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12

13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF MONTEREY**

15 LEONARDO ORTEGA, on behalf of himself
and all similarly aggrieved employees,

16 Plaintiff,

17 v.

18 BALESTERI CONSTRUCTION, INC.; and
19 DOES 1 through 50, inclusive,

20 Defendants.
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Case No. 23CV003755

**JOINT STIPULATION AND SETTLEMENT
AGREEMENT OF CLASS ACTION AND
PAGA CLAIMS**

1 This Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims
2 (“Agreement” or “Settlement”) is made and entered into by and between Plaintiff Leonardo Ortega
3 (“Plaintiff”) and Defendant Balesteri Construction, Inc. (“Defendant”) (collectively, “the Parties”).

4 **DEFINITIONS**

5 The following definitions are applicable to this Agreement. Definitions contained elsewhere in
6 this Agreement shall also be effective:

7 1. “Action” shall mean the lawsuit entitled *Ortega v. Balesteri Construction, Inc.*, originally
8 filed in the Superior Court of the State of California for the County of Monterey, Case No.
9 23CV003755.

10 2. “Agreement,” “Settlement,” or “Stipulation of Settlement” means this Joint Stipulation
11 and Settlement Agreement of Class Action and PAGA Claims.

12 3. “Confidential Individual Settlement Agreement” means the confidential individual
13 resolution of Plaintiff’s individual employment claims. Plaintiff’s individual employment claims are
14 explicitly excluded from any Released Claims and/or PAGA Released Claims, as defined in this
15 Agreement.

16 4. “Class” or “Class Members” means “all current and former non-exempt employees of
17 Defendant who were employed in the State of California at any time during the Class Period.

18 5. “Class Counsel” shall mean B. James Fitzpatrick and Alison L. Baker of Fitzpatrick &
19 Swanston.

20 6. “Class Counsel Costs” shall mean Class Counsel’s actual costs not to exceed Five
21 Thousand Dollars (\$5,000.00). Any portion of the Class Counsel Costs not used or approved by the
22 Court shall be added to the Net Settlement Amount.

23 7. “Class Counsel Fees” shall mean, subject to the Court’s approval, the maximum amount
24 of attorneys’ fees provided for by the Settlement, which shall not exceed Twenty-Five Thousand Dollars
25 (\$25,000.00) of the Gross Settlement Amount. Any portion of the Class Counsel Fees not approved by
26 the Court shall be added to the Net Settlement Amount.

27 8. “Class Period” means the period commencing on November 16, 2019, and ending on
28 November 16, 2023.

1 9. “Class Representative” or “Plaintiff” shall mean Plaintiff Leonardo Ortega.

2 10. “Class Representative Service Award” means the amount that the Court authorizes to be
3 paid from the Gross Settlement Amount to the named Plaintiff in exchange for executing a general
4 release and in recognition of his efforts and risks in assisting with the prosecution of the Action on
5 behalf of Class Employees. Plaintiff will request and Defendant will not oppose Plaintiff’s application to
6 the Court for a Class Representative Service Award of Two Thousand Five Hundred Dollars (\$2,500.00)
7 to Plaintiff from the Gross Settlement Amount for Plaintiff’s willingness to serve and efforts undertaken
8 as Class Representative.

9 11. “Court” means the Superior Court of the State of California for the County of Monterey.

10 12. “Court’s Final Order and Judgment” means the Final Order Approving Class Action
11 Settlement and Judgment in a form to be agreed upon by the Parties and approved by the Court.

12 13. “Defendant’s Counsel” shall mean Kelly McCarthy Sutherland of Anthony Lombardo &
13 Associates.

14 14. “Effective Date” shall mean the date when all of the following events have occurred: (i)
15 this Stipulation of Settlement has been executed by Plaintiff, Defendant, Class Counsel, and Defendant’s
16 Counsel; (ii) Plaintiff has executed the Confidential Individual Settlement Agreement without revoking
17 it and the time for revocation has expired; (iii) the Court has given preliminary approval to the
18 Settlement; (iv) the Notice has been sent to the Class, providing them the opportunity to object to the
19 Settlement and the opportunity to opt out of the Settlement; (v) the Court has held a formal fairness
20 hearing and entered the Court’s Final Order and Judgment; and (vi) only in the event there are written
21 objections filed prior to the formal fairness hearing which are not later withdrawn, the later of the
22 following events: (A) when the period for filing any appeal, writ, or other appellate proceeding opposing
23 the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; (B)
24 when any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally
25 and conclusively with no right to pursue further remedies or relief; or (C) when any appeal, writ, or
26 other appellate proceeding has upheld the Court’s Final Order and Judgment with no right to pursue
27 further remedies or relief.

28 15. “Final Approval Hearing” shall mean the hearing where the Court shall consider any

1 timely objections to the Settlement from Class Members, testimony from the Parties or their counsel,
2 declarations regarding the claims process from the Settlement Administrator, and otherwise make a final
3 determination regarding the fairness of the Settlement as set forth herein.

4 16. "Gross Settlement Amount" refers to Eighty-Two Thousand Five Hundred Dollars
5 (\$82,500.00), which is the maximum amount that Defendant will pay pursuant to this Settlement,
6 excluding Defendant's share of payroll taxes, excluding the Confidential Individual Settlement, and
7 subject to the escalator provision in this Settlement. The Gross Settlement Amount is based on
8 Defendant's representation that there are approximately 4,160 workweeks. If the number of workweeks
9 during this time period exceeds the estimate by 10%, the Gross Settlement Amount will increase by 1%
10 for every 1% increase in workweeks over the 10% threshold.

11 17. "Individual PAGA Payment" means the amount payable from the PAGA Member
12 Payment to each PAGA Member.

13 18. "Individual Settlement Payment" means the amount payable from the Net Settlement
14 Amount to each Participating Class Member.

15 19. "LWDA Payment" means seventy-five percent (75%) of the PAGA Penalties, *i.e.*, the
16 sum of One Thousand Eight Hundred Seventy-Five Dollars (\$1,875.00), which shall be paid to the
17 California Labor and Workforce Development Agency ("LWDA").

18 20. "Net Settlement Amount" shall mean the Gross Settlement Amount less Class Counsel
19 Fees, Class Counsel Costs, Service Award, PAGA Penalties, and Settlement Administration Costs.

20 21. "Notice of Proposed Settlement" or "Notice" means the Notice of Pendency of Class
21 Action, including a Spanish translation thereof, in substantially the form attached hereto as **Exhibit A**,
22 and as approved by the Court.

23 22. "PAGA" shall mean the California Labor Code Private Attorneys General Act, Labor
24 Code § 2698, *et seq.*

25 23. "PAGA Member" shall mean all current and former non-exempt employees of Defendant
26 who were employed in the State of California at any time during the PAGA Period.

27 24. "PAGA Member Payment" means twenty-five percent (25%) of the PAGA Penalties,
28 *i.e.*, the sum of Six Hundred Twenty-Five Dollars (\$625.00), which shall be paid to PAGA Members.

1 25. “PAGA Penalties” means the portion of the Gross Settlement Amount that the Parties
2 have agreed will be allocated to resolve all claims, penalties, and remedies under PAGA. The amount of
3 the PAGA Penalties is subject to Court approval pursuant to California Labor Code § 2699(1). The
4 Parties have agreed that Two Thousand Five Hundred Dollars (\$2,500.00) of the Gross Settlement
5 Amount shall be allocated to the resolution of the PAGA Members’ claims arising under PAGA.
6 Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Penalties, *i.e.*, the sum of One
7 Thousand Eight Hundred Seventy-Five Dollars (\$1,875.00), shall be paid to the LWDA. The remaining
8 twenty-five percent (25%) of the PAGA Penalties, *i.e.*, the sum of Six Hundred Twenty-Five Dollars
9 (\$625.00) (“PAGA Member Payment”), shall be distributed to PAGA Members.

10 26. “PAGA Period” means the period commencing on October 24, 2022, and ending
11 September 28, 2023.

12 27. “PAGA Released Claims” means all claims under the Private Attorneys General Act that
13 were alleged in the operative complaint in the Action and any claims that could have been alleged based
14 on the facts as alleged in the operative complaints in the Action.

15 28. “Participating Class” or “Participating Class Members” means members of the Class who
16 do not opt out of the class action portion of the settlement by submitting a valid request for exclusion as
17 described below.

18 29. “Parties” shall refer to the Plaintiff and Defendant, each of whom is a “Party.”

19 30. “Released Claims” means all claims that were alleged in the operative complaints of the
20 Action and any claims that could have been alleged based on the facts as alleged in the operative
21 complaints of the Action. “Released Claims” specifically does not include Class Representative and
22 Plaintiff Leonardo Ortega’s individual claims, which are the subject of the Confidential Individual
23 Settlement Agreement.

24 31. “Released Parties” collectively means Defendant Balesteri Construction, Inc., and all of
25 its past and present affiliated entities, parents, subsidiaries, owners, officers, directors, shareholders,
26 executives, managers, and employees.

27 32. “Settlement Administration Costs” means the fees and expenses reasonably incurred by
28 the Settlement Administrator as a result of the procedures and processes expressly required by this

Settlement, which is not to exceed \$5,000.00. Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the Net Settlement Amount.

33. "Settlement Administrator" means Phoenix Settlement Administrators.

34. "Settlement Payment Check" means the payment of the Individual Settlement Payment to Participating Class Members and Individual PAGA Payment to PAGA Members.

RECITALS

35. This Settlement is made and entered into by and between Plaintiff and Defendant, and is subject to the terms and conditions hereof, and to the Court's approval. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant.

36. Plaintiff, on behalf of himself, the State of California, and Class Members, seek to recover damages and penalties for alleged wage and hour violations by Defendant.

37. Procedural History.

a. On September 28, 2023, the Parties participated in private mediation with mediator Elizabeth R. Leitzinger of Fenton & Keller. After a full day of mediation, the Parties were able to reach an agreement. The Parties entered a memorandum of understanding, with the agreement to prepare a more detailed, formalized settlement agreement to be submitted to the Court for preliminary and final approval. The Parties now enter this more detailed, formalized settlement agreement to submit to the Court for preliminary and final approval.

b. On August 15, 2023, Plaintiff provided notice of alleged PAGA claims to Defendant, and on October 24, 2023, Plaintiff provided notice of alleged PAGA claims to the LWDA, on behalf of himself and all similarly situated current and former employees of Defendant.

c. On November 16, 2023, Plaintiff filed a class and representative action complaint against Defendant. The initial complaint alleges the following causes of action: 1) Failure to Provide Meal Periods or Compensation in Lieu Thereof; 2) Failure to Provide Rest Periods or Compensation in Lieu Thereof; 3) Failure to Pay Hourly and Overtime Wages; 4) Failure to Comply with Itemized Employee Wage Statement Requirements; 5) Failure to Pay All Wages Upon Termination; 6) Violation of Labor Code § 2802; 7) California Labor Code Private Attorneys General Act of 2004; and 8) Unfair

Business Practices.

38. Solely for the purpose of settling this case only, the Parties stipulate and agree that the requisites for establishing class certification with respect to the Class meet the requirements of Code of Civil Procedure § 382.

39. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims in the Action, and further denies that, for any purpose other than settling this lawsuit, this Action is appropriate for class action or representative treatment.

40. It is the Parties' desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the allegations of this Action.

41. It is the Parties' intention that this Stipulation of Settlement shall constitute a full and complete settlement and release of the Released Claims and PAGA Released Claims, which release includes the Released Parties.

42. It is the Parties' intention that this Settlement shall not become effective until the Effective Date.

43. Class Counsel has conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents and data produced by Defendant, and has diligently pursued an investigation of claims of the members of the Class against Defendant. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risks of significant delay, the risk of non-certification, and the defenses asserted by Defendant. Defendant and Defendant's Counsel also agree that the Settlement is fair and in the best interests of the Class.

44. The Parties agree to cooperate and take all steps necessary and appropriate to consummate this Settlement.

TERMS OF SETTLEMENT

45. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

a. It is agreed by and between Plaintiff and Defendant that this case and any claims,

1 damages, or causes of action arising out of the disputes which are the subject to this case, be settled and
2 compromised as between the Class and Defendant, subject to the terms and conditions set forth in this
3 Stipulation of Settlement and the Court's approval. It is agreed by and between Plaintiff and Defendant
4 that Plaintiff shall sign a Confidential Individual Settlement Agreement as provided by Defendant to
5 release all of his potential employment claims against Defendant. Defendant shall provide a draft within
6 thirty (30) days after the full execution of this Stipulation. Defendant shall not be required to pay the
7 Gross Settlement Amount until Plaintiff executes without revoking the Confidential Individual
8 Settlement Agreement provided by Defendant.

9 b. If the Court declines to approve the Settlement, the entire Stipulation of
10 Settlement is deemed void and unenforceable as if no settlement of any claim was ever reached; and all
11 negotiations, statements, and proceedings and data relating thereto shall be protected by California
12 Evidence Code § 1152 and shall be without prejudice to the rights of any of the Parties, all of whom
13 shall be restored to their respective positions prior to the mediation on September 28, 2023.

14 c. Settlement Amount: To implement the terms of this Settlement, Defendant agrees
15 to pay the Gross Settlement Amount. The Gross Settlement Amount shall be used to satisfy all of
16 Defendant's liabilities arising from this settlement, other than its liability for employer-side payroll taxes
17 on amounts paid to Class Members, the Confidential Individual Settlement, and subject to the escalator
18 provision. The Gross Settlement Amount includes Individual Settlement Payments to Participating Class
19 Members (excluding any appropriate and lawfully required employer-side payroll taxes owed by
20 Defendant on such payments which Defendant shall be separately responsible for apart from the Gross
21 Settlement Amount), Individual PAGA Payments to PAGA Members, PAGA Penalties, Settlement
22 Administration Costs, Service Award, approved Class Counsel Fees, and Class Counsel Costs.
23 Defendant shall transfer the Gross Settlement Amount to the Settlement Administrator at the later of the
24 date that is fifteen (15) calendar days after the Effective Date and September 28, 2024.

25 d. Allocation of Gross Settlement Amount: The Parties agree the Gross Settlement
26 Amount, subject to Court approval, shall be allocated as follows:

27 i. Individual Settlement Payments: Class Members who do not validly opt-
28 out shall receive their share of the Net Settlement Amount based upon the number of workweeks

employed during the Class Period.

ii. Each Class Member's respective number of applicable workweeks and estimated share of the Net Settlement Amount shall be identified on the Notice of Proposed Settlement. The Parties agree that if any Class Member disputes the basis for determining their share of the Settlement, Defendant's records shall presumptively control unless the Class Member can produce evidence of other workweeks worked during the relevant time period. Upon the submission of such evidence, the Settlement Administrator will make a determination as to any such dispute, which shall be final and binding.

iii. Twenty percent (20%) of each Individual Settlement Payment shall be classified as wages and the remaining eighty percent (80%) shall be penalties and interest. Participating Class Members' shares of the Net Settlement Amount shall be paid within fifteen (15) calendar days of the Settlement Administrator's receipt of the Gross Settlement Amount. Class Members shall have one-hundred eighty (180) days from the date of issuance of the check to negotiate the check. The funds from any checks not negotiated within 180 days shall be transmitted to the CASA of Monterey County as the *cy pres* recipient. In such event, those Participating Class Members will nevertheless remain bound by the Settlement.

iv. Settlement Awards Do Not Trigger Additional Benefits: All Individual Settlement Payment checks to the Class shall be deemed to be income solely in the year in which such Individual Settlement Payment checks are actually received by the members of the Class. It is expressly understood and agreed that the receipt of such Individual Settlement Payment checks will not entitle any Class Member to additional compensation or benefits under any company bonus, contest, or other compensation or benefit plan or agreement in place (including, but not limited to, health and welfare benefits) during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the Individual Settlement Payments provided for in this Agreement are the sole payments to be made by Defendant to the Class in connection with this Settlement, and that the Class is not entitled to any new or additional compensation or benefits as a result of having received the payments (notwithstanding any contrary language or agreement in any benefit or compensation plan

document that might have been in effect during the period covered by this Settlement).

v. Settlement Administrator: The Settlement Administrator will demonstrate the proven ability, and will contract to, maintain acceptable electronic and physical security protocols to adequately protect and safeguard the private employee information it will have access to as a result of the claims process. The fees and expenses of the Settlement Administrator, up to a maximum amount of Five Thousand Dollars (\$5,000.00), for work done shall be paid from the Gross Settlement Amount.

vi. Class Counsel Fees and Costs: Subject to the Court's approval, Defendant will pay Class Counsel's attorneys' fees of up to a maximum of Twenty-Five Thousand Dollars (\$25,000.00), and litigation costs not to exceed Five Thousand Dollars (\$5,000.00). Defendant will not object to Class Counsel's application for attorneys' fees and costs in these amounts. The amount set forth above will cover all work performed and all fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in the future in connection with the approval by the Court of this Stipulation of Settlement, the administration of the Settlement, and obtaining dismissal with prejudice of this case.

vii. Class Representative Service Award: Defendant agrees not to oppose or impede any application or motion by Plaintiff for Service Award of up to Two Thousand Five Hundred Dollars (\$2,500.00). The Service Award shall be paid from the Gross Settlement Amount and shall be paid in addition to Plaintiff's Settlement Payment as a Participating Class Member. Because it is the intent of the Parties that the Service Award represents payment to Plaintiff for his service and not wages, the Settlement Administrator shall issue IRS Form 1099 to Plaintiff reflecting the Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Service Award and shall hold the Released Parties harmless and indemnify Released Parties from any claim or liability for taxes, penalties, interest, or other payments and costs arising as a result of the non-withholding of taxes from the Service Award. Any portion of the Service Award not awarded to Plaintiff shall be added to the Net Settlement Amount and shall be distributed to Class Employees as provided in this Agreement.

viii. PAGA Penalties: Subject to the Court's Approval, the amount of Two Thousand Five Hundred Dollars (\$2,500.00) will be allocated from the Gross Settlement Amount for

1 alleged penalties under PAGA. One Thousand Eight Hundred Seventy-Five Dollars (\$1,875.00),
2 representing 75% of the penalties paid pursuant to the PAGA, shall be paid to the California Labor and
3 Workforce Development Agency and Six Hundred Twenty-Five Dollars (\$625.00), representing 25% of
4 the penalties paid pursuant to the PAGA, shall be paid to PAGA Members ("PAGA Member Payment").

5 1. Individual PAGA Payments: PAGA Members shall receive their
6 share of the PAGA Member Payment based upon the number of pay periods worked during the PAGA
7 Period. Each PAGA Member's respective number of applicable pay periods and estimated share of the
8 PAGA Member Payment shall be identified on the Notice of Proposed Settlement. The Parties agree that
9 if any PAGA Member disputes the basis for determining their share of the PAGA Member Payment,
10 Defendant's records shall presumptively control unless the PAGA Member can produce evidence of
11 other pay periods worked during the relevant time period. Upon the submission of such evidence, the
12 Settlement Administrator will make a determination as to any such dispute, which shall be final and
13 binding. One hundred percent (100%) of the Individual PAGA Payment shall be classified as penalties.
14 PAGA Members' shares of the PAGA Member Payment shall be paid within fifteen (15) calendar days
15 of the Settlement Administrator's receipt of the Gross Settlement Amount. PAGA Members shall have
16 one-hundred eighty (180) days from the date of issuance of the check to negotiate the check. The funds
17 from any checks not negotiated within 180 days shall be transmitted to the *cy pres* recipient. In such
18 event, those PAGA Members will nevertheless release the PAGA Released Claims.

19 ix. Tax Forms and Indemnification: The Settlement Administrator shall be
20 responsible for issuing the payments and withholding all required state and federal taxes in accordance
21 with this Stipulation of Settlement. The Settlement Administrator will issue IRS Forms W-2 with respect
22 to the amounts paid as wages to Participating Class Members, and IRS Forms 1099 with respect to the
23 amounts paid as penalties and interest to Participating Class Members and PAGA Members. The
24 Settlement Administrator will also issue IRS Forms 1099 to Class Counsel for the amount paid for
25 approved fees and costs. The Settlement Administrator will be responsible for preparing these forms
26 correctly. The Settlement Administrator shall also be responsible for submitting Defendant's share of
27 payroll taxes to the appropriate government agencies on behalf of Defendant. Plaintiff, Participating
28 Class Members, PAGA Members, and Class Counsel will be responsible for correctly characterizing this

1 compensation for tax purposes and for paying any taxes on the amounts received. Plaintiff, Participating
2 Class Members, PAGA Members, and Class Counsel agree to indemnify Defendant for any liability it
3 incurs to any tax authority on account of Plaintiff, Participating Class Members, PAGA Members,
4 and/or Class Counsel's failure to pay all taxes due on the awarded attorneys' fees and costs, or any other
5 amounts recorded on an IRS Form 1099.

6 **NOTICE TO THE CLASS**

7 46. Within fourteen (14) calendar days of preliminary approval of this Settlement by the
8 Court, Defendant shall provide to the Settlement Administrator a Class List, consisting of the full names,
9 last known addresses, Social Security numbers, total number of workweeks Class Members worked
10 during the Class Period, and total number of pay periods PAGA Members worked during the PAGA
11 Period.

12 47. The Settlement Administrator (along with any of its agents) shall represent and warrant
13 that it will: (1) provide reasonable and appropriate administrative, physical and technical safeguards for
14 any personally identifiable information ("PII"), which it receives from Defendant's Counsel and/or
15 Class Counsel; (2) not disclose the PII to third parties, including agents or subcontractors, without
16 Defendant's consent; (3) not disclose or otherwise use the PII other than to carry out its duties as set
17 forth herein; (4) promptly provide Defendant with notice if PII is subject to unauthorized access, use,
18 disclosure, modification, or destruction; and (5) destroy the PII upon termination of its services. The
19 Settlement Administrator may provide notice to both Parties if the PII is subject to unauthorized access,
20 use, disclosure, modification, or destruction; however, all additional communications from the
21 Settlement Administrator regarding the scope, circumstances, and substance shall be communicated
22 solely to Defendant.

23 48. The Settlement Administrator shall send Notice of Proposed Settlement to each Class
24 Member by first class mail within ten (10) calendar days of receipt of the Class List. Prior to mailing the
25 Court approved Notice, the Settlement Administrator shall update the addresses of the Class Members
26 by reference to the National Change of Address Database maintained by the United States Postal
27 Service. If a Notice of Proposed Settlement is returned as non-deliverable but with a forwarding address,
28 the Settlement Administrator shall resend the Notice of Proposed Settlement to the forwarding address.

1 If a Notice of Proposed Settlement is returned as non-deliverable with no forwarding address, the
2 Settlement Administrator shall conduct an advanced skip trace to locate the most current address of the
3 person to whom the Notice of Proposed Settlement was addressed and shall re-send the Notice of
4 Proposed Settlement within five (5) calendar days to any updated address. Upon completion of these
5 steps, the Parties shall be deemed to have satisfied their obligations to provide the Notice of Proposed
6 Settlement to the affected members of the Settlement Class.

7 49. The Settlement Administrator shall provide to the Court, concurrently with Plaintiff's
8 Motion for Final Approval, a declaration of due diligence and proof of mailing with regard to the
9 mailing of the Notice of Proposed Settlement.

10 **REQUESTS FOR EXCLUSION (OPT OUT)**

11 50. Each Class Member shall have forty-five (45) calendar days from the mailing of the
12 Notice of Proposed Settlement within which to postmark a written request for exclusion, for return to the
13 Settlement Administrator. The request need not be in any particular form and will be considered a valid
14 request for exclusion so long as it communicates a clear desire by the Class Member not to be included
15 in the Settlement and/or Class, identifies his/her full name, last four (4) digits of his/her Social Security
16 number, current address, and his/her signature. No requests for exclusion shall be accepted if
17 postmarked after the forty-five (45) calendar day period for the filing of exclusions. Any disputes
18 regarding the timeliness of a request for exclusion or whether a written communication constitutes a
19 valid request that cannot be resolved between the Parties shall be determined by the Court, whose
20 determination shall be final.

21 51. Any Class Member who validly excludes him/herself from this Settlement shall not be
22 bound by this Settlement and shall not be entitled to any portion of the Net Settlement Amount, except
23 that in light of the binding nature of a PAGA judgment on non-party employees, Class Members who
24 are also PAGA Members who exclude themselves from this Settlement shall still be bound by the
25 release of the PAGA Released Claims, as well as any Judgment that may be entered by the Court
26 thereon. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
27 Members to submit a Request for Exclusion. Class Counsel shall not represent any Class Members with
28 respect to any such request.

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1 then the Parties will have no further obligations under the Settlement, including, without limitation, any
2 obligation by Defendant to pay the Gross Settlement Amount, the Confidential Individual Settlement, or
3 any amounts that otherwise would have been owed under this Settlement, except that Defendant shall
4 pay all Settlement Administration Costs incurred by the Settlement Administrator up to the date of
5 Defendant's notice to rescind. In the event the Settlement is terminated, the Parties shall proceed in all
6 respects as if this Stipulation of Settlement had not been executed. The Parties agree that they will not
7 encourage any Class Member to object to the Settlement or to opt out.

8 **RELEASE BY THE CLASS AND CLAIMANTS**

9 56. Release by Participating Class Members: Upon the Effective Date and funding of the
10 Gross Settlement Amount, Plaintiff and all Participating Class Members hereby do and shall be deemed
11 to have fully, finally, and forever released, settled, compromised, relinquished, and discharged, to the
12 fullest extent possible, any and all of the Released Parties of and from any and all Released Claims
13 during the Class Period.

14 57. Release by PAGA Members: Upon the Effective Date and funding of the Gross
15 Settlement Amount, Plaintiff and all PAGA Members hereby do and shall be deemed to have fully,
16 finally, and forever released, settled, compromised, relinquished, and discharged, to the fullest extent
17 possible, any and all of the Released Parties of and from any and all PAGA Released Claims during the
18 PAGA Period. Class Members who are also PAGA Members shall still be bound by the PAGA Released
19 Claims regardless of whether a timely and valid Request for Exclusion is submitted.

20 58. Release of Claims by Class Representative: The claims released in this section specifically
21 do not include Class Representative and Plaintiff Leonardo Ortega's individual claims, which are the
22 subject of the Confidential Individual Settlement Agreement. Apart from said individual claims, upon the
23 Effective Date and funding of the Gross Settlement Amount, Plaintiff, on behalf of himself and his heirs,
24 executors, administrators, and representatives, shall and does hereby forever release, discharge, and agree
25 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations,
26 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
27 losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity,
28 which he may now have or may have after the signing of this Agreement, against the Released Parties

1 including, but not limited to, the Released Claims, claims that were asserted or could have been asserted
2 in the Complaint, and claims of any kind related to any and all transactions, occurrences, or matters
3 between the parties occurring prior to and through the Effective Date. Without limiting the generality of
4 the foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans
5 With Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil
6 Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act,
7 as amended; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee
8 Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act;
9 (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966;
10 (m) the California Fair Employment and Housing Act; (n) the California Constitution; (o) the California
11 Labor Code; (p) the California Government Code; (q) the California Civil Code; and (r) any and all other
12 federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based
13 on constitutional, statutory, common law or regulatory grounds as well as any other claims based on
14 theories of wrongful or constructive discharge, breach of contract or implied contract, fraud,
15 misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or
16 damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release
17 is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay,
18 vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages,
19 damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases,
20 discharges, and agrees to hold harmless Defendant and the Released Parties from any and all claims for
21 attorney fees and costs arising out of the matters released in this Agreement.

22 Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of Civil
23 Code § 1542, which provides as follows:

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

1 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits he
2 may have under Section 1542 as well as any other statutes or common law principles of a similar effect.
3 Plaintiff may hereafter discover facts in addition to or different from those which he now knows or
4 believes to be true with respect to the subject matter of all the claims referenced herein, but stipulates and
5 agrees that, upon the Effective Date, he shall and hereby does fully, finally, and forever settle and release
6 any and all claims against the Released Parties, known or unknown, suspected or unsuspected, contingent
7 or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without
8 regard to the subsequent discovery of existence of such different or additional facts. The release provided
9 for in this section does not extend to any individual claims that Plaintiff may assert against Defendants.

10 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

11 59. Class Counsel will be responsible for drafting all documents necessary to obtain
12 Preliminary approval.

13 60. Class Counsel shall promptly submit this Stipulation of Settlement to the Court in support
14 of Plaintiff's Motion for Preliminary Approval and determination by the Court as to whether the
15 proposed Settlement is within the range of possible judicial approval. Plaintiff will provide Defendant
16 with a draft of the Motion at least one business day prior to the filing of the Motion to give Defendant an
17 opportunity to propose changes or additions to the Motion. Promptly upon execution of this Stipulation
18 of Settlement, Class Counsel shall apply to the Court for the entry of an order substantially in the
19 following form:

20 a. Scheduling of the Final Approval Hearing on the question of whether the
21 proposed Settlement, including payment of attorneys' fees and costs, should be finally approved as fair,
22 reasonable, and adequate as to the Class Members;

23 b. Certifying the Class;

24 c. Approving the manner and method for the Class Members to request exclusion
25 from the Settlement as contained herein and within the Notice of Pendency of Class Action;

26 d. Directing the mailing of the Notice of Pendency of Class Action by first class
27 mail to the Class Members; and

28 e. Preliminarily approving the Settlement subject only to the objections of the Class

1 Members and final review by the Court.

2 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

3 61. Following final approval by the Court of the settlement provided for in this Stipulation of
4 Settlement, Class Counsel shall submit a proposed Final Order and Judgment in approximately the
5 following form: approving the Settlement, adjudging the terms thereof to be fair, reasonable, and
6 adequate, and directing consummation of its terms and provisions including the approval of Class
7 Counsel's application for an award of attorneys' fees and costs.

8 **PARTIES' AUTHORITY**

9 62. The signatories hereto hereby represent that they are fully authorized to enter into this
10 Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

11 **MUTUAL FULL COOPERATION**

12 63. The Parties agree to fully cooperate with each other to accomplish the terms of this
13 Stipulation of Settlement, including, but not limited to, execution of such documents and taking of such
14 action as reasonable may be necessary to implement the terms of this Stipulation of Settlement. The
15 Parties to this Stipulation of Settlement shall use their best efforts, including all efforts contemplated by
16 this Stipulation of Settlement and any other efforts that may become necessary by order of the Court, or
17 otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein. As soon as
18 practicable after execution of this Stipulation of Settlement, Class Counsel shall take all necessary steps
19 to secure the Court's final approval of this Stipulation of Settlement.

20 64. The Parties and their respective counsel agree that they will not attempt to encourage or
21 discourage Class Members from filing Requests for Exclusion.

22 **NO PRIOR ASSIGNMENTS**

23 65. The Parties and their respective counsel represent, covenant, and warrant that they have
24 not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
25 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or
26 right herein released and discharged except as set forth herein.

27 **NO ADMISSION**

28 66. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to

1 be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
2 Defendant. Each of the Parties hereto has entered into this Stipulation of Settlement solely with the
3 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

4 **ENFORCEMENT ACTIONS**

5 67. In the event one or more of the parties to this Stipulation of Settlement institutes any legal
6 action or other proceeding against any other party or parties to enforce the provisions of this Stipulation
7 of Settlement or to declare rights or obligations under this Stipulation of Settlement, the successful party
8 or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees
9 and costs, including expert witness fees incurred in connection with any enforcement actions. All such
10 disputes shall be resolved by the Court.

11 **NOTICES**

12 68. Unless otherwise specifically provided herein, all notices, demands, or other
13 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
14 the third business day after mailing by United States registered or certified mail, return receipt
15 requested, addressed as follow:

16 **To Plaintiff, the Class, and Class**
17 **Counsel:**

18 B. James Fitzpatrick
19 Alison L. Baker
20 FITZPATRICK & SWANSTON
21 555 S. Main Street
22 Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

To Defendant and Defendant's Counsel:

Kelly McCarthy Sutherland
ANTHONY LOMBARDO & ASSOCIATES
A Professional Corporation
144 W. Gabilan Street
Salinas, CA 93901
Telephone: (831) 751-2330
Facsimile: (831) 751-2331

23 **CONSTRUCTION**

24 69. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are
25 the result of lengthy, intensive arm's-length negotiations between the Parties with the assistance of a
26 neutral mediator, and this Stipulation of Settlement shall not be construed in favor of or against any
27 Party by reason of the extent to which any Party or his/her/its counsel participated in the drafting of this
28 Stipulation of Settlement.

1 **CAPTIONS AND INTERPRETATIONS**

2 70. Paragraph titles or captions contained herein are inserted as a matter of convenience and
3 for reference, and in no way define, limit, extend, or describe the scope of this Stipulation of Settlement
4 or any provision of it. Each term of this Stipulation of Settlement is contractual and not merely a recital.

5 **MODIFICATION**

6 71. This Stipulation of Settlement may not be changed, altered, or modified, except in writing
7 and signed by the Parties or their counsel and approved by the Court. This Stipulation of Settlement may
8 not be discharged except by performance in accordance with its terms or by a writing signed by the
9 Parties hereto.

10 **INTEGRATION CLAUSE**

11 72. This Stipulation of Settlement contains the entire agreements between the Parties relating
12 to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
13 understandings, representations, and statements, whether oral or written and whether by a Party or such
14 Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

15 **BINDING ON ASSIGNS**

16 73. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties
17 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

18 **DISPUTES REGARDING LANGUAGE OF SETTLEMENT AGREEMENT**

19 74. If the Parties have a dispute with regard to the language of the terms of the Agreement,
20 the Parties agree to present any such dispute to the mediator Elizabeth R. Leitzinger, Esq. for resolution.

21 **CLASS MEMBER SIGNATORIES**

22 75. It is agreed that because the Class Members are so numerous, it is impossible or
23 impractical to have each member execute this Stipulation of Settlement. The Notice of Pendency of
24 Class Action, Exhibit "A" hereto, will advise the Class of the binding nature of the release, and the
25 release shall have the same force and effect as if this Stipulation of Settlement were executed by each
26 member.

27 **COUNTERPARTS**

28 76. This Stipulation of Settlement may be executed in counterparts and by facsimile or
electronic signatures, and when each Party has signed and delivered at least one such counterpart, each

counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and effective as to all Parties.

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims between Plaintiff and Defendant as of the date(s) set forth below.

Dated: Leonardo Ortega 3/14/24

Plaintiff Leonardo Ortega

Leonardo Ortega D 3/14/24
Plaintiff and Class Representative

Dated: _____

Defendant Balesteri Construction, Inc.

By _____
Its _____

Dated: 3/14/2024

FITZPATRICK & SWANSTON

B. James Fitzpatrick
Attorney for Plaintiff

Dated: _____

ANTHONY LOMBARDO & ASSOCIATES

Kelly McCarthy Sutherland
Attorneys for Defendant
Balesteri Construction, Inc.

Ortega v. Balesteri Construction, Inc.
SETTLEMENT ADMINISTRATOR
PHOENIX SETTLEMENT ADMINISTRATORS

IMPORTANT LEGAL NOTICE

<<FIRST AND LAST NAME>>

<<ADDRESS>>

<<CITY AND ZIP CODE>>

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF MONTEREY
Ortega v. Balesteri Construction, Inc., Case No. 23CV003755

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

YOU ARE ESTIMATED TO RECEIVE APPROXIMATELY \$<<EstimatedAward>> THROUGH THIS SETTLEMENT.

To: All current and former non-exempt employees of Defendant who were employed in the State of California at any time between November 16, 2019, and November 16, 2023

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.
YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED SETTLEMENT.

TO RECEIVE YOUR SHARE, YOU DO NOT NEED TO DO ANYTHING.

This Notice is Court-approved. This is not a solicitation from an attorney.

1. WHY DID I GET THIS NOTICE?

You received this Notice because a proposed settlement (the “Settlement”) has been reached in the class action lawsuit entitled *Ortega v. Balesteri Construction, Inc.*, Case No. 23CV003755 (hereinafter referred to as the “Action”). Defendant has agreed to pay a total of \$82,500.00 (the “Gross Settlement Amount”) to settle all class claims arising out of the Action. There was a hearing on **[INSERT PRELIMINARY APPROVAL DATE]** in the Superior Court of the State of California for the County of Monterey, at which time Judge Thomas W. Wills preliminarily approved the Settlement as being fair and reasonable to the members of the Class.

The Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement, see Section 17, below.

2. WHAT IS THE ACTION ABOUT?

This Action was originally filed in Monterey County Superior Court on November 16, 2023. The operative Complaint alleges claims on behalf of Plaintiff Leonardo Ortega (“Plaintiff”) and other similarly situated employees against Defendant Balesteri Construction, Inc. (“Defendant”) for: 1) failure to provide meal periods or compensation in lieu thereof; 2) failure to provide rest periods or compensation in lieu thereof; 3) failure to pay hourly and

overtime wages; 4) failure to comply with itemized employee wage statement requirements; 5) failure to pay all wages upon termination; 6) violation of Labor Code § 2802; 7) California Labor Code Private Attorneys General Act of 2004; and 8) Unfair Business Practices.

Defendant denies all allegations of wrongdoing and maintains that it complied with all applicable laws, rules, and regulations at issue in this litigation. The Court has not ruled on the merits of the lawsuit.

3. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Leonardo Ortega is the person who is bringing this Action on your behalf and on behalf of other similarly situated employees.

In the Action, the Plaintiff seeks to represent you on a class basis. A class action allows the Court to resolve the claims of all the members of the Class at the same time. A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action. A class action allows one court to resolve all of the issues in a lawsuit for all the members of the Class who choose not to exclude themselves from the class.

4. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All current and former non-exempt employees of Defendant who were employed in the State of California at any time during the Class Period (the “Class” or “Class Member(s)”).

The period commencing on November 16, 2019, and ending on November 16, 2023, is the “Class Period”. You are receiving this Notice because Defendant’s records show that you are a member of the Class.

In addition, you may also be eligible to receive a payment under the PAGA, California Labor Code § 2699 *et seq.*, if you worked for Defendant during the period commencing on August 15, 2022, and ending September 28, 2023 (the “PAGA Period”). If you are a current or former non-exempt employee of Defendant who was employed in the State of California at any time during the PAGA Period, you are also considered a “PAGA Member.”

5. WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff thinks he could have won at trial. Defendant thinks it could have won at trial. But there was no trial. Instead, the parties agreed to a settlement. That way, they avoid the cost of litigation, and the individuals potentially affected will get compensation. Plaintiff and Plaintiff’s counsel (“Class Counsel”) believe the Settlement is a fair and reasonable compromise that is in the best interests of the Class.

6. WHAT ARE THE TERMS OF THE SETTLEMENT?

As stated above, Defendant has agreed to pay a total of \$82,500.00 to settle all claims arising out of the lawsuit. Subject to the Court’s approval, the Gross Settlement Amount will be used as follows: (1) attorneys’ fees for Class Counsel not to exceed \$25,000.00; (2) attorneys’ costs/expenses not to exceed \$5,000.00; (3) a “service award” to Plaintiff as the Class Representative not to exceed \$2,500.00; (4) settlement administration costs not to exceed \$5,000.00; and (5) PAGA penalties to be paid to the California Labor & Workforce Development Agency (“LWDA”) and PAGA Members, which are estimated to be \$2,500.00.

The amount of money remaining after all of these payments (the “Net Distribution Fund”) will be distributed to Class Members who do not opt out of the Settlement (the “Participating Class Members”).

Participating Class Members who do not opt out will each receive a payment (“Individual Class Payment”) representing their pro-rata share of the Net Distribution Fund, based upon the number of workweeks worked during the Class Period.

Based on Defendant’s records, the number of workweeks you worked during the Class Period is <<Workweeks>> and your estimated Individual Class Payment is \$<<EstimatedClassAward>>. One-third (1/3) of the Individual Class Payment will be considered wages and will be reported on an IRS Form W-2, one-third (1/3) will be considered interest, and one-third (1/3) will be considered penalties. The amounts classified as interest and penalties will be reported on an IRS Form 1099 misc., if applicable.

In addition, you may also be eligible to receive a payment under the PAGA, California Labor Code § 2699 *et seq.*, if you are also a “PAGA Member,” as defined above.

Individual payments under the PAGA will be paid to PAGA Members on a pro-rata basis, based on the number of weeks each PAGA Member worked during the PAGA Period. Defendant’s records indicate that you worked a total of <<Weeks>> during the PAGA Period. Based on that, your individual share of the PAGA penalties (or “Individual PAGA Payment”) is \$<<EstimatedPAGAAward>>.

Any questions regarding your workweek count or the amount of your Individual Class Payment or Individual PAGA Payment should be directed to the Settlement Administrator at the address listed in Section 17 below.

7. WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT?

You do not need to do anything to participate in the Settlement. You will receive your Individual Class Payment and/or Individual PAGA Payment from this Settlement in or around [INSERT DATE] if the Court approves the Settlement and no written objections or appeals are filed. Class Counsel has been appointed and approved by the Court, and Class Counsel will represent you unless you choose not to participate in the settlement.

Upon receipt of your settlement check, it will be your responsibility to cash the check before the expiration date of the check (180 days from the check’s issuance). You will not be retaliated against for cashing the settlement check. Checks that are not cashed or negotiated within 180 days from the date of issuance of the check will become void and be transmitted to the following non-profit chosen by the Parties: CASA of Monterey County.

8. HOW DOES THE SETTLEMENT AFFECT MY RIGHTS?

After the Court has approved the Settlement, each Participating Class Member, as well as their spouses, heirs, executors, administrators, trustees, and/or permitted assigns, will release the Released Parties from any and all Settled Class Claims arising during the Class Period.

The Released Parties consist of:

Balesteri Construction, Inc., and all of their past and present affiliated entities, parents, subsidiaries, owners, officers, shareholders, executives, managers, and employees (“Released Parties”).

The Settled Class Claims are as follows:

all causes of action that were pled or could have reasonably been pled based on the factual allegations and/or causes of action alleged in the “First Amended Complaint for Damages, Penalties and Injunctive Relief” in the Lawsuit during the Class Period, including causes of action for: (i) failure to provide meal periods (Labor Code §§ 226.7 and 1198); (ii) failure to provide rest periods (Labor Code §§ 226.7 and 1198); (iii) failure to pay hourly and overtime wages (Labor Code §§ 1194 and 1198); (iv) failure to comply with itemized employee wage statement requirements (Labor Code §§ 226, 1174, and 1175); (v) failure to pay all wages upon termination (Labor Code §§ 201, 202, 203); (vi) violation of Labor Code § 2802; and (vii) violation of Business & Professions Code §§ 17200, which are premised on the violations described above (“Settled Class Claims”).

If you are a member of the Class and you do not elect to properly opt out of the Settlement, you will be deemed to have entered into this release and to have released the above-described Settled Class Claims. If the Settlement is approved by the Court and becomes final, you will release the Settled Class Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

In addition, PAGA Members will release the Released Parties from any and all Settled PAGA Claims arising during the PAGA Period.

The Settled PAGA Claims are as follows:

all claims for civil penalties pursuant to PAGA that were alleged, or could have been alleged, based on the facts stated in the “First Amended Complaint for Damages, Penalties and Injunctive Relief” and/or any PAGA Notice submitted to the LWDA for civil penalties under the PAGA, including claims premised on alleged violations of Labor Code §§ 201-204, 208, 216, 223, 226, 226.7, 233, 510, 512, 558, 1174, 1194, 1197-1199, 2698 et seq., 2699(f) and (g), 2802 (“Settled PAGA Claims”). This release shall apply to claims arising during the PAGA Period.

9. WHAT IF I DON’T WANT TO PARTICIPATE IN THIS SETTLEMENT?

If you do not want to be bound by the terms of the Settlement, you may submit a Request for Exclusion (“opt out”) by sending written notice of your intention to opt out to the Settlement Administrator, at the address listed below:

Ortega v. Balesteri Construction, Inc. Class Action Lawsuit
c/o Phoenix Settlement Administrators
[INSERT ADDRESS]

The Request for Exclusion must be in writing and include (1) the full name and current address of the person seeking exclusion; (2) last four digits of his/her Social Security number, (3) a statement that the individual requests exclusion from the Class and does not wish to participate in the Settlement; and (4) the signature of the person seeking exclusion. Any person who opts out will not be affected by the terms of the Settlement, except as it pertains to the PAGA claims. ***Any opt-out request must be postmarked no later than [INSERT DATE].***

If you are also a PAGA Member, you may not exclude yourself from the Settled PAGA Claims regardless of whether you submit a valid “opt-out” request.

PAGA claims are brought on behalf of the State of California by an employee who has been given permission by the State of California to litigate on its behalf. Any settlement of PAGA claims, once approved, is binding on the State and forecloses future lawsuits by the State (or other employees acting on its behalf) that seek PAGA civil penalties for the settled alleged violations. Thus, because the claim for PAGA civil penalties belongs to the State and not individual employees, there is no mechanism for employees to exclude themselves from the settlement of the Settled PAGA Claims. As such, you will still receive an Individual PAGA Payment and be bound by the Settled PAGA Claims if you are a PAGA Member.

If you submit a timely and valid Request for Exclusion, you will no longer be a member of the Class, and you will not be eligible to receive an Individual Class Payment or object to the terms of the Settlement. However, you will not be bound by the release of Settled Class Claims described above, and you may pursue any claims you may have, at your own expense, against Defendant.

10. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

If you do not opt-out of the Settlement by submitting a valid and timely request for exclusion as outlined in Section 9 above, you may object to any of the terms of the Settlement before the Final Approval Hearing. Failure to take the steps below will be deemed a waiver of your objections. If the Court rejects your objection, you will still be bound by the terms of the Settlement and you will also receive an Individual Class Payment. To object, you must mail your written objection to the Settlement Administrator at the below address within 45 days from the mailing of this Notice or appear at the Final Approval Hearing to state your objection.

Ortega v. Balesteri Construction, Inc. Class Action Lawsuit
c/o Phoenix Settlement Administrators
[INSERT ADDRESS]

Your written objections must state (1) your full name and current address; (2) the name and case number of this lawsuit: *Ortega v. Balesteri Construction, Inc.*, Case No. 23CV003755; (3) the specific reason(s) for the objections; (4) any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) to be considered by the Court; and (5) a statement as to whether you wish to appear at the Final Approval Hearing and be heard in support of, or in opposition to the Settlement.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION OR APPEAR AT THE FINAL APPROVAL HEARING, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS.

11. WILL THE NAMED PLAINTIFF BE COMPENSATED FOR BRINGING THIS LAWSUIT?

Plaintiff will request a service award of \$2,500.00 for his services as the Class Representative and for his efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to Plaintiff.

12. DO I HAVE A LAWYER IN THIS CASE?

Yes. The Court decided that the law firm of Fitzpatrick & Swanston, which represents the Plaintiff, is also qualified to represent you and all Class Members. You will not be charged

for these lawyers. The law firm is referred to as “Class Counsel.” If you want to be represented by your own lawyer, you may hire one at your own expense.

The contact information for Class Counsel is as follows:

B. James Fitzpatrick, Esq.
Alison L. Baker, Esq.
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311

If you have questions about the case or the Settlement, you should contact Class Counsel.

13. HOW WILL THE LAWYERS BE PAID?

Class Counsel will be requesting from the Court attorneys’ fees not to exceed \$25,000.00 and reimbursement of litigation costs not to exceed \$5,000.00. These fees will serve to compensate Class Counsel for their efforts in achieving the settlement for the benefit of the Class and for their risk in undertaking this representation on a contingency basis. Class Counsel has already spent many hours investigating this case, reviewing payroll and time records information provided by Defendant, researching the Class’s claims, and negotiating this settlement for the Class. They will incur additional hours overseeing the final approval and implementing the plan of distribution.

14. WHAT IS THE FINAL APPROVAL HEARING?

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class; to consider the award of attorneys’ fees and expenses to Class Counsel; and to consider the request for a service award to the Named Plaintiff.

15. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold the Final Approval Hearing on **[INSERT DATE]** at **[INSERT TIME]** a.m., in Department 15 of the Superior Court of the State of California for the County of Monterey, 1200 Aguajito Road, Monterey, California 93940 (“Final Approval Hearing”).

The Final Approval Hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing unless you would like to. However, you have the right to attend the Final Approval Hearing and be represented by your own counsel at your own expense. If you plan to attend the Final Approval Hearing, you may contact Class Counsel to confirm the date and time. If the Settlement is not approved by the Court or does not become final for some reason, the Action may continue to trial.

16. MAY I SPEAK AT THE FINAL APPROVAL HEARING?

At the hearing, the Court will be available to hear any objections and arguments concerning the Settlement. You may attend, but you do not have to attend. You may speak at the Final Approval Hearing if you have not chosen to opt-out from the Settlement.

17. HOW DO I GET MORE INFORMATION?

To see a copy of the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims (which defines the capitalized terms used in this Notice and provides a brief summary of what has happened in the Action), the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, the Complaints and other filed documents related to Plaintiff's lawsuit and this Settlement, you may view all such files at the Clerk's office at the Superior Court of the State of California for the County of Monterey, 1200 Aguajito Road, Monterey, California 93940.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the address and telephone number listed below. Please refer to the *Balesteri Construction, Inc.* Class Action Settlement.

Ortega v. Balesteri Construction, Inc. Class Action Lawsuit
c/o Phoenix Settlement Administrators
[INSERT ADDRESS]
[INSERT TOLL-FREE NUMBER]

You may also contact the attorneys for the Class; see Section 12.

18. WHAT IF MY INFORMATION CHANGES?

It is your responsibility to keep a current address and telephone number on file with the Settlement Administrator, to ensure receipt of your Individual Class Payment and/or Individual PAGA Payment and applicable tax forms if the settlement is given final approval by the Court. If you change your mailing address, you should promptly contact the Settlement Administrator and provide the Settlement Administrator with your new address and contact information.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE
LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.**