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11 **an individual and as proxy for the Labor and**  
12 **Workforce Development Agency**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF KERN**

15 **JAIME DOJAQUEZ, an individual and as**  
16 **proxy for the Labor and Workforce**  
17 **Development Agency**

18 **Plaintiff,**

19 **vs.**

20 **KERN RIVER CONSULTING, INC., a**  
21 **corporation; SME STEEL**  
22 **CONTRACTORS, INC., a corporation;**  
23 **SOUTHWEST STEEL OF CALIFORNIA,**  
24 **INC., a corporation; JAMES RIVERA, an**  
25 **individual, and DOES 1-100, inclusive,**

26 **Defendants.**

27 **CASE NO: BCV-24-101168**

28 **[PROPOSED] ORDER APPROVING PAGA**  
**SETTLEMENT AND DISMISSING ACTION**  
**WITH PREJUDICE**

**Date:**  
**Time:**  
**Dept.:**

29 Plaintiff's Motion for Approval of PAGA Settlement and to Dismiss Action with Prejudice  
30 ("Motion") came before the Court on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. in Department \_\_\_\_\_.  
31 Appearances are reflected in the Court's record. Having reviewed Plaintiff's moving papers, there  
32 being no opposition or objections filed, and good cause appearing, this Court finds and orders as  
33 follows:

34 1. Pursuant to the California Labor Code Private Attorneys General Act ("PAGA"),  
35 Cal. Lab. Code §§ 2699(1)(2), (1)(4), the Labor Workforce and Development Agency ("LWDA")

1 has been given notice of the Settlement. In particular, on the date Plaintiff filed the motion seeking  
2 approval of the Settlement with the Court, Plaintiff submitted to the LWDA a Notice of Settlement  
3 enclosing a copy of the Settlement. Plaintiff's Notice of Settlement to the LWDA complied with  
4 the requirements of PAGA.

5         2.       The Court has jurisdiction over the subject matter of this litigation, over all  
6 Aggrieved Employees<sup>1</sup>, and over those persons and entities undertaking affirmative obligations  
7 under the Settlement.

8         3.       The Court approves the PAGA Settlement Agreement, a copy of which is attached  
9 hereto as **Exhibit 1**, under Cal. Lab. Code § 2699(1)(2) as fair, reasonable and adequate as to the  
10 following group of individuals, collectively referred to as the "Aggrieved Employees": All  
11 individuals who worked for Defendant Kern River Consulting, Inc., including those who worked  
12 on projects for SME Steel Contractors, Inc., and Southwest Steel of California, Inc., in California  
13 as consultants from December 23, 2022, through the date of this Order.

14         4.       The Court approves the following release of claims: For the entirety of the PAGA  
15 Period, the State of California and all Aggrieved Employees, including Plaintiff, are deemed to  
16 release, on behalf of themselves and their respective former and present representatives, agents,  
17 attorneys, heirs, administrators, successors, and assigned, the Released Parties (including but not  
18 limited to Defendants) from any and all claims for civil penalties under PAGA based on violations  
19 of Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226(a), 226.7, 226.8, 256, 510, 512, 558.  
20 558.1, 1182.12, 1194, 1194.2, 1197.1, 1197.2, 1198, 2698-2699.5, 2802, 2810.3, 3357, Business  
21 and Professions Code section 17203, and all other applicable wage orders and Labor Code sections  
22 which were alleged in the Operative Complaint as well as any fact, theories, or claims for civil  
23 penalties that would be considered administratively exhausted under applicable law by the PAGA  
24 Notices and Operative Complaint.

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28 <sup>1</sup> All capitalized terms herein shall have the same meaning as set forth in the Parties' PAGA Settlement Agreement  
attached to this Order as **Exhibit 1**.

1           5.       The Court approves the allocations and payment of the total amount of One  
2 Hundred and Thirty-Five Thousand Dollars (\$135,000.00) for the compromise of claims brought  
3 under PAGA, to be paid in accordance with the terms of the Settlement.

4           6.       The Court approves payment of Forty-Five Thousand Dollars (\$45,000.00) from the  
5 Gross Settlement Amount to Mayall Hurley, P.C. as attorney's fees.

6           7.       The Court approves payment of Seven Thousand, Five Hundred Thirty-Seven  
7 Dollars and Thirty-Four Cents (\$7,537.34) from the Gross Settlement Amount to Mayall Hurley,  
8 P.C. as reimbursement for litigation expenses.

9           8.       The Court appoints Phoenix Class Action Administration Solutions to act as  
10 Settlement Administrator and approves payment of One Thousand, Seven Hundred Ninety-Five  
11 Dollars (\$1,795.00) to Phoenix Class Action Administration Solutions to administer the settlement.

12          9.       The Court approves payment of Two Thousand, Five Hundred Dollars (\$2,500.00)  
13 from the Gross Settlement Amount to Plaintiff Jaime Dojaquez for his service to the LWDA and  
14 the Aggrieved Employees.

15          10.      The Net Settlement Amount totals Seventy-Eight Thousand, One Hundred Sixty-  
16 Seven Dollars and Sixty-Six Cents (\$78,167.66).

17          11.      Seventy-Five Percent (75%) of the Net Settlement Amount, or Fifty-Eight  
18 Thousand, Six Hundred Twenty-Five Dollars and Seventy-Five Cents (\$58,625.75) shall be paid to  
19 the State of California Labor Workforce Development Agency ("LWDA PAGA Payment").

20          12.      The remaining amount of the Net Settlement Amount, or Nineteen Thousand Five  
21 Hundred Forty-One Dollars and Ninety-One Cents (\$19,541.91) shall be distributed to the  
22 Aggrieved Employees in accordance with the terms of the Settlement.

23          13.      The Court retains jurisdiction under Code of Civil Procedure Section 664.6 for  
24 purposes of administration and enforcement of the Settlement.

25          14.      Nothing in this Order or the Settlement shall be construed as an admission or  
26 concession by any party. The Settlement and this Order simply represent a compromise of disputed  
27 allegations.

1           15.     Plaintiff is directed to submit a copy of this Order to the LWDA within 10 days of  
2 the date of this Order.

3           16.     The Action is hereby DISMISSED WITH PREJUDICE.  
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5                               **IT IS SO ORDERED:**  
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7 Dated: \_\_\_\_\_  
8                                                       Judge of the Superior Court  
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# Exhibit 1

## PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Jaime Dojaquez (“Plaintiff”) and defendants Kern River Consulting, Inc. (“Kern River”), James Rivera (“Mr. Rivera”), SME Steel Contractors, Inc. (“SME Steel”), and Southwest Steel of California, Inc. (“Southwest Steel”). Kern River, Mr. Rivera, SME Steel, and Southwest Steel are referred to collectively as “Defendants”. The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

### 1. DEFINITIONS.

- 1.1. “Action” means Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants that is captioned *Jaime Dojaquez v. Kern River Consulting, Inc. et al.*, Case No. BCV-24-101168, which was filed on April 4, 2024 and is pending in the Superior Court of the State of California, County of Kern.
- 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in an amount not to exceed One Thousand Seven Hundred Ninety-Five Dollars and Zero Cents (\$1,795.00).
- 1.4. “Aggrieved Employee” means all individuals who worked for defendant Kern River Consulting, Inc. (“Kern River”), including those who worked on projects for SME Steel Contractors, Inc. (“SME Steel”), and Southwest Steel of California, Inc. (“Southwest Steel”), in California as consultants from December 23, 2022, through the date that an approval order approving the settlement is entered (the “PAGA Period”).
- 1.5. “Aggrieved Employee Data” means a list of the identifying information of employees contemplated by this Settlement, which Kern River will diligently and in good faith compile from its records, and provide on a confidential basis to the Administrator. Kern River will use its best efforts to include each allegedly Aggrieved Employees’ full name, most recent mailing address, last known telephone number if readily available, dates of employment or number of workweeks (or pay periods) worked during the applicable limitations period(s), and Social Security number.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

- 1.7. “Approval Order” means the Court order granting approval of this PAGA Settlement.
- 1.8. “Court” means the Superior Court of California, County of Kern.
- 1.9. “Defendants” means all four of the named defendants in the Action (i.e., Kern River, SME Steel, Southwest Steel, and Mr. Rivera).
- 1.10. “Defendants’ Counsel” means Robert H. Pepple and Alejandro Castro of Nixon Peabody LLP (who represent Kern River and Mr. Rivera), and Drew R. Hansen of Nossaman LLP (who represents SME Steel and Southwest Steel).
- 1.11. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its order approving this PAGA Settlement and (b) the Judgment is final. “Final” means (i) in the event there are no appeals to the settlement, sixty-five (65) days after the Court issues the Approval Order and entry of judgment. It is the intention of the Parties that the settlement shall not become effective until the Court’s order approving the settlement has become completely final, and there is no timely recourse by an appellant who seeks to contest the settlement.
- 1.12. “Gross Settlement Amount” means One Hundred Thirty-Five Thousand Dollars and Zero Cents (\$135,000.00) which is the maximum dollar amount that Kern River and Mr. Rivera will be required to pay to fully satisfy all claims and expenses associated with fully and forever resolving the Action, except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.<sup>1</sup>
- 1.13. “Individual PAGA Payment” means each Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.14. “Judgment” means the judgment entered by the Court based upon the Approval Order.
- 1.15. “LWDA” means the California Labor and Workforce Development Agency, the agency referenced in Labor Code section 2699, subd. (i).
- 1.16. “LWDA PAGA Payment” means 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

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<sup>1</sup> Kern River and Mr. Rivera’s payment of the Gross Settlement Amount is in exchange for, among other things, an entry of judgment in the Action (which shall have the effect of dismissing the Action against all four Defendants in its entirety *with prejudice*) as well as a release from the Aggrieved Employees and the State of California to all of the Defendants and other Released Parties (defined below) of all of the Released PAGA Claims (defined below) for the entirety of the PAGA Period.

- 1.17. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.18. “Operative Complaint” means the complaint filed on April 4, 2024 alleging causes of action against Defendants for failure to pay minimum wage, failure to pay overtime, failure to provide meal breaks, failure to pay rest breaks, failure to pay all wages due and owing at the end of employment, failure to provide accurate itemized wage statements, failure to reimburse business expenses, and for civil penalties under PAGA.
- 1.19. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698 et seq.).
- 1.20. “PAGA Counsel” means Robert J. Wassermann and Vladimir J. Kozina of Mayall Hurley, P.C., the attorneys representing Plaintiff in the Action.
- 1.21. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.22. “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.23. “PAGA Period” means the period from December 23, 2022 to the date the Court enters an order approving the settlement.
- 1.24. “PAGA Notice” means Plaintiff’s December 22, 2023 letter to Kern River, SME Steel, Southwest Steel. and the LWDA and Plaintiff’s subsequent January 25, 2024 amended letter to Mr. Rivera and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.25. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (i.e., Eighteen Thousand Six Hundred Twenty-Five Dollars and Zero Cents [\$18,625.00]) and 75% to the LWDA (i.e., Fifty-Five Thousand Eight Hundred Seventy-Five Dollars and Zero Cents [\$55,875.00]) in settlement of PAGA claims.
- 1.26. “Plaintiff” means Jaime Dojaquez, the named plaintiff in the Action.
- 1.27. “Released PAGA Claims” means all of the claims being released through this Agreement as set forth in Section 5 below for the entirety of the PAGA Period, subject to Court Approval of this Settlement, including, but not limited to, any and all

claims for civil penalties under PAGA based on violations of Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226(a), 226.7, 226.8, 256, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2698-2699.5, 2802, 2810.3, 3357, Business and Professions Code section 17203, and all other applicable wage orders and labor code sections which were alleged in the PAGA Notice Plaintiff sent to the LWDA and subsequently pled in the Operative Complaint in the Action and/or any amended complaint Plaintiff will file in the Action pursuant to this Settlement, as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notice Plaintiff sent to the LWDA and subsequent complaint.<sup>2</sup>

1.28. “Released Parties” means: all four Defendants in the Action (i.e., James Rivera, Kern River Consulting, Inc., SME Steel Contractors, Inc., Southwest Steel of California, Inc.) and Defendants’ former and present parents, subsidiaries and affiliated companies and entities, franchisors and franchisees, and all of their current, former, and future owners, officers, shareholders, directors, members, managers, operators, employees, consultants, vendors, partners, affiliates, subsidiaries, shareholders, attorneys, insurers, payroll providers, joint venturers, and agents, and any successors, assigns, or legal representatives and any individual or entity who or which could be jointly liable with Defendants and all persons or entities acting by, through under or in concert with any of them..

1.29. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment (which judgment shall again have the effect of dismissing the Action against Defendants with prejudice).

## 2. RECITALS.

2.1. On April 4, 2024, Plaintiff commenced this Action by filing a Complaint against Defendants alleging causes of action against Defendants for failure to pay minimum wage, failure to pay overtime, failure to provide meal breaks, failure to pay rest breaks, failure to pay all wages due and owing at the end of employment, failure to provide accurate itemized wage statements, failure to reimburse business expenses, and for civil penalties under PAGA. The Complaint is the operative complaint in the Action (the “Operative Complaint”). Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notices.

2.3. On August 1, 2024, the Parties participated in an all-day mediation presided over by Tagore Subramaniam, Esq. which led to this Agreement to settle the Action.

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<sup>2</sup> The Parties agree that the judgment, and Released PAGA Claims provided herein, shall have *res judicata* effect.

- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, time and payroll records for the Aggrieved Employees from Kern River.
- 2.5. The Parties, PAGA Counsel and Defendants' Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### **3. MONETARY TERMS.**

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, defendants Kern River Consulting, Inc., and James Rivera promise to pay One Hundred Thirty-Five Thousand Dollars and Zero Cents (\$135,000) and no more as the Gross Settlement Amount.<sup>3</sup> Defendants Kern River Consulting, Inc., and James Rivera have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to defendants Kern River Consulting, Inc., and James Rivera.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:
  - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, or Forty-Five Thousand Dollars and Zero Cents (\$45,000.00) and PAGA Counsel Litigation Expenses Payment of not more than Eight Thousand Dollars and Zero Cents (\$8,000.00). Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's counsel arising from any claim to any portion of any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants and the other Released Parties harmless, and indemnifies Defendants and the other Released Parties, from any dispute or controversy regarding any division or sharing of any of these payments.

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<sup>3</sup> Defendants SME Steel and Southwest Steel do not have any obligation under this Agreement to pay any portion of the Gross Settlement Amount.

3.2.2. To Plaintiff: Plaintiff will request from the Court a payment of Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) in exchange for Plaintiff's general release (which is memorialized in a separate individual agreement) and for his service to the LWDA and other Aggrieved Employees in prosecuting this Action.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed One Thousand Seven Hundred Ninety-Five Dollars and Zero Cents (\$1,795.00) as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than One Thousand Seven Hundred Ninety-Five Dollars and Zero Cents (\$1,795.00), the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Seventy-Four Thousand Five Hundred Dollars and Zero Cents (\$74,500.00) to be paid from the Gross Settlement Amount, with 75%, or Fifty-Five Thousand Eight Hundred Seventy-Five Dollars and Zero Cents (\$55,875.00) allocated to the LWDA PAGA Payment and 25%, or Eighteen Thousand Six Hundred Twenty-Five Dollars and Zero Cents (\$18,625.00) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (Eighteen Thousand Six Hundred Twenty-Five Dollars and Zero Cents [\$18,625.00]) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Aggrieved Employees and Pay Periods. Based on a review of its records to date, Defendant Kern River estimates there are 23 Aggrieved Employees who worked a total of 385 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within ten (10) days of the Effective Date, Kern River will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Kern River has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to

provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Kern River must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

- 4.3. Funding of Gross Settlement Amount. Defendants Kern River Consulting, Inc. and James Rivera shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than ten (10) days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within thirty (30) days after defendants Kern River Consulting, Inc. and James Rivera fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
  - 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
  - 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.
  - 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
  - 4.4.4. The payment of Individual PAGA Payments shall not obligate Kern River, Mr. Rivera, or any of the other Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

- 5. RELEASES OF CLAIMS.** Upon entry of final judgment by the Court in the Action, the State of California, Plaintiff and all Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, waived, and discharged any and all of the Released Parties (including, but not limited to, Defendants) of and from any and all Released PAGA Claims for the entirety of the PAGA Period as follows:

**5.1 PAGA Release Provided By the State of California and all Aggrieved Employees to the Released Parties:**

For the entirety of the PAGA Period (i.e., from December 23, 2022 up through and including the date of the Approval Order), the State of California and all Aggrieved Employees, including Plaintiff, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties (including, but not limited to, Defendants) from any and all claims for civil penalties under PAGA based on violations of Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226(a), 226.7, 226.8, 256, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2698-2699.5, 2802, 2810.3, 3357, Business and Professions Code section 17203, and all other applicable wage orders and Labor Code sections which were alleged in the PAGA Notices and the Operative Complaint as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notices and Operative Complaint.

- 6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

**6.1 Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defendants' Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed order granting approval of this PAGA Settlement; (ii) a signed declaration from PAGA Counsel attesting to its timely transmission to the LWDA of all necessary PAGA documents; and (iii) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defendants' Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than forty-five (45) days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defendants' Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defendants' Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

## **7. SETTLEMENT ADMINISTRATION.**

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions to serve as the Administrator and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

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

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

## **8. ESCALATOR CLAUSE**

Based on its records, Kern River estimates that, as of the date of this Agreement, there are 23 Aggrieved Employees who worked 385 pay periods during the PAGA Period. In the event the actual total number of pay periods exceeds 385 by more than 10%, i.e.,  $(385 \times 0.1)$ , by the end of the PAGA Period, the Net Settlement Amount shall be increased on

pro rata basis at a value of Three Hundred Fifty Dollars and Sixty-Four Cents (\$350.64) per pay period. For example, if the total number of pay periods is  $[385 \times 0.1] + 1$ , Kern River and Mr. Rivera would have to increase the Gross Settlement Amount by Three Hundred Fifty Dollars and Sixty-Four Cents (\$350.64) for a total of One Hundred Thirty-Five Thousand Three Hundred Fifty Dollars and Sixty-Four Cents (\$135,000.00 + (\$350.64)).

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

## 10. **ADDITIONAL PROVISIONS.**

10.1 **Impact of Any Court Determination Not Approving this Settlement.** In the event that the Court does not enter an Approval Order and this Agreement does not become effective, the following will occur:

- on the date approval is denied, the status of the Action will be deemed to return to its status at the time immediately prior to, and as if the Parties had never executed this Agreement;
- Defendants shall have no obligation to answer or otherwise respond to the Operative Complaint for at least sixty (60) days; and
- the Parties stipulate to a thirty (30)-day stay of the Action, including discovery, to provide the Parties time, if they so choose, to make any adjustments or corrections needed to obtain approval of this Settlement in a revised form. The Parties shall exercise good faith in undertaking measures to re-submit to the Court a modified PAGA settlement based upon the issues the Court gave for not approving this PAGA Settlement.

- 10.2 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this Agreement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.3 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with any attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.4 Attorney Authorization. PAGA Counsel and Defendants' Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by the Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.5 Enforcement Actions & Prevailing Party's Fees. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.
- 10.6 Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.
- 10.7 Nullification of Agreement. In the event that: (i) the Court does not finally approve the Settlement as provided in this Agreement; or (ii) the Settlement does not become final for any other reason, then this Agreement and any documents generated to bring it into effect will be null and void. Any order or judgment entered by the Court in furtherance of this Agreement will likewise be treated as void from the beginning. In such case, the Settlement shall not be used or be admissible in any subsequent proceedings, either in this Action, this Court, or any other court or forum.

- 10.8 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.9 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.10 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants, nor Defendants' Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.11 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.12 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.13 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.14 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.15 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.16 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Kern River in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court.

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

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

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

To Plaintiff: Robert J. Wassermann (rwassermann@mayalllaw.com)  
Vladimir J. Kozina (vjkozina@mayalllaw.com)  
Mayall Hurley, P.C.  
112 S. Church Street  
Lodi, California 9540  
Phone: (209) 477-3833

To Defendants: Robert H. Pepple (rpepple@nixonpeabody.com)  
Alejandro J. Castro (acastro@nixonpeabody.com)  
Nixon Peabody LLP  
300 S. Grand Avenue, Suite 4100  
Los Angeles, California 90071-3151  
Phone: (213) 629-6000

Drew R. Hansen (dhansen@nossaman.com)  
Nossaman LLP  
18101 Von Karman Avenue, Suite #1800  
Irvine, CA 92612  
Phone: (949) 477-7670

10.20 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

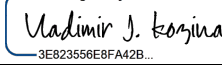
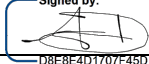
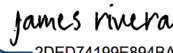
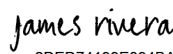
10.21 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement the date to bring a case to trial under California Code of Civil Procedure section 583.310 shall be extended for the entire period of the Settlement process.

10.22 No Publicity – Neither PAGA Counsel nor Defendants’ counsel shall publicize the Settlement on their website or in advertising/marketing materials, other than filing documents with the Court. Plaintiff and his counsel and Defendants and Defendants’ counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement. If Plaintiff or his counsel or Defendants or their counsel receive an inquiry about the Settlement from the media, they may respond only after the motion for approval has been filed and only by confirming the accurate terms of the Settlement. Nothing in this provision shall prevent Defendants or Plaintiff from making any required disclosure. Nothing shall prevent PAGA Counsel from referring to this case in a declaration establishing qualification as representative counsel in future cases.

**IN WITNESS THEREOF**, the Parties each acknowledge that they have read the foregoing Agreement, accept and agree to the provisions contained in this Agreement, and hereby execute it voluntarily and with full understanding of its consequences.

Signatures on the Next Page

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| Print Name                                | Title / Counsel For                                                                            | Signature                                                                                                                  | Date       |
|-------------------------------------------|------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|------------|
| Robert J. Wassermann/<br>Vladimir Kozina  | Counsel for<br>Jaime Dojaquez                                                                  | DocuSigned by:<br><br>3E823556E8FA42B... | 10/7/2024  |
| Jaime Dojaquez                            | Plaintiff                                                                                      | Signed by:<br><br>D8E8E4D1707F45D...     | 10/7/2024  |
| Robert H. Pepple / Alejandro<br>J. Castro | Counsel for Kern<br>River<br>Consulting, Inc.<br>and James<br>Rivera                           | DocuSigned by:<br><br>CBF7EBEFFD2A4DA... | 10/24/2024 |
| James Rivera                              | Individual<br>Defendant                                                                        | DocuSigned by:<br><br>2DED74199E894BA... | 10/24/2024 |
| James Rivera                              | President of<br>Kern River<br>Consulting, Inc.                                                 | DocuSigned by:<br><br>2DED74199E894BA... | 10/24/2024 |
| Landon Moyes                              | President of<br>SME Steel<br>Contractors, Inc.                                                 |                                                                                                                            |            |
| Landon Moyes                              | President of<br>Southwest Steel<br>of California,<br>Inc.                                      |                                                                                                                            |            |
| Drew R. Hansen                            | Counsel for SME<br>Steel<br>Contractors, Inc.<br>and Southwest<br>Steel of<br>California, Inc. |                                                                                                                            |            |

| Print Name                                | Title / Counsel For                                                                            | Signature                                                                            | Date       |
|-------------------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------|
| Robert J. Wassermann/<br>Vladimir Kozina  | Counsel for<br>Jaime Dojaquez                                                                  |                                                                                      |            |
| Jaime Dojaquez                            | Plaintiff                                                                                      |                                                                                      |            |
| Robert H. Pepple / Alejandro<br>J. Castro | Counsel for Kern<br>River<br>Consulting, Inc.<br>and James<br>Rivera                           |                                                                                      |            |
| James Rivera                              | Individual<br>Defendant                                                                        |                                                                                      |            |
| James Rivera                              | President of<br>Kern River<br>Consulting, Inc.                                                 |                                                                                      |            |
| Landon Moyes                              | President of<br>SME Steel<br>Contractors, Inc.                                                 |    | 10/7/24    |
| Landon Moyes                              | President of<br>Southwest Steel<br>of California,<br>Inc.                                      |  | 10/7/24    |
| Drew R. Hansen                            | Counsel for SME<br>Steel<br>Contractors, Inc.<br>and Southwest<br>Steel of<br>California, Inc. |                                                                                      | 10/07/2024 |