Settlement Administrator shall multiply the Weekly
12 Amount by the estimated total number of workweeks that each Settlement Class Member worked
13 for Defendant during the Class Period. The product of each calculation represents the gross
14 Individual Settlement Payment for the respective Settlement Class Member. The Settlement
15 Administrator shall then deduct Employee Taxes attributable to wages to arrive at the net
16 Individual Settlement Payment for each respective Class Member. Within fourteen (14) calendar
17 days after Preliminary Approval, Defendant shall provide the Settlement Administrator with any
18 information reasonably necessary to perform the calculation of number of workweeks for each
19 Class Member, and any other reasonably required information the Settlement Administrator
20 requests to perform the calculations required under this Settlement. Defendant shall have no
21 responsibility for deciding the validity of any Individual Settlement Payment or any other
22 payments made pursuant to this Settlement, shall have no involvement in or responsibility for
23 the determination or payment of Employee Taxes, and shall have no liability for any errors made
24 with respect to such Employee Taxes.

25 3.13. **PAGA Allocation & Related Release.** Out of the Maximum Settlement Amount
26 that is ultimately preliminarily approved, Defendant shall pay a total of Twenty-Five Thousand
27 Dollars (\$25,000.00) to resolve the PAGA Claims (as defined below) of the Settlement Class (the
28 "PAGA Payment"). Of this amount, 75% will be paid to the LWDA and 25% (i.e. \$6,750.00) will

1 be distributed on a pro rata per pay period basis to the PAGA Members who worked at any time
2 during the PAGA Period. Each PAGA Member's Individual PAGA Payment will be calculated
3 based on the total number of pay periods he or she worked during the PAGA Period. To establish
4 the pay period value, the Settlement Administrator will first determine the total number of pay
5 periods worked by PAGA Members during the PAGA Period. 25% of the PAGA Settlement
6 Fund will then be divided by the total number of pay periods worked by PAGA Members during
7 the PAGA Period to determine the pay period value. The PAGA Member Allocation represents
8 the portion of civil penalties awarded directly under PAGA, and shall be allocated as 100%
9 penalties. The Settlement Administrator will report the PAGA Payments on IRS 1099 Forms.
10 PAGA Members will not be required to submit a claim form in order to be issued a check for
11 their share of the PAGA Payment. The PAGA Members will not have the opportunity to opt out
12 of, or object to, the PAGA Payment and release of the PAGA Claims. Upon receipt of the PAGA
13 Payment, PAGA Members shall be deemed to have released the PAGA claims as to civil and
14 statutory penalties, and any other interest, liquidated damages, attorney's fees and costs related
15 to PAGA.

16 3.13.1. Settlement Class Members are not eligible to receive any compensation
17 other than the Individual Settlement Payment (and PAGA Payment for PAGA Members), and
18 they may only receive an Individual Settlement Payment if they do not submit a valid and timely
19 Request for Exclusion to opt out of the Settlement. PAGA Members will receive their portion
20 of the PAGA Payment regardless of whether they submit a valid and timely Request for
21 Exclusion to opt out of the Settlement. Plaintiff, however, are also eligible to receive a Class
22 Representative Service Awards.

23 3.13.2. No benefit, including but not limited to pension benefits, shall increase or
24 accrue as a result of any payment made pursuant to this Settlement.

25 3.13.3. If an Individual Settlement Payment is returned to the Settlement
26 Administrator as undeliverable and does not have a forwarding address, the Settlement
27 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
28 search. If the returned Individual Settlement Payment has a forwarding address, or another

1 address is identified, the Settlement Administrator shall mail the Individual Settlement Payment
2 to the forwarding, or newly-identified, address. If an Individual Settlement Payment is returned
3 to the Settlement Administrator a second time as undeliverable, the Settlement Administrator
4 shall not attempt any further re-mailing of that Individual Settlement Payment, but shall hold
5 such Individual Settlement Payment until it becomes void. Any settlement checks that remain
6 uncashed one hundred eighty (180) calendar days after issuance shall be void ("Voided
7 Checks").

8 3.13.4. Any settlement checks that are not cashed within one hundred eighty (180)
9 days after mailing shall thereafter be paid to the California State Controller in the name of the
10 Class Member who did not cash his or her check.

11 3.14. Class Representative Service Award. Defendant agrees not to oppose or object to
12 any application or motion by Plaintiff for a Class Representative Service Award, not to exceed
13 Ten Thousand Dollars (\$10,000.00) for Plaintiff, as consideration for Plaintiff's time and effort
14 in bringing and prosecuting this matter. The Class Representative Service Award shall be paid
15 to Plaintiff from the Gross Settlement Amount no later than fourteen (14) calendar days after
16 Defendant funds the Gross Settlement Amount. The Settlement Administrator shall issue an IRS
17 Form 1099 — MISC to Plaintiff for his Class Representative Service Award. Plaintiff shall be
18 solely and legally responsible for payment of all applicable taxes on their Class Representative
19 Service Award and shall hold Defendant harmless from any claim or liability for taxes, penalties,
20 or interest arising as a result of their Class Representative Service Award. The Class
21 Representative Service Award shall be in addition to Plaintiff's Individual Settlement Payment
22 as a Settlement Class Member. In the event that the Court awards a lesser amount than the Class
23 Representative Service Award requested, then any portion of the requested amount not awarded
24 to Plaintiff shall be added to the Net Settlement Amount. Plaintiff shall not have the right to
25 revoke this agreement to the Settlement on the grounds the Court did not approve any or all of his
26 request for a Class Representative Service Award; it shall remain binding. Any adjustments made
27 by the Court to the requested Class Representative Service Award shall not be deemed a material
28 modification of this Agreement.

1 3.15. Class Counsel Fees and Costs. Defendant agrees not to oppose or object to any
2 application or motion by Class Counsel for Class Counsel Fees in the amount of one-third of the
3 Gross Settlement Amount or Three Hundred Thirty Thousand Dollars (\$330,000.00) and Class
4 Counsel Costs not to exceed Fourteen Thousand Dollars (\$14,000.00) from the Gross Settlement
5 Amount. The Class Counsel Fees and Class Counsel Costs shall be paid no later than fourteen
6 (14) calendar days after the Defendant funds the Gross Settlement Amount. Class Counsel shall
7 be solely and legally responsible to pay all applicable taxes on the payments made pursuant to
8 this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class
9 Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent upon
10 the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount
11 requested by Class Counsel for the Class Counsel Fees and Class Counsel Costs and not granted
12 by the Court shall become part of the Net Settlement Amount.

13 3.16. PAGA Allocation. Subject to Court approval, the Parties shall allocate a total of
14 Twenty-Five Thousand Dollars (\$25,000.00) from the Gross Settlement Amount for the
15 compromise of claims brought under the Labor Code Private Attorney's General Act of 2004 (the
16 "PAGA Allocation").

17 3.17. LWDA PAGA Allocation. The LWDA PAGA Allocation shall be Eighteen
18 Thousand Seven Hundred and Fifty Dollars (\$18,750.00), representing 75% of the PAGA
19 Allocation, and shall be paid to California's Labor Workforce Development Agency ("LWDA")
20 from the Gross Settlement Amount by the Settlement Administrator no later than fourteen (14)
21 calendar days after Defendant funds the Gross Settlement Amount. The remaining Six Thousand
22 Two Hundred and Fifty Dollars (\$6,250.00), representing 25% of the PAGA Allocation, shall be
23 distributed to PAGA Members.

24 3.18. Defendant's Option to Terminate Settlement. If, after the Response Deadline and
25 before the Final Approval Hearing, ten percent (10%) or more of the number of Settlement Class
26 Members submit timely and valid Requests for Exclusion from the Settlement, Defendant shall
27 have, in its sole discretion, the option to terminate this Settlement. Defendant shall exercise its
28 option to terminate, if it wishes, prior to the Final Approval Hearing, provided the Settlement

1 Administrator has provided Defendant the number and percentage of valid and timely Requests
2 for Exclusion no later than fourteen (14) calendar days prior to the Final Approval Hearing. If
3 Defendant decides to void the Settlement, then the Settlement and conditional class certification
4 shall be considered void, and neither the Settlement, conditional class certification, nor any of the
5 related negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in
6 the same position, without prejudice, as if this Settlement had been neither entered into nor filed
7 with the Court. Should Defendant void the Settlement under this paragraph, Defendant shall be
8 responsible for all Settlement Administration Costs incurred by the Settlement Administrator
9 through the date that Defendant notifies the Settlement Administrator that they are exercising the
10 option to terminate the Settlement.

11 3.19. Settlement Administration Costs. The Settlement Administrator shall be paid for
12 the costs of administration of the Settlement from the Gross Settlement Amount. Such costs of
13 administration are not to exceed Eleven Thousand Dollars (\$11,000.00), unless the court approves
14 a higher amount. No fewer than twenty (20) days prior to the Final Approval Hearing, the
15 Settlement Administrator shall provide the Parties with a statement detailing the costs of
16 administration. The Settlement Administrator, on Defendant's behalf, shall have the authority
17 and obligation to make payments, credits and disbursements, including payments and credits in
18 the manner set forth in this Settlement, to Settlement Class Members, calculated in accordance
19 with the methodology set out in this Settlement and orders of the Court. The Parties agree to
20 cooperate in the administration of the Settlement and to make all reasonable efforts to control and
21 minimize the costs and expenses incurred in administration of the Settlement. The Parties each
22 represent they do not have any financial interest in the Settlement Administrator or otherwise
23 have a relationship with the Settlement Administrator that could create a conflict of interest. The
24 Settlement Administrator shall be responsible for: processing and mailing all payments described
25 in the Settlement to the Plaintiff, Class Counsel, Settlement Class Members and Verified
26 Settlement Class Members, the LWDA, tax authorities,; printing and mailing the Notice Packets
27 to the Settlement Class Members as called for in this Settlement and ordered by the Court;
28 receiving and reporting Notice of Objections and Requests for Exclusion submitted by Class

Members; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other tax documents required by administration of this Settlement shall be prepared by the Settlement Administrator. Any expenses incurred in connection with such preparation shall be Settlement Administration Costs. The Settlement Administrator shall be paid the Settlement Administration Costs no later than fifteen (15) calendar days after the Defendant funds the Gross Settlement Amount.

3.20. Final Approval Hearing. At a reasonable time following the Response Deadline, the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and the Court shall determine amounts properly payable for (i) the Class Counsel Fees, (ii) the Class Counsel Costs, (iii) the Class Representative Service Award, (iv) the LWDA PAGA Allocation; and (v) the Settlement Administration Costs.

3.21. Entry of Final Judgment. If the Court approves this Settlement at the Final Approval Hearing, the Parties shall request that the Court enter the Final Judgment after the Gross Settlement Amount has been fully funded, with the Court retaining jurisdiction over the Parties to enforce the terms of the judgment. If the Court grants Final Approval to the Settlement, notice of Final Approval shall be posted on the Settlement Administrator's website, at www.phoenixclassaction.com.

3.22. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class Members pursuant to this Settlement will not count as earnings or compensation for purposes of any benefits (e.g., pensions or retirement plans) sponsored by Defendant. It is expressly understood and agreed that the receipt of Individual Settlement Payments and/or PAGA Payments shall not entitle any Settlement Class Member to additional compensation or benefits under any collective bargaining agreement or under any bonus, contest, or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor shall it entitle any Settlement Class Member to any increased pension and/or retirement, or other deferred

1 compensation benefits. It is the intent of the Parties that payments from Net Settlement Amount
2 provided for in this Settlement are the sole payments to be made by Defendant to Settlement Class
3 Members in connection with this Settlement, with the sole exception of Plaintiff's Class
4 Representative Service Award, and that the Settlement Class Members are not entitled to any new
5 or additional compensation or benefits as a result of having received funds from the Net
6 Settlement Amount. Furthermore, the receipt of Individual Settlement Payments by Settlement
7 Class Members shall not, and does not, by itself establish any general, special, or joint
8 employment relationship between and among the Settlement Class Member(s) and Defendant.

9 3.23. Nullification of Settlement. In the event: (i) the Court does not enter the
10 Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of the
11 Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided herein;
12 or (iv) the Settlement does not become final for any other reason, this Settlement shall be null and
13 void and any order or judgment entered by the Court in furtherance of this Settlement shall be
14 treated as void from the beginning. In such a case, the Parties and any funds to be awarded under
15 this Settlement shall be returned to their respective statuses as of the date and time immediately
16 prior to the execution of this Settlement, and the Parties shall proceed in all respects as if this
17 Settlement had not been executed. In the event an appeal is filed from the Court's Final Judgment,
18 or any other appellate review is sought, administration of the Settlement shall be stayed pending
19 final resolution of the appeal or other appellate review.

20 3.24. No Admission by the Parties. Defendant denies any and all claims alleged in this
21 Action and denies all wrongdoing whatsoever. This Settlement is not a concession or admission,
22 and shall not be used against Defendant as an admission or indication, with respect to any claim,
23 of any fault, concession, or omission by Defendant. Neither this Settlement, nor any of its terms
24 and conditions, nor any of the negotiations connected with it, is a concession or admission, and
25 none shall be used against Defendant as an admission or indication with respect to any claim of
26 any fault, concession, or omission by Defendant, or that class certification is proper under the
27 standard applied to contested certification motions. The Parties stipulate and agree to the
28 certification of the Settlement for settlement purposes only. The Parties further agree that this

1 Settlement will not be admissible in this or any other proceeding as evidence that either: (i) a class
2 action should be certified or (ii) Defendant is liable to Plaintiff or any Class Member, other than
3 according to the terms of this Settlement.

4 3.25. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
5 the interpretation, calculation or payment of settlement claims, or other disputes regarding
6 compliance with this Settlement shall be resolved as follows:

7 3.25.1. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
8 Members, or Defendant at any time believe that the other Party or Parties have breached or acted
9 contrary to the Settlement, that Party shall notify the other Party or Parties in writing of the alleged
10 violation.

11 3.25.2. Upon receiving notice of the alleged violation or dispute, the responding
12 Party shall have ten (10) days to correct the alleged violation and/or respond to the initiating Party
13 with the reasons why the Party disputes all or part of the allegation.

14 3.25.3. If the response does not address the alleged violation to the initiating
15 Party's satisfaction, the Parties shall negotiate in good faith for up to ten (10) days to resolve their
16 differences.

17 3.25.4. Prior to the Court's involvement pursuant to paragraph 3.35, if the Parties
18 still cannot resolve a dispute, the Parties shall utilize the services of the Lou Marlin (Mediator) in
19 a good-faith attempt to mediate and resolve the dispute.

20 3.25.5. If the Parties are unable to resolve their differences after twenty (20) days,
21 either Party may file an appropriate motion for enforcement with the Court.

22 3.26. Exhibits and Headings. The terms of this Settlement include the terms set forth in
23 Exhibits A, B and C, which are attached to this Settlement and incorporated by this reference as
24 though fully set forth in this paragraph. Any Exhibits to this Settlement are an integral part of the
25 Settlement. The descriptive headings of any paragraphs or sections of this Settlement are inserted
26 for convenience of reference only and do not constitute a part of this Settlement.

27 3.27. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
28 Action and thereafter implement and complete the Settlement. The Parties further agree that upon

1 the signing of this MOU that pursuant to CCP section 583.330 to extend the date to bring a case
2 to trial under CCP section 583.310 for the entire period of this settlement process.

3 3.28. Amendment or Modification. This Settlement may be amended or modified only
4 by a written instrument signed by all the Parties and counsel for all Parties or their successors-in-
5 interest.

6 3.29. Entire Settlement. This Settlement and any attached Exhibits constitute the entire
7 agreement among these Parties, and no oral or written representations, warranties, or inducements
8 have been made to any Party concerning this Settlement or its exhibits, other than the
9 representations, warranties, and covenants contained and memorialized in the Settlement and its
10 exhibits. No other prior or contemporaneous written or oral agreements may be deemed binding
11 on the Parties.

12 3.30. Authorization to Enter into Settlement. Counsel for all Parties warrant and
13 represent they are expressly authorized by the Parties whom they represent to negotiate this
14 Settlement and to take all appropriate actions required or permitted to be taken by such Parties
15 pursuant to this Settlement to effectuate its terms, and to execute any other documents required
16 to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each
17 other and use their best efforts to affect the implementation of the Settlement. In the event the
18 Parties are unable to reach agreement on the form or content of any document needed to
19 implement the Settlement, or on any supplemental provisions that may become necessary to
20 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
21 such disagreement. The person signing this Settlement on behalf of Defendant represents and
22 warrants that he or she is authorized to sign this Settlement on behalf of Defendant. Plaintiff
23 represent and warrant he is authorized to sign this Settlement and that he have not assigned any
24 claim, or part of a claim, covered by this Settlement to a third-party.

25 3.31. No Prior Assignments. The Parties and their counsel represent, covenant, and
26 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
27 to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
28 action, cause of action or right herein released and discharged.

1 3.32. California Law Governs. All terms of this Settlement and the exhibits hereto shall
2 be governed by and interpreted according to the laws of the State of California.

3 3.33. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
4 Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
5 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
6 present and potential.

7 3.34. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h),
8 the Parties agree that the Court shall retain jurisdiction with respect to the interpretation,
9 implementation, and enforcement of the terms of this Settlement and all orders and judgments
10 entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction
11 of the Court for purposes of interpreting, implementing, and enforcing this Settlement and all
12 orders and judgments entered in connection therewith.

13 3.35. Invalidity of Any Provision. Before declaring any provision of this Settlement
14 invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent
15 possible, consistent with applicable precedents.

16 3.36. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
17 conditional class certification for purposes of this Settlement only.

18 3.37. Cooperation. The Parties agree to cooperate fully with one another to accomplish
19 and implement the terms of this Settlement. Such cooperation shall include, but not be limited
20 to, execution of such other documents and the taking of such other action as may be reasonably
21 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall use their best
22 efforts, including all efforts contemplated by this Settlement and any other efforts that may
23 become necessary by Court order, or otherwise, to effectuate this Settlement and its terms.

24 3.38. Publicity. Plaintiff agrees not to disclose or publicize the Settlement Agreement
25 contemplated herein, the facts of the Settlement Agreement, its terms or contents, or the
26 negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly,
27 to any person or entity, except to Settlement Class members and as shall be contractually required
28 to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited

purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of the Settlement on their respective websites, but may not include the name(s) of any of the Parties, including the Defendant, or any of the Released Parties, or the case name or case number of the Action.

3.39. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

3.40. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and that this Settlement has been executed with the consent and advice of counsel, and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement.

3.41. All Terms Subject to Final Court Approval. All amounts and procedures described in this Stipulation are subject to final Court approval.

3.42. Notices. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement shall be: (1) in writing; (2) deemed given on the third business day after mailing; and (3) sent via United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff:

Kevin Mahoney, Esq.
John A. Young, Esq.
MAHONEY LAW GROUP
249 East Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

To Defendant:

Aaron Schu, Esq.
Aaron Buckley, Esq.
QUARLES & BRADY LLP
101 West Broadway | Ninth Floor
San Diego, CA 92101
Tel.: (619) 237-5200
Fax: (619) 615-0700

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

3.44. Execution by Plaintiff and Defendant. Plaintiff and Defendant, by signing this Settlement, are bound by the terms herein.

3.45. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

3.46. Counterparts. This Settlement shall become effective upon its execution by all of the undersigned. Plaintiff and Defendant may execute this Settlement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Copies of the executed Settlement shall be effective for all purposes as though the signatures contained therein were original signatures.

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

Dated: _____, 2023

11/15/2023

On behalf of American Scaffold, LLC

DocuSigned by:

Matthew Schaltegger

846771BE2742499...

Matt Schaltegger
General Manager

10 / 31 / 2023

Dated: _____, 2023

Oskar Lizarraga

[Signature]

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO
LIZARRAGA V. AMERICAN SCAFFOLD, LLC, CASE NO. 37-2022-00038496-CU-OE-
CTL**

A court authorized this notice. This is not a solicitation from a lawyer.

**ATTENTION: IF YOU HAVE BEEN EMPLOYED BY AMERICAN SCAFFOLD, LLC,
AS A NON-EXEMPT HOURLY PAID EMPLOYEE IN CALIFORNIA AT ANY TIME
DURING THE PERIOD BEGINNING SEPTEMBER 27, 2018 THROUGH NOVEMBER
30, 2023, YOU ARE ENTITLED TO A SHARE OF A PROPOSED CLASS ACTION
SETTLEMENT.**

*American Scaffold, LLC's records show that, between September 27,
2018 through November 30, 2023 you worked <<weeks worked>> as a non-
exempt employee. Based on these records, your estimated minimum settlement
payment is <<estimated amount>>.*

TO UNDERSTAND YOUR RIGHTS, READ THIS NOTICE CAREFULLY.

- A proposed class action settlement (the “Settlement”) has been reached between Plaintiff Oskar Lizarraga (“Plaintiff”), on behalf of himself and the below-defined Settlement Class, and Defendant American Scaffold, LLC (“Defendant”).
- The Settlement resolves a class action lawsuit (the “Action”) about Plaintiff’s allegations that Defendant failed to provide meal periods, failed to provide rest periods, failed to pay minimum wage, failed to pay overtime, failed to pay all wages at termination, failed to pay waiting time penalties, failed to provide accurate wage statements, failed to reimburse for necessary business expenditures, engaged in unfair business practices, and is liable for civil penalties. Defendant denies all liability to Settlement Class Members, asserts that it properly and timely compensated employees for all wages owed, including minimum wages, overtime wages, and final wages; properly and timely provided accurate itemized wage statements; properly and timely provided meal and rest periods; fully complied with all applicable wage and hour laws; has not engaged in any unfair business practices; and has entered into the Settlement solely for purposes of resolving this dispute.
- The Settlement provides for settlement payments based on the number of weeks you worked while employed by Defendant, in a non-exempt position, between September 27, 2018 through November 30, 2023.

**Your estimated minimum settlement payment and covered weeks worked during the
relevant period are printed on the notice below.**

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
DO NOTHING	You will automatically receive a settlement payment in exchange for which, whether or not you cash or deposit the payment, you will be bound by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement receives final approval by the Court, and you will give up your rights to be part of any other lawsuit against Defendant involving the same or similar legal claims as the ones in this Action, based on the facts alleged in this Action. You will be mailed a settlement check at the address where this notice was mailed (unless you timely provide a forwarding address to the Settlement Administrator).
EXCLUDE YOURSELF FROM THE CLASS	Submit a request for exclusion post marked no later than [Response Deadline]. This is the only way for you to be part of any other lawsuit against Defendant involving the same or similar legal claims as the ones in this Action. If you submit a Request for Exclusion, you will <u>not</u> receive a class settlement payment and you will <u>not</u> be bound by the terms of the Settlement. If you request to be excluded from the Settlement, you will still receive a PAGA individual payment if you worked during the PAGA Period (July 16, 2022 through November 30, 2023) also referred to as the “PAGA Period”, and shall be bound by the PAGA release.
OBJECT	If you wish to object to the Settlement, you must submit a written Objection and any supporting papers to the Settlement Administrator. The Objection must be postmarked no later than [Response Deadline]. You may also attend the Final Approval Hearing, with or without an attorney, to voice your objections (whether you had previously mailed a written objection or not).
GO TO THE HEARING	You may also attend the Final Approval Hearing, with or without an attorney, to voice your objections, if any (whether you had previously mailed a written objection or not). If the Court approves the Settlement, you will be bound by it.

- These rights and options, and how to exercise them, are explained in more detail in this notice.
- The Court handling this Action still has to decide whether to grant final approval of the Settlement. Settlement payments will only be issued if the Court grants final approval of the Settlement.
- Additional information regarding the Settlement is available through the Settlement Administrator or Class Counsel, whose contact information is provided in this notice.

BASIC INFORMATION

1. Why Did I Get This Notice?

Defendant's records show that you are, or have been, employed by it as a non-exempt employee at some point in California during the period from September 27, 2018 through November 30, 2023. This notice explains the Action, the Settlement, and your legal rights.

The lawsuit is known as *Lizarraga v. American Scaffold, LLC*, and is pending in the Superior Court of California for the County of San Diego, Case No. 37-2022-00038496-CU-OE-CTL (the "Action"). Oskar Lizarraga is called the Plaintiff, and the company he sued, American Scaffold, LLC, is called the Defendant.

2. What is the Action About?

The Action generally involves claims under California's wage and hour laws. Plaintiff is a former non-exempt employee of Defendant. Plaintiff alleges that Defendant did not compensate its employees for all hours worked, did not provide Plaintiff with meal and rest breaks, did not provide accurate itemized wage statements, failed to pay wages upon ending employment, and failed to indemnify for expenditures. As a result, Plaintiff alleges that Plaintiff and Settlement Class Members (defined in response to Question 4 below) are entitled to recover unpaid wages, including overtime wages, interest, reimbursement of business expenditures, and penalties. Defendant denies that it engaged in any wrongful conduct or that it violated the law in any way, and it believes that Plaintiff and the Settlement Class were properly compensated and provided meal and rest breaks, reimbursement for necessary business expenditures, and accurate itemized wage statements.

3. Why is This A Class Action?

Class action lawsuits are generally used where a large number of individuals are believed to be affected. In a class action, one or more persons, called the "Plaintiff" (in this case, Oskar Lizarraga), sue on behalf of people who have similar alleged claims. All of these people are a "class" or "class members." Once the class is certified, the Court resolves the issues for all class members, except for those who exclude themselves from the class. Class certification does not mean that there was any wrongdoing on the part of Defendant. On **[insert date]**, the Honorable Gregory W. Pollack issued an order conditionally certifying the Settlement Class for Settlement purposes only.

4. Who Is In The Settlement Class?

"Settlement Class Members" or "Settlement Class" means all non-exempt, hourly paid employees currently and formerly employed by Defendant in the State of California at any time from September 27, 2018 through November 30, 2023, that have not elected to be excluded.

5. Why Is There A Settlement?

After conducting thorough investigation, including review of policies, payroll records, time records and other documents and data, both sides have agreed to the Settlement as described in this notice to avoid the cost and risk of further litigation. The Settlement does not mean that any law was broken or that Defendant engaged in any wrongdoing. Defendant denies all of the claims asserted in the Action and denies that it has violated any laws. A settlement permits the parties to avoid the cost, delay, and uncertainty of trial, and permits eligible Class Members to receive some compensation sooner, rather than engaging in years of further litigation – including motions for summary judgment, trial, and an appeal – with the possibility of no recovery at all. The Settling Parties disagree on both liability and damages, and do not agree on the average amount of damages, if any, that would be recoverable if Plaintiff was to prevail at trial on each claim. Nonetheless, Defendant has concluded that further defense of this Action would be protracted and expensive, and that it is desirable that this Action be fully and finally settled upon the terms and conditions approved by the Court in order to limit further expense and avoid the burden of protracted litigation. Defendant entered into a proposed Settlement without in any way admitting to or acknowledging any fault, liability or wrongdoing of any kind. There has been no adverse determination by any court against Defendant or anyone else on the merits of the claims asserted in the Complaint.

THE SETTLEMENT BENEFITS—WHAT YOU GET

6. What Does The Settlement Provide?

Under the terms of the Settlement, Defendant agrees to pay a Gross Settlement Amount of Nine Hundred Ninety Thousand Dollars (\$990,000.00). Defendant will fund the Gross Settlement Amount no later than fourteen (14) days of the Final Approval Date if no Class Members object to the Settlement. Individual Settlement Payments will be mailed by regular First-Class U.S. Mail to Settlement Class Members' last known address no later than fourteen (14) calendar days after Defendant funds the Gross Settlement Amount.

Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees, not to exceed three hundred thirty thousand dollars (\$330,000.00), which is one-third of the Gross Settlement Amount; attorneys' actual costs, not to exceed fourteen thousand dollars (\$14,000.00); Class Representative Enhancement Award to Plaintiff for his service as Plaintiff and class representative, not to exceed ten thousand dollars (\$10,000.00) for Plaintiff; a payment of eighteen thousand seven hundred fifty dollars (\$18,750.00) to the State of California Labor and Workforce Development Agency ("LWDA") for alleged civil penalties; and the fees and expenses of the Settlement Administrator, Phoenix Settlement Administrators, not to exceed eleven thousand dollars (\$11,000.00), which will result in a net amount payable by Defendant for distribution to Settlement Class Members who do not opt out ("The Net Settlement Amount"). The remaining six thousand two hundred fifty dollars (\$6,250.00) of the PAGA Allocation, will be paid to Class Members who worked during the PAGA Period based on the number of pay periods worked by the Class Member during the PAGA Period.

Individual Class Settlement Payment Formula: The Net Settlement Amount will be distributed to Settlement Class Members who do not opt out of the Settlement (“Participating Class Members”), as follows: (1) Ten percent (10%) of the Net Settlement Amount will be disbursed to Settlement Class Members that worked from September 27, 2018 through January 10, 2020 based on the formula below; and (2) the remaining ninety percent (90%) of the Net Settlement Amount will be disbursed to Settlement Class Members that worked from January 11, 2020 through November 30, 2023 based on the below formula. The Net Settlement distribution formula is based on a prior class action settlement that encompassed all claims asserted in this Action up to and including January 10, 2020, except for Plaintiff’s claims under Labor Code section 2802 (*Macias-Lopez v. Amscaff, LLC, et al.*, Superior Court of California, San Diego County, Case Number: 37-2018-00017800-CU-OE-CTL). The Settlement Administrator shall divide the Net Settlement Amount by the total number of workweeks Class Members worked for Defendant during the Class Period in order to determine the amount each Settlement Class Member is entitled to for each workweek he or she worked for Defendant (the “Weekly Amount”) during the Class Period. The Settlement Administrator shall multiply the Weekly Amount by the estimated total number of workweeks that each Settlement Class Member worked for Defendant during the Class Period. The product of each calculation represents the gross Individual Settlement Payment for the respective Settlement Class Member. The Settlement Administrator shall then deduct Employee Taxes attributable to wages to arrive at the net Individual Settlement Payment for each respective Class Member.

No benefit, including but not limited to pension benefits, shall increase or accrue as a result of any payment made as a result of the Settlement.

The Parties recognize that the settlement amounts to be paid to the Participating Class Members are for wages, interest, and penalties. The Parties agree that twenty percent (20%) of the Participating Class Member payments shall be reported as wages on IRS Form W-2 and its state and local equivalents, and eighty percent (80%) shall be reported as interest and penalties on IRS Form 1099 and its state and local equivalents. **The Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to any settlement amounts to be paid to the Participating Class Members. Each Participating Class Member will assume any employee tax obligations or consequences that may arise from any settlement amount paid to him or her and should consult with a tax expert if he or she has questions.** Each Participating Class Member’s pro rata gross distribution amount will be reduced by the amount of any required employee-related tax deductions.

Individual Class Settlement Payment to Participating Class Members: Each Participating Class Member shall be eligible to receive an Individual Settlement Payment, which is a share of the Net Settlement Amount, based on the number of weeks worked by the Participating Class Member for Defendant during the Class Period, as a proportion of all weeks worked by all Participating Class Members for Defendant during the Class Period. Please note: (1) Ten percent (10%) of the Net Settlement Amount will be disbursed to Settlement Class Members that worked from September 27, 2018 through January 10, 2020 based on the formula below; and (2) the remaining ninety percent (90%) of the Net Settlement Amount will be disbursed to Settlement Class Members that worked from January 11, 2020 through November 30, 2023 based on the below formula. The Net Settlement distribution formula is based on a prior class action settlement

that encompassed all claims asserted in this Action up to and including January 10, 2020, except for Plaintiff's claims under Labor Code section 2802 (*Macias-Lopez v. Amscaff, LLC, et al.*, Superior Court of California, San Diego County, Case Number: 37-2018-00017800-CU-OE-CTL).

Individual PAGA Settlement Payment Formula: The Settlement Administrator shall divide the PAGA Allocation to be distributed to Class Members that worked during the PAGA Period regardless of whether they opt-out of the Individual Class Settlement Payment. Twenty-Five percent (25%) of the PAGA Allocation or six thousand seven hundred fifty dollars (\$6,750.00) shall be distributed to Class Members by the total number of pay periods they worked during the PAGA Period. Each Class Member's Individual PAGA Payment will be calculated based on the total number of pay periods he or she worked during the PAGA Period. To establish the pay period value, the Settlement Administrator will first determine the total number of pay periods worked by Class Members during the PAGA Period. Twenty-Five percent (25%) of the PAGA Allocation will then be divided by the total number of pay periods worked by Class Members during the PAGA Period to determine the pay period value. The product of each calculation represents the gross Individual PAGA Settlement Payment for the respective Class Member.

AMERICAN SCAFFOLD, LLC'S RECORDS INDICATE YOU WORKED APPROXIMATELY [INSERT WORKWEEKS] WORKWEEKS DURING THE SETTLEMENT CLASS PERIOD.

AMERICAN SCAFFOLD, LLC'S RECORDS INDICATE YOU WORKED APPROXIMATELY [INSERT PAY PERIODS] PAY PERIODS DURING THE PAGA PERIOD.

BASED ON YOUR TOTAL WORKWEEKS DURING THE CLASS PERIOD AND PAY PERIODS WORKED DURING THE PAGA PERIOD, YOUR ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT IS [INSERT AMOUNT], TO BE ISSUED LESS APPLICABLE TAXES.

To the extent any Participating Class Member disputes any aspect of his or her payment, that Participating Class Member must complete a workweek dispute report form and produce supporting evidence to the Settlement Administrator and it must be postmarked no later than [Response Deadline]. Late workweek dispute forms will not be considered. Defendant's records will be presumed determinative.

Once the Settlement becomes final (as described in response to Question 17 below), the process of funding the Gross Settlement Amount (as described above) will begin. The Individual Settlement Payments to Participating Class Members will be made within fourteen (14) calendar days after Defendant fully funds the Settlement. Additionally, any settlement checks that are not cashed within one hundred eighty (180) days after mailing shall thereafter be paid to the California State Controller in the name of the Class Member who did not cash his or her check.

7. What Am I Giving Up In Exchange For Settlement Benefits?

In exchange for the consideration provided, Plaintiff and each member of the Settlement Class who does not submit a valid Request for Exclusion (defined in response to Question 10 below) will release American Scaffold, LLC, and each of its parent companies, subsidiaries, related companies, affiliates, dbas, current and former management employees, shareholders, members, predecessors, successors, and assigns, or any related entity that was the “employer” of Class Members (collectively, the “Released Parties”) from any and all claims during the Class Period which were or could have been raised based on the facts, conduct, and/or omissions alleged in the Action, including all wage and hour claims, demands, rights, liabilities, and causes of action for unpaid wages, including minimum wage payments, regular wages, overtime wages; failure to pay wages during employment; failure to pay all wages due upon separation of employment; meal and rest break violations; meal and rest break premiums, failure to reimburse for necessary business expenditures, violation of the Private Attorney General Act (California Labor Code section 2698, *et seq.*), civil and statutory penalties, interest, liquidated damages, attorney’s fees and costs, claims under California Labor Code sections 90.5, 201-204, 225.5, 226, 510, 512, 1174, 1194, 1194.2, 1197, 1198, 2802, 2698-2699.5, and applicable Industrial Welfare Commission Wage Order, and claims under California Business & Professions Code sections 17200-17204. It is understood and agreed that Released Claims do not include claims for workers’ compensation, unemployment, or disability benefits of any nature, nor any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code section 12940, *et seq.*; the Unruh Civil Rights Act, California Civil Code section 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.*; and all of their implementing regulations and interpretive guidelines.

HOW TO GET A SETTLEMENT PAYMENT

8. How Do I Get A Settlement Payment?

If you do not exclude yourself from the Settlement, you will automatically receive a class settlement payment in exchange for which, whether or not you cash or deposit the payment, you will be bound by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement receives final approval by the Court; and you will give up your rights to be part of any other lawsuit against the Released Parties involving the same or similar legal claims as the ones in this case, based on the facts alleged in the Action. You will be mailed a settlement check at the address where this notice was mailed (unless you timely provide a forwarding address to the Settlement Administrator). If you worked during the PAGA Period, you will also receive a PAGA Payment and will be bound by the release of PAGA claims.

9. When Will I Get My Check?

Checks will be mailed to Participating Class Members after the Gross Settlement Amount is fully funded (as described in response to Question 6 above). If the judge approves the Settlement after a hearing on **[insert date]** (see “The Court’s Final Approval Hearing” section below), there may be appeals. If there are any appeals, resolving them could take some time, so please be

patient. Please also be advised that you will have only 180 days from the date that your settlement check is issued to cash it. If you do not cash your settlement check within 180 days of the date of its issuance, your Individual Settlement Payment will be voided. **Assuming there are no appeals, it is estimated that you will receive your settlement check within approximately forty-five (45) days after the Court grants final approval of the Settlement** (see “The Court’s Final Approval Hearing” section below).

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How Do I Ask The Court to Exclude Me From the Settlement Class?

If you do not wish to participate in the Settlement (“opt out”), you must complete and send a timely Request for Exclusion form. The Request for Exclusion must be signed, dated, and mailed by First Class U.S. Mail, or the equivalent, postmarked no later than [**Response Deadline**] to:

**Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863**

Requests for Exclusion that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the above-specified deadline shall be bound by all terms of the Settlement and any Final Judgment entered in the Action if the Settlement is approved by the Court. Finally, this request for exclusion will not apply to your Individual PAGA Settlement Payment if you worked during the PAGA Period. You will receive your Individual PAGA Settlement Payment regardless of your request for exclusion and you will be bound by the PAGA release if the Settlement is approved.

11. If I Exclude Myself, Can I Get Anything From the Class Settlement?

No. If you exclude yourself now, you will not get anything from the settlement. If you ask to be excluded within the time allowed for a Request for Exclusion, you will not get an Individual Class Settlement Payment and you will not be bound by the Settlement. However, as stated in section 10, even if you submit a request for exclusion from the Class Action Settlement, it will not apply to your Individual PAGA Settlement Payment if you worked during the PAGA period and you will receive your Individual PAGA Settlement Payment regardless of your request for exclusion and you will be bound by the PAGA release if the Settlement is approved.

12. If I Don’t Exclude Myself, Can I Sue Later?

No. Unless you exclude yourself, you give up the right to sue the Released Parties for the claims that were or could have been brought based on the facts as alleged in this Action. You must exclude yourself from the Class Action Settlement within the time indicated in the response to Question 10 above if you wish to start or continue your own lawsuit.

THE LAWYERS REPRESENTING YOU

13. Do I Have a Lawyer In This Case?

The Court has appointed the following lawyers to serve as Class Counsel for the Settlement Class:

Kevin Mahoney, Esq. (SBN: 235367)
kmahoney@mahoney-law.net
John A. Young (SBN: 299808)
jyoung@mahoney-law.net
MAHONEY LAW GROUP, APC
249 East Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone No.: (562) 590-5550
Facsimile No.: (562) 590-8400

14. How Will The Costs of the Lawsuit and The Settlement Be Paid?

Subject to court approval, Defendant agrees to pay, as part of the Gross Settlement Amount, three hundred thirty thousand dollars (\$330,000.00) in attorneys' fees, and up to fourteen thousand dollars (\$14,000.00) in actual costs, to Class Counsel. The Court may award less than these amounts. If lesser amounts are awarded, the difference will be returned to the Net Settlement Amount for distribution to Participating Class Members.

In addition, and subject to Court approval, Defendant agrees to pay Plaintiff, as part of the Gross Settlement Amount, a total of up to ten thousand dollars (\$10,000.00), as Class Representative Service Award for his participation in this lawsuit and for taking on the risk of litigation. Defendant also agrees to pay, as part of the Gross Settlement Amount, the PAGA Allocation of twenty-five thousand dollars (\$25,000.00). Defendant also agrees to pay, as part of the Gross Settlement Amount, the Settlement Administrator's costs and fees associated with administering the Settlement, not to exceed eleven thousand dollars (\$11,000.00). The Court may award less than these amounts. If lesser amounts are awarded, the difference will be included in the Net Settlement Amount for distribution to Participating Class Members.

OBJECTING TO THE SETTLEMENT

15. How Do I Object to the Settlement?

Any Settlement Class Member may object to the proposed Settlement for any reason by completing a written objection. The written objection must be mailed to the Settlement Administrator at the following address by regular U.S. Mail, or the equivalent, postmarked no later than **[Response Deadline]**:

**Phoenix Settlement
Administrators
P.O. Box 7208**

Orange, CA 92863

A written objection must be signed by the Settlement Class Member and must state: (1) the full name of the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3) the last four digits of the Settlement Class Member's Social Security number and/or the entire Employee ID number; (4) the basis for the objection; and, (5) whether the Settlement Class Member intends to appear at the Final Approval Hearing. If a Settlement Class Member wishes to appear at the Court's Final Approval Hearing (see response to Question 17 below) and orally present his or his objection to the Court, they may do so whether or not they submitted a written objection to the Settlement Administrator. They may also hire counsel to represent them at the final approval hearing. Any Settlement Class Member who submits an objection or appears at the Final Approval Hearing to submit a verbal objection remains eligible to receive monetary compensation from the Settlement. Settlement Class Members who submit Requests for Exclusion may not object to the proposed Settlement.

16. What's The Difference Between Objecting and Asking to be Excluded?

Objecting is simply telling the Court you do not like something about the Settlement. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. Whether you have filed an objection on time or not, you may attend and you may ask to speak, but you don't have to.

It is not necessary for you to appear at this hearing. You may appear and speak at the hearing if you want to do so, remotely or in-person. You can arrange for a remote appearance via Zoom through the Court's online check-in process available through the court's website at <https://www.sdcourt.ca.gov/virtualhearings>. Any attorney who will represent you must file a notice of appearance with the Court and serve the notice of appearance on Class Counsel and counsel for Defendant on or before [one week before the hearing]. You will be solely responsible for the fees and costs of your own attorney.

17. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Final Approval Hearing on [insert time/date] in Department C-71 at the Superior Court of California for the County of San Diego, located at **330 W Broadway, San Diego, CA 92101**. The hearing may be moved to a different date and/or time without additional notice. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will only listen to people who ask to speak at the hearing. The Court will also decide how much should be paid for Class Counsel's fees and costs, the Settlement Administrator's costs, the PAGA Allocation, and Plaintiff's Class Representative Service Award. After the hearing, the Court will decide whether to approve the Settlement. If the Court grants final approval of the Settlement, the date which the Court grants final approval of the Settlement will be the Final Approval Date. We do not know how long these decisions will take.

18. Do I Have to Come to the Hearing?

No. Class Counsel will answer any questions the judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it, however, you are welcome to do so. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend and represent you, but it is not required.

19. May I Speak At The Hearing?

If you wish to appear at the Final Approval Hearing and orally present your objection to the Court, you may do so regardless of whether or not you submitted a written objection.

IF YOU DO NOTHING

20. What Happens If I Do Nothing At All?

If you do nothing, you will automatically receive a payment from this Settlement (assuming the Settlement is approved and not successfully appealed) as described above and you will be bound by the release of the claims described above and in the Settlement. If the Court grants final approval to the Settlement, notice of the final approval shall be posted on the Settlement Administrator's website at www.phoenixclassaction.com.

GETTING MORE INFORMATION

21. How Do I Get More Information?

This notice summarizes the Settlement. More details are in the Settlement. You may contact Class Counsel or the Settlement Administrator for more information. You may contact Class Counsel by email at kmahoney@mahoney-law.net, jyoung@mahoney-law.net or by phone at (562) 590-5550, or visit the Settlement Administrator website at [www.phoenixclassaction.com/\[INSERT BY ADMINISTRATOR\]](http://www.phoenixclassaction.com/[INSERT BY ADMINISTRATOR]) for more information. You may also view the entire case file, you can go to the Clerk's Office of the Superior Court of California for the County of San Diego, located at 330 W Broadway, San Diego, CA 92101.

Exhibit B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

OSKAR LIZARRAGA, as an individual and
on behalf of all similarly situated employees,

Plaintiff,

v.

AMERICAN SCAFFOLD, LLC, and DOES
1 through 50, inclusive,

Defendant.

CASE NO. 37-2022-00038496-CU-OE-CTL
[Hon. Gregory W. Pollack]
Department C-71

**REQUEST TO BE EXCLUDED FROM
SETTLEMENT¹**

**ONLY COMPLETE THIS FORM IF YOU *DO NOT* WANT TO RECEIVE RECOVERY
FROM THE SETTLEMENT**

Name: _____

Address: _____

Telephone: _____

Last 4 Digits of SSN: _____

I wish to be excluded from the Settlement of the case *Lizarraga v. American Scaffold, LLC* Case No. 37-2022-00038496-CU-OE-CTL, currently pending in the Superior Court of the State of California, County of San Diego. I understand by signing below I will not receive any payment from this Settlement and will not be releasing any claims at issue in this action.

Dated: _____

(signature)

If you wish to be excluded from the Settlement, please complete and sign this Request for Exclusion form and mail it to *Lizarraga v. American Scaffold, LLC*, c/o Phoenix Class Action Administration at P.O. Box 7208, Orange, CA 92863 no later than [**DATE set by Court**].

¹ **DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A SETTLEMENT PAYMENT.**

Exhibit C

CLASS WORKWEEK DISPUTE FORM

SUPERIOR COURT OF THE STATE OF CALIFORNIA – SAN DIEGO
LIZARRAGA V. AMERICAN SCAFFOLD, LLC

<<Name>> _____
«Address>> _____
<<City>>, <<State>> <<Zip Code>> _____
XX - XX - ____ - ____

Indicate Name/Address Changes, if any: _____

INSTRUCTIONS

IF YOU WERE EMPLOYED BY AMERICAN SCAFFOLD, LLC (“DEFENDANT”) AS AN HOURLY EMPLOYEE, BETWEEN SEPTEMBER 27, 2018 AND NOVEMBER 30, 2023 THEN YOU ARE A SETTLEMENT CLASS MEMBER.

The amount of your estimated Settlement Payment is based upon the Workweeks you worked for Defendant in California between September 27, 2018 and November 30, 2023. A “Workweek” is defined as any week during the period between September 27, 2018 and November 30, 2023 in which you performed any compensable work as an hourly employee of American Scaffold, LLC. The number of Workweeks applicable to your claim is set forth below. If you believe that the number of Workweeks stated is incorrect, you may dispute the number of weeks by submitting this completed Class Workweek Dispute Form with supporting documents on or before [45 days after initial mailing]. **If you believe that the number of Workweeks stated below is correct, you do not have to do anything.**

If you have moved or may move in the future, you must immediately send your new address to the Settlement Administrator at the address listed above; otherwise, your individual settlement payment may not reach you. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

I. YOUR COMPENSABLE WORK WEEKS

Defendant’s records show that during the Class Period (September 27, 2018 and November 30, 2023), you worked as an hourly employee, in California, which qualifies you as a Settlement Class Member and your total number of Workweeks in this position are: <<**NUMBER OF WORKWEEKS**>>.

II. YOUR ESTIMATED SETTLEMENT PAYMENT

Based upon the above numbers of Workweeks, your estimated pre-tax Settlement Payment is <<**INSERT**>>.

III. CHALLENGE TO WORK WEEKS

If you wish to dispute the Eligible Workweeks data listed above, you must postmark your dispute and provide all supporting information and/or documentation to the Settlement Administrator by <<**NOTICE PERIOD DEADLINE**>>.

Check a box below ONLY if you wish to dispute the dates listed above:

☐ I wish to dispute the number of Workweeks listed above. I believe the correct amount of my work weeks is _____. I have also included information and/or documentary evidence that support my dispute (such as paystubs, time records, tax documents). I understand that, by submitting this dispute, I hereby authorize the Settlement Administrator to review Defendant's records and make a determination as to the validity of my dispute based upon Defendant's records as well as the records and information that I submit to the Settlement Administrator.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the information I provided in this Workweek Dispute Form is true and correct.

Dated: _____

Signature: _____

Print or Type Name: _____

MAIL TO:

LIZARRAGA V. AMERICAN SCAFFOLD, LLC
Settlement Administrator
c/o
Phoenix Settlement Administrators
1411 N. Batavia St. Suite 105
Orange, CA 92867

IF YOU ARE CONTESTING THE AMOUNT OF YOUR ELIGIBLE WORKWEEKS, TO CHALLENGE YOUR WORK WEEK AMOUNT YOU MUST SIGN AND POSTMARK AND RETURN THIS FORM TO THE SETTLEMENT ADMINISTRATOR ON OR BEFORE «NOTICE PERIOD DEADLINE».