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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

JONATHAN NAVA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

TEMECULA VALLEY DRYWALL, INC.
a California Corporation; LORRY HALES,
an individual; DOUGLAS MISEMER, an
individual; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CVRI2400423
*[Assigned to Hon. Harold Hopp, Dept 1, for all
purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing

Date: July 15, 2025

Time: 8:30 a.m.

Dept.: 1

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment law department and am a partner with the law firm of Lauby, Mankin & Lauby LLP, which has offices in Orange County and Riverside County. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since
3 2001. I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 18 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 300 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in over half of those actions to date, and anticipate receiving
12 final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history - a \$12.5 million-dollar court approved settlement, which followed
18 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
19 50 company (*Garcia v. Macy’s*, Los Angeles Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
21 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
22 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
23 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
24 Both cases were appealed.

25 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
26 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
27 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
28 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that

only 5% of lawyers receive.

ADEQUACY OF THE SETTLEMENT

7. The Class, as conditionally certified by this Court, consists of all current and former nonexempt (hourly paid) employees employed by Defendant in California at any time during the Class Period of January 25, 2020, through October 16, 2024.

8. The Gross Settlement Amount is \$475,000 and, as set forth in the in the Declaration of Jonathan Paul on behalf of the Settlement Administrator, Xpand Legal, the Net Settlement Amount is \$248,874.99, as detailed here:

<i>Gross Settlement Amount</i>	\$ 475,000.00
Attorneys' Fees (1/3)	\$ 158,333.33
Litigation Costs	\$ 14,491.68
Administrator Costs	\$ 8,300.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Award	\$ 10,000.00
Class Representative Release Payment	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 248,874.99

9. The process of mailing the Notice Packets, consisting of a Class Notice, Objection Form, Dispute Form and Exclusion Form, was completely successful, as 97.4% of the Notice Packets were successfully delivered by the Settlement Administrator.

10. The response from the Class Members was overwhelmingly positive, as 100% of the Class participated in the Settlement and there were no objections.

11. As discussed at length in Plaintiff's motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is very favorable to the Class and the release is narrowly limited to the claims alleged.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties' arms' length bargaining facilitated by an experienced wage and hour mediator, the extensive exchange of informal discovery, the experience of Class Counsel, the fact that all Class Members elected to participate (and no objections were submitted), the presumption of fairness is justified.

1 13. I believe that the settlement is fair, reasonable, adequate, and in the best interests
2 of the Class, given the litigation risks and delay inherent in further litigation and possible
3 appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations
4 submitted in support thereof, Defendants vigorously challenged Plaintiff's claims, and Plaintiff
5 faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter.
6 Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and
7 that it is desirable that the action be fully and finally settled in the manner and upon the terms
8 and conditions set forth in the Settlement Agreement in order to limit further expense,
9 inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit
10 the operation of Defendants' business without further expensive litigation and the distraction and
11 diversion of its personnel with respect to matters at issue. All parties took into account the
12 uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The
13 parties determined that it is desirable and beneficial to both the Class and Defendants that this
14 case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The
15 recoveries contemplated by the Settlement represent a good result for the Class, fairly
16 proportioned to the likely risk-adjusted recovery in litigation.

17 **ADEQUACY OF COUNSEL AND**
18 **REASONABLENESS OF REQUEST FEE AND COST AWARDS**

19 14. As set forth above, I have handled over 300 class and representative actions. I
20 have been appointed as class counsel and have successfully resolved over half of those cases
21 (while many are ongoing and will successfully resolve in the future) while recovering hundreds
22 of millions of dollars for my clients and Class Members. This is substantially better than average
23 accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class Actions, cited
24 in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which found that only
25 one-third of class actions are successful, compared to two-thirds that are defeated and result in no
26 payment to the class members.¹

27
28

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 15. When this case was taken on a contingency fee basis, with my firm agreeing to
2 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
3 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research
4 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

5 16. It has been my experience that the benchmark for attorney fee awards in
6 California state cases is one-third of a common settlement fund, which the CA Supreme Court
7 upheld in the *Laffitte v. Robert Half*, 1 Cal.5th 480 case. Here, in accordance with the Settlement
8 Agreement, Class Counsel is seeking a fee of \$158,333.33, which is one-third of the Settlement
9 Amount.

10 17. There are several additional factors why I believe that the Court should award
11 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
12 resulted in a very good result for the Class, especially in light of the disputed nature of the claims
13 alleged. This result was achieved by the work and success of my office, who negotiated the
14 settlement after extensive preparation, investigation, mediation, and substantial work thereafter.

15 18. Second, Plaintiff faced significant risks going forward with the litigation. As
16 discussed in the motion for preliminary approval, Defendants raised various defenses throughout
17 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
18 Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
19 going forward with this litigation, and it would have taken several more years to realize any
20 recovery in this action along with the possibility of post-trial appeals.

21 19. Third, Class Counsel are experienced class action litigators. This experience and
22 expertise, combined with the high quality of work performed in this case, resulted in the
23 settlement achieved in this case.

24 20. Fourth, Class Counsel has been representing Plaintiff strictly on a contingency fee
25 basis. To that end, we have incurred the risk of non-recovery after investing a substantial
26 amount of time, money, and resources, and have done so since the inception of this case without
27 any payment or compensation. If Plaintiff had lost this case, we would have recovered nothing,
28 and would have lost our out-of-pocket costs. This is not an easy burden for my office, which is a

1 small firm. While some cases result in a positive lodestar and some in a negative lodestar like
2 this case, if, despite these hardships and risks, the best my office could hope for is merely to be
3 paid our hourly rate, then Class Counsel would not be compensated for the hardships and serious
4 risks we face when litigating contingency fee cases, and would not be incentivized to take on
5 similar cases in the future. Indeed, not all class/PAGA cases are successful. Many cases end
6 with no fees or a greatly reduced fee that is far less than lodestar like this one, often due to no
7 fault of counsel (*i.e.*, bankruptcy, change in the law, consolidation- coordination-preemption,
8 being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above, only one-third
9 of class actions are successful, compared to two-thirds that are defeated and result in no payment
10 to the class members.

11 21. Fifth, the request for attorney's fees in the amount of one-third of the common
12 fund falls well within the norms accepted by state and federal courts in California in comparable
13 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
14 recovery under the common fund doctrine was approved by the California Supreme Court in
15 *Laffitte, supra*, 1 Cal.5th 480, 503.

16 22. For these reasons, a common fund fee award here in the amount of one-third of
17 the common fund created by Plaintiff and Class Counsel is fair and reasonable, especially where
18 the actual lodestar for my firm far surpasses the amount requested (as discussed below).

19 23. At my office, this case was handled by Misty Lauby while I performed the role of
20 the supervising attorney. Ms. Lauby's experience is set forth in her declarations, but in sum, she
21 works exclusively with me on employment law matters and has been in practice for 16 years and
22 bills at the hourly rate of \$650/hour. I have been in practice for over 23 years, with most of those
23 years handling complex litigation and for over the last 18 years, my practice has almost entirely
24 consisted of handling class action wage and hour matters. My billing rate is \$950/hour.

25 24. I believe these rates are comparable to those of other attorneys with equal or
26 similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com
27 indicates that the benchmark rates are: \$777/hour for an 8–10-year attorney, \$878/hour for a 11–
28 19-year attorney, and \$1,057/hour for a 20+ year attorney). Moreover, the Wolters Kluwer 2023

Real Rate Report (“Real Rate Report”) provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data, comprising millions billing entries from a hundred thousand individual timekeepers who worked at thousands of law firms. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area: (a) the rate for partners in Los Angeles is between \$840 and \$1,159 per hour for the middle and upper quartiles, and (b) the rates for associates with seven or more years of experience, the median rate is \$674 per hour, and the upper quartile rate is \$888 per hour. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms, which makes it “a much better reflection of true market rates than self-reported rates in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist. LEXIS 182309, at *21.

25. The table below includes a summary of the hours worked, plus additional hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the administrator and defense counsel to issue checks, respond to class members and finalize this matter. The actual aggregated lodestar between the attorneys that worked on this case is approximately \$148,810, which reflects the fact that we are seeking a very small multiplier – further reinforcing the reasonableness of the requested fees.

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (23 Years)	\$950	77	\$73,150
Misty Lauby <i>Handling Attorney / Partner</i> (16 Years)	\$650	116.4	\$75,660
Grand Total for All Attorneys			\$148,810

26. Thus, the requested fee is warranted and appropriate because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendants do not oppose

1 this fee request.

2 27. In the course of prosecuting this action, my office has incurred expenses
3 necessary to the effective representation of the Class. These expenses included but were not
4 limited to: court filings, copying and management of documents, messenger services, postage,
5 mediation fees, expert fees, and other incidental expenses directly related to this action. My
6 firm's expenses through the final approval hearing are estimated to be \$14,491.68, which
7 includes filing this motion, process/server costs, and service expenses (see the itemized statement
8 of these costs attached hereto as Exhibit C). Since the Settlement Agreement provided for
9 capped costs up to \$25,000, the savings of over \$10,000 will be placed in the Net Settlement
10 Amount for distribution to the Participating Class Members. Defendants do not oppose this
11 request for costs.

12 **REASONABLENESS OF REQUESTED SERVICE AWARD**

13 28. I also believe that the service award of \$10,000 to Plaintiff and Class
14 Representative Jonathan Nava is fair and warranted, plus \$5,000 for the release payment. He
15 came forward and worked directly with my office in analyzing the claims and documents,
16 providing valuable information, and he gave up the ability to pursue his separate individual
17 claims as part of the settlement. (See his declaration for supporting information.) Indeed, his
18 participation was an essential element of Defendants' desire to mediate and of the pre- and post-
19 mediation analysis that allowed Class Counsel to settle the case. Of course, Plaintiff also took on
20 various risks, including the risk that he could have been ordered to pay Defendants' costs if she
21 lost and the risk of retaliation and being black-balled in the industry. Defendants do not oppose
22 the requested service awards.

23 **SUBMISSION TO THE LWDA**

24 29. The Motion and declarations, including the Settlement Agreement, have
25 concurrently been submitted to the LWDA. (See Exhibit E hereto).

26 **EXHIBITS AND CONCLUSION**

27 30. A true and correct copy of the Class Action and PAGA Settlement Agreement
28 and Release of Claims (the "Settlement Agreement") is attached hereto as **Exhibit A**.

31. A true and correct copy of the Order granting preliminary approval is attached hereto as **Exhibit B**.

32. A true and correct copy of an itemized statement of my firm's litigation costs is attached hereto as **Exhibit C**.

33. A true and correct copy of the LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as **Exhibit D**.

34. For the foregoing reasons, it is respectfully requested that the Court grant final approval of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested attorneys' fees, costs, and enhancements.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 19, 2025, at Riverside, California.

By:


Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendants Temecula Valley Drywall, Inc., Lorry Hales, and Douglas Misemer

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

JONATHAN NAVA, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

TEMECULA VALLEY DRYWALL, INC. a
California Corporation; LORRY HALES, an
individual; DOUGLAS MISEMER, an
individual; and DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2400423

*[Assigned to Hon. Harold Hopp, Dept 1, for
all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Jonathan Nava, individually and on behalf of all others similarly
3 situated, and on behalf of the State of California, and Defendants Temecula Valley Drywall, Inc.,
4 Lorry Hales and Douglas Misemer, and is approved by their respective counsel of record, subject
5 to the terms and conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Nava v. Temecula*
8 *Valley Drywall, Inc., et. al.*, Riverside County Superior Court, Case No. CVRI2400423.

9 2. "Aggrieved Employee(s)" means all current and former nonexempt (hourly paid)
10 employees employed by Defendant TVDI in California who worked at least one pay period
11 during the PAGA Period.

12 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
13 Action and PAGA Settlement Agreement.

14 4. "Class" is defined all current and former nonexempt (hourly paid) employees
15 employed by Defendant TVDI in California who worked at least one Workweek during the Class
16 Period.

17 5. "Class Member(s)" refers to individual member(s) of the Class.

18 6. "Class Counsel" refers to Brian Mankin and Misty Lauby of Lauby, Mankin &
19 Lauby LLP.

20 7. "Class Data" means a complete list that Defendants will diligently and in good
21 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
22 which shall include, for each Class Member: the individual's full name; last known address;
23 Social Security Number; total Workweeks worked during the Class Period; and total pay periods
24 worked during the PAGA Period.

25 8. "Class Period" is deemed to be the period from January 25, 2020, through
26 October 16, 2024.

27 9. "Complaint" refers to the operative First Amended Complaint, which pleads class
28 action and PAGA representative claims.

1 10. “Court” (or “Judge”) means the California Superior Court, County of Riverside.

2 11. “Defendants” means and refers to Defendants Temecula Valley Drywall, Inc.
3 (“TVDI”), Lorry Hales and Douglas Misemer.

4 12. “Defendants’ Counsel” or “Defense Counsel” means and refers to Hill, Farrer &
5 Burrill LLP.

6 13. “Effective Date” means the latest of the following dates: (i) if no Class Member
7 timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement
8 Agreement under Code of Civil Procedure § 663, then the date the Court enters an order granting
9 Final Approval; (ii) if a Class Member intervenes, or files a motion to vacate the judgment
10 approving the Settlement Agreement, then sixty-one (61) calendar days following the date the
11 Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely
12 appeal is filed, the date of final resolution of that appeal (including any requests for rehearing
13 and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

14 14. “Escalator Clause:” Defendants represent that there are approximately 271 Class
15 Members, who collectively worked a total of approximately 18,000 Workweeks during the Class
16 Period. If the Class Data shows that the actual number of Workweeks worked by Class
17 Members during the Class Period is more than 10% greater than this number (i.e., if there are
18 more than 19,800 Workweeks worked by Class Members during the Class Period), Defendants
19 shall increase the Settlement Amount in proportion to the increase in Workweeks worked by
20 Class Members over 10% (e.g., if the number of Workweeks worked by Class Members during
21 the Class Period is 12% greater than 18,000, Defendants will increase the Settlement Amount by
22 2%).

23 15. “Final Approval” refers to the order of the Court granting final approval of this
24 Settlement Agreement and entering a judgment approving this Agreement on substantially the
25 terms provided herein or as may be modified by subsequent agreement of the Parties.

26 16. “Individual Class Payment” refers to each Participating Class Members share of
27 the Net Settlement Amount, as further set forth in Paragraph 47(c) below.
28

1 17. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
2 PAGA Penalties, as further discussed in Paragraph 47(c) below.

3 18. “Net Settlement Amount” is defined as the Settlement Amount less the Attorneys’
4 Fees and Costs Award, the Service Payment to Plaintiff as awarded by the Court, the Release
5 Payment to Plaintiff, the Settlement Administration Costs, and PAGA Penalties, as further set
6 forth in Paragraph 47(b) below.

7 19. “Notice” means the notice of proposed class settlement that will be sent to Class
8 Members, and which will advise each Class Member of the settlement and estimated Individual
9 Class and PAGA Payments, and will further advise of the setting of a Final Approval Hearing.

10 20. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection
11 Form, and the Dispute Form to be sent to all Class Members.

12 21. “Objecting Class Member” means a Class Member, other than Plaintiff, who
13 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 68(c)
14 below.

15 22. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
16 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
17 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
18 as the individual PAGA payment allocated to each Aggrieved Employee.

19 23. “PAGA Period” is deemed to be the period from January 25, 2023, through
20 October 16, 2024.

21 24. “Participating Class Member” means any and all Class Members who are deemed
22 to participate and receive an Individual Class Payment and do not opt-out by submitting timely
23 valid Requests for Exclusion.

24 25. “Parties” or “Settling Parties” mean Plaintiff and Defendants, collectively.

25 26. “Plaintiff” or “Class Representative” means and refers to Plaintiff Jonathan Nava.

26 27. “Preliminary Approval Date” means the date the Court approves the Settlement
27 Agreement and enters the Preliminary Approval Order.
28

1 28. “Preliminary Approval Order” means the judicial Order to be entered by the
2 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
3 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
4 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
5 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
6 and costs. Provided that the motion is consistent with the terms herein, Defendants will not
7 object to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to
8 review and comment upon the motion before it is filed.

9 29. “QSF” means the Qualified Settlement Fund set up by the Settlement
10 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
11 from which the settlement payments shall be made.

12 30. “Released Class Claims” by the Participating Class Members upon Final
13 Approval of the Settlement will include the claims stated in the Complaint and those based solely
14 upon the facts in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay
15 overtime wages, (3) failure to provide meal periods or to pay premium wages for missed meal
16 periods , (4) failure to provide rest breaks or to pay premium wages for missed rest periods, (5)
17 failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to provide
18 accurate itemized wage statements, and (8) unfair and unlawful competition under Business and
19 Professions Code §§ 17200 et seq.; as well as claims arising under California Labor Code §§ 200,
20 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197,
21 1197.1, 1198, 1199, and 2802; and claims alleged under the applicable California Industrial
22 Welfare Commission Wage Order. The time period governing the Released Class Claims shall
23 be the Class Period.

24 31. “Released PAGA Claims” means any and all PAGA Claims that Plaintiff alleged
25 against the Released Parties, based on the facts stated in the relevant LWDA Notice Letter and
26 only to the extent that they are alleged in the Complaint, including all PAGA claims seeking civil
27 penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages,
28 (3) failure to provide meal periods or to pay premium wages for missed meal periods, (4) failure

1 to provide rest breaks or to pay premium wages for missed rest periods, (5) failure to reimburse
2 business expenses, (6) failure to timely pay wages each pay period, (7) failure to timely pay
3 wages upon separation of employment, (8) failure to provide accurate itemized wage statements,
4 and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act,
5 Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA Notice Letter and
6 Complaint, including claims that are premised upon California Labor Code §§ 200, 201, 202,
7 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1,
8 1198, 1199, and 2802. The time period governing the Released PAGA Claims shall be any time
9 during the PAGA Period.

10 32. “Released Parties” means Defendants Temecula Valley Drywall, Inc., Lorry
11 Hales, and Douglas Misemer, together with their officers, directors, employees, and agents.

12 33. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the
13 Class Members.

14 34. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a)
15 below.

16 35. “Settlement Amount” is \$475,000, subject to the Escalator Clause and exclusive
17 of TVDI’s obligation to fund its share of payroll taxes owed on Individual Class Payments, as
18 further set forth in Paragraph 47(a) below.

19 36. “Service Payment” means the amount approved by the Court to be paid to
20 Plaintiff in addition to his Individual Settlement Payment as a Participating Class Member and
21 Individual PAGA payment as an Aggrieved Employee.

22 37. “Settlement Administrator” means and refers to Xpand Legal, the third-party class
23 action settlement administrator agreed to by the Parties, that will provide the Notice Packet to the
24 Class Members and distribute the settlement amounts as described in this Agreement.

25 38. “Settlement Administration Costs” means the costs payable from the Settlement
26 Amount to the Settlement Administrator for administering this Settlement, including, but not
27 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and
28 deposit of the employee and employer share of payroll taxes, unclaimed property due diligence,

1 reporting and remittance obligations, distributing the Settlement Amount, and providing
2 necessary reports and declarations, as requested by the Parties. The Settlement Administration
3 Costs shall be paid from the Settlement Amount, and shall not exceed the amount approved by
4 the Court, regardless of any additional costs that the Settlement Administrator may request or
5 feel is necessary to administer the Settlement.

6 39. “Workweeks” in the context of a Class Members means any and all workweeks
7 during the Class Period during which the Class Member performed work for Defendants.

8 **B. General Terms**

9 40. On January 25, 2024, Plaintiff filed the instant class action, alleging that
10 Defendants violated various sections of the Labor Code. On the same day, Plaintiff gave written
11 notice by an online filing to the Labor and Workforce Development Agency (“LWDA”) and by
12 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
13 violated, including the facts and theories to support the alleged violations (“LWDA Notice
14 Letter”). Then, on November 19, 2024, Plaintiff filed a First Amended Complaint adding causes
15 of action under PAGA.

16 41. Defendants deny Plaintiff’s claims and allegations, deny any wrongdoing or
17 liability, and contend that the Action is not suitable for class certification.

18 42. Plaintiff believes he can proceed with the representative and class claims, that the
19 Action is meritorious, and that class certification is appropriate.

20 43. The Parties have conducted a thorough investigation into the facts of the Action.
21 This includes conducting an extensive exchange of informal discovery prior to mediation. Class
22 Counsel is both knowledgeable about and has done extensive research with respect to the
23 applicable law and potential defenses to the claims of the Class. Class Counsel has diligently
24 pursued an investigation of the Class Members’ claims against Defendants. Based on the
25 foregoing data and on their own independent investigation and evaluation, Class Counsel is of
26 the opinion that the Settlement with Defendants for the consideration and on the terms set forth
27 in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the
28 Class Members in light of all known facts and circumstances, including the risk of significant

1 delay and uncertainty associated with litigation, various defenses asserted by Defendants, and
2 numerous potential appellate issues.

3 44. On October 16, 2024, the Parties attended a mediation session with Hon. Daniel
4 Buckley (Ret.), a well-respected wage-and-hour mediator. At the conclusion of mediation, and
5 after extensive arms-length negotiations, Judge Buckley issued a mediator's proposal which was
6 ultimately accepted by the Parties.

7 45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
8 to be performed or judgment to be entered pursuant to the terms of the Settlement and
9 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
10 any statute or law or liability on the claims or allegations in the Action.

11 46. Stipulation for Class Certification. For settlement purposes only, Defendants
12 stipulate that the Class Members described herein who do not Request Exclusion from the Class
13 may be conditionally certified as a Class. This stipulation to certification is in no way an
14 admission that class action certification is proper and shall not be admissible in this action except
15 for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to
16 issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall
17 become null and void ab initio and shall have no bearing on, and shall not be admissible in this
18 Action in connection with, the issue of whether certification would be appropriate in a non-
19 settlement context. Defendants expressly reserve their rights and declare that they would
20 continue to oppose class certification and the substantive merits of the case should the Court fail
21 to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue
22 to pursue class certification and a trial should the Court fail to issue Final Approval.

23 **C. Terms of Settlement**

24 47. The financial terms of the Settlement are as follows:

25 (a) Settlement Amount: The Parties agree to settle this Action for the
26 Settlement Amount, subject to the Escalator Clause and TVDI's obligation to separately pay its
27 share of employer-side payroll taxes owed on the wage portion of Individual Class Payments,
28 which is the maximum amount that will be paid by Defendants, and this includes payments to the

1 Participating Class Members, PAGA Penalties (to the Aggrieved Employees and LWDA),
2 Attorneys' Fees and Costs Award, the Service Payment to Plaintiff, and Settlement
3 Administration Costs. The Settlement Amount is a material term of this Agreement. Except as it
4 relates to the Escalator Clause and TVDI's obligation to separately pay its share of payroll taxes,
5 to the extent the Court orders Defendants to pay more than the Settlement Amount as part of this
6 Agreement, Defendants shall retain the right, in the exercise of its sole discretion, to nullify this
7 Agreement.

8 (b) Net Settlement Amount: The Net Settlement Amount is the amount
9 payable to the Participating Class Members. If the Court reduces the Attorneys' Fees and Costs
10 Award, Service Payment, the Release Payment or Settlement Administrator Costs, or either
11 increases or decreases the amount allocated to the PAGA Penalties, the difference shall be placed
12 in the Net Settlement Amount and allocated to the Participating Class Members.

13 (c) Calculation of Individual Class Payments: Individual Class Payments for
14 the Class will be calculated and apportioned from the Net Settlement Amount based on the
15 number of Workweeks by a Class Member during the Class Period. Each specific Individual
16 Class Payment will be calculated by: (a) dividing the Net Settlement Amount by the total number
17 of Workweeks by all Participating Class Members during the Class Period, and (b) multiplying
18 the result by each Participating Class Members' Workweeks. The entire Net Settlement Amount
19 will be disbursed to all Participating Class Members. If there are any valid and timely Requests
20 for Exclusion, the Settlement Administrator shall proportionally increase the Individual Class
21 Payment for each Participating Class Member according to the number of Workweeks, so that
22 the amount actually distributed to Participating Class Members equals one hundred percent
23 (100%) of the Net Settlement Amount.

24 (d) Allocation of Individual Class Payments: The Individual Class Payments
25 to Participating Class Members shall be allocated as one-third (33.333%) as wages subject to
26 withholding of all applicable local, state and federal taxes, and two-thirds (66.667%) for interest
27 and statutory penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210, 226) from
28 which no taxes will be withheld. The Settlement Administrator will issue to each Participating

1 Class Member (as applicable) an Internal Revenue Service Form W-2 and comparable state
2 forms with respect to the wage allocation and/or a Form 1099 with respect to the penalties and
3 interest allocations.

4 (e) Service Payment and Release Payment to Plaintiff: The amount, if any,
5 awarded to the Plaintiff as a Service Payment will be set by the Court not to exceed \$10,000 in
6 exchange for the service that Plaintiff performed on behalf of the Class, plus a Release Payment
7 of \$5,000 to Plaintiff in exchange for signing a full release and Civil Code § 1542 waiver and
8 foregoing the right to bring separate individual claims. Defendants agree not to oppose these
9 requests. The Service Payment and Release Payment to Plaintiff will be paid out of the
10 Settlement Amount. Plaintiff will be issued an IRS Form 1099 in connection with these
11 payments. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on
12 these payments. The Parties agree that any amount awarded as the Service Payment or Release
13 Payment to Plaintiff less than the requested amount shall not be a basis for Plaintiff or Class
14 Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the
15 Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to
16 the Participating Class Members.

17 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
18 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
19 Settlement Amount, plus verified and reasonable litigation costs not to exceed \$25,000
20 ("Attorney's Fees and Cost Award"). Defendants agree not to oppose any contention by Class
21 Counsel that attorneys' fees should be based on the common fund theory. The Attorneys' Fee
22 and Cost Award shall be paid from the Settlement Amount, and, except for this award,
23 Defendants shall have no further obligation to pay any attorneys' fees, costs, or expenses to
24 Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel,
25 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
26 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
27 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
28 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount

of attorneys' fees and costs awarded by the Court.

(g) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Settlement Amount, not to exceed \$8,300.00, unless (1) the Escalator Clause is triggered (whereby any reasonable increase in Settlement Administration Costs shall be paid from the increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all Parties and the Court.

(h) PAGA Penalties: The Parties agree that \$30,000 is allocated to PAGA Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this amount, \$22,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the Private Attorney General Act of 2004 ("PAGA") and \$7,500 (25%) will form the Individual PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata based on the number of pay periods worked by an Aggrieved Employee during the PAGA Period, which will be treated as civil penalties and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement.

(i) Tax Liability: Class Counsel and Defendants make no representations as to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the Class Members are not relying on any statement or representation by Class Counsel or Defendants in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Individual Class Payments and Individual PAGA Payments, described herein. Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendants into compliance with any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective payments described herein.

1 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
2 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
3 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
4 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
5 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
6 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
7 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
8 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
9 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
10 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
11 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
12 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
13 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
14 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
15 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
16 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
17 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
18 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
19 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
20 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
21 ADVISOR’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
22 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
23 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
24 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

25 (k) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement.
26 Under no circumstances will any portion of the Settlement Amount revert to Defendants.
27 Participating Class Members and Aggrieved Employees will not have to make a claim to receive
28 an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of

1 Individual Class Payment or Individual PAGA Payments will be made directly to each
2 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
3 responsible for accurately and timely reporting and remittance obligations with respect to
4 unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not
5 cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set
6 forth herein.

7 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
8 reasonable and will so represent same to the Court.

9 **D. Release by the Participating Class Members**

10 48. Upon entry of the Final Approval Order and Defendants' funding of the
11 Settlement Amount, and except as to such rights or claims as may be created by this Agreement,
12 Plaintiff and the Participating Class Members will forever completely release and discharge the
13 Released Parties from the Released Class Claims for the Class Period. The scope of the
14 Released Class Claims is a material term of this Agreement and the Parties agree to comply with
15 the Court's Case Management Order in defining the Released Class Claims. To the extent the
16 Court orders the Parties to modify the scope of the Released Class Claims, the Parties will meet
17 and confer in good faith and attempt to address the Court's concern.

18 49. Each Participating Class Member will be deemed to have made the foregoing
19 release as if by manually signing it.

20 50. Plaintiff, on behalf of himself and the Class, acknowledges and agrees that the
21 claims for unpaid wages and untimely payment of wages in the Action are disputed, and that the
22 payments set forth herein constitute payment of all sums allegedly due to them. Plaintiff, on
23 behalf of himself and the Class, acknowledges and agrees that California Labor Code Section
24 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides in pertinent
25 part as follows: "An employer shall not require the execution of any release of any claim or right
26 on account of wages due, or to become due, or made as an advance on wages to be earned, unless
27 payment of those wages has been made."

28 ///

1 **E. Release of PAGA Claims**

2 51. Upon entry of the Final Approval Order and Defendants' funding of the
3 Settlement Amount, Plaintiff, the State of California and the LWDA shall completely release and
4 discharge the Released Parties from the Released PAGA Claims for the PAGA Period. The
5 scope of the Released PAGA Claims is a material term of this Agreement and the Parties agree
6 to comply with the Court's Case Management Order in defining the Released PAGA Claims. To
7 the extent the Court orders the Parties to modify the scope of the Released PAGA Claims, the
8 Parties will meet and confer in good faith and attempt to address the Court's concern.

9 52. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
10 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
11 releasing the Released PAGA Claims.

12 53. It is the intent of the Parties that the Final Approval Order shall have full
13 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

14 **F. Release by Plaintiff**

15 54. Plaintiff does hereby, for himself and his spouses, heirs, successors, beneficiaries,
16 devisees, legatees, executors, administrators, trustees, conservators, guardians, personal
17 representatives, and assigns forever and completely release and discharge the Released Parties
18 from any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
19 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and
20 expenses (including back wages, statutory penalties, civil penalties, liquidated damages,
21 exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the
22 beginning of time through the execution of this Agreement, whether known or unknown,
23 suspected or unsuspected, including but not limited to all claims arising out of, based upon, or
24 relating to Plaintiff's employment with Defendants or the remuneration for or termination of
25 such employment (the "Plaintiff's Claims").

26 55. Without limiting the generality of the foregoing, this general release by Plaintiff
27 includes all federal, state and local statutory claims, federal and state common law claims
28 (including but not limited to those for contract, tort and equity), including without limitation any

1 claims for breach of any implied or express contract or covenant; claims for promissory estoppel;
2 claims of entitlement to any pay; claims of wrongful denial of insurance and employee benefits
3 (except workers' compensation benefits); claims for failure to hire, public policy violations,
4 defamation, invasion of privacy, fraud, misrepresentation, emotional distress, assault/battery, or
5 other common law or tort matters; claims of harassment, retaliation or discrimination based on
6 age, race, color, religion, sex, national origin, ancestry, physical or mental disability, protected
7 activity, medical condition, marital status, sexual preference, union activity, or veteran status;
8 claims under the Americans with Disabilities Act, Age Discrimination in Employment Act, Title
9 VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991; 42 USC sec.
10 1981, 42 USC sec. 1983, the Older Workers Benefit Protection Act, the Family and Medical
11 Leave Act; claims for unfair competition; claims based on legal restrictions on Defendants' right
12 to terminate, not to hire or promote employees, or to change an employee's compensation; and
13 claims based on any federal, state or other governmental statute, regulation or ordinance, all
14 statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or
15 expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation
16 costs, restitution, or equitable relief, or any other claims arising under the Fair Labor Standards
17 Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the
18 California Fair Employment and Housing Act, the California Unfair Competition Act (California
19 Business and Professions Code section 17200 et seq.), the California Labor Code, or Industrial
20 Welfare Commission Wage Orders, or arising out of or based upon the following categories of
21 allegations regardless of the forum in which they may be brought, to the fullest extent such
22 claims are releasable by law: (i) all claims for unpaid overtime; (ii) all claims for unpaid wages;
23 (iii) all claims for meal break violations; (iv) all claims for rest period violations; (v) all claims
24 for paid sick leave violations; (vi) all claims for the failure to timely pay wages upon
25 termination; (vii) all claims for the failure to timely pay wages during employment; (viii) all
26 claims for wage statement violations; (ix) all claims for reporting time pay; (x) all claims for
27 failure to reimburse business expenses; and (xi) all other penalties recoverable for such claims
28 under PAGA.

1 56. Plaintiff agrees that there is a risk that any injury that he may have suffered by
2 reason of the Released Parties' relationship with them might not now be known, and there is a
3 further risk that said injuries, whether known or unknown at the date of this Settlement
4 Agreement, might possibly become progressively worse, and that as a result thereof further
5 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
6 discharge the Released Parties and understands that, by the execution of this Settlement
7 Agreement, no further claims for any such injuries that existed at the time of the execution of this
8 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
9 period from the beginning of time to the execution of this Settlement Agreement.

10 57. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
11 Section 1542 of the Civil Code of the State of California and does so understanding and
12 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
13 of the State of California states:

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

21 Plaintiff acknowledges and agrees that this knowing and voluntary waiver is an essential
22 and material term of this Settlement Agreement, and the Settlement Agreement would not have
23 been entered into without such a waiver.

24 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
25 full and complete release and discharge of all parties, Plaintiff expressly acknowledges that this
26 Settlement Agreement is intended to include in its effect, without limitation, all claims that
27 Plaintiff knew of, as well as all claims that he does not know or suspect to exist in his favor
28 against the Released Parties, or any of them, for the time period from the beginning of time to the
execution of this Settlement Agreement, and that this Settlement Agreement contemplates the
extinguishment of any such Plaintiff's claims. Notwithstanding the above, the general release by

Plaintiff shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

G. Interim Stay of Proceedings

58. Pending completion of all prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

H. Notice Process

59. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice Packet, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

60. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiff and Defendants notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this Agreement.

61. Class Data. Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendants shall provide the Class Data to the Settlement Administrator. The

1 Settlement Administrator will run a check of the Class Members' addresses against those on file
2 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
3 Settlement Administrator will remain confidential and will not be used or disclosed to anyone,
4 except as required by applicable tax authorities, pursuant to Defendants' express written consent,
5 or by order of the Court. Although Class Counsel will not be provided with the list of Class Data,
6 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
7 the Action and Settlement.

8 62. Total Workweeks. At least five (5) calendar days prior to mailing the Notice
9 Packet, the Settlement Administrator shall provide a spreadsheet to Class Counsel and Defense
10 Counsel containing a preliminary calculation of all payments to be paid from the Settlement
11 Amount, including the estimated Individual Class Payments to each Class Member and
12 Individual PAGA Payments to each Aggrieved Employee (a person's name shall be redacted and
13 a control number used in place of the name). In the event that the total Workweeks worked by
14 all Class Members triggers the Escalator Clause, the Settlement Administrator shall notify the
15 Parties of the increased Settlement Amount, and shall modify the Notice (where needed) to
16 reflect the increased Settlement Amount and related increased payments from the Settlement
17 Amount, or the revised Class Period, including increased Attorneys' Fees and Costs and any
18 increased Settlement Administration Costs (if applicable), all of which shall be subject to Court
19 approval.

20 63. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the
21 Settlement Administrator to the Class Members, by first class mail, in English and Spanish,
22 within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data.
23 For all Class Members, the Notice Packet will include the Notice, a Request for Exclusion Form,
24 an Objection Form, and a Dispute Form. The Settlement Administrator shall use standard
25 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
26 envelopes are returned.

27 64. Returned Notice Packets. The Settlement Administrator will take steps to ensure
28 that the Notice Packet is received by all Class Members, including utilization of the National

1 Change of Address Database maintained by the United States Postal Service to review the
2 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
3 Member for whom an updated address is located within ten (10) calendar days following both
4 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.
5 The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the
6 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
7 the Response Deadline or fifteen (15) calendar days after the remailing of the Notice Packet.

8 65. Presumption Regarding Receipt of Notice Packet. It will be conclusively
9 presumed that if an envelope has not been returned to Settlement Administrator by the Response
10 Deadline that the Class Member received the Notice Packet.

11 66. Disputes Regarding Class Data. Class Members are deemed to participate in the
12 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
13 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
14 Payment and Individual PAGA Payment, as well as the number of Workweeks during the Class
15 Period and number of pay periods worked the PAGA Period. Class Members may dispute their
16 Workweeks by timely submitting evidence to the Settlement Administrator. Defendants' records
17 will be presumed determinative absent reliable evidence to rebut Defendants' records, but the
18 Settlement Administrator will evaluate the evidence submitted by the Class Member and provide
19 the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in
20 good faith about the evidence to determine the Class Member's actual number of Workweeks,
21 and estimated Individual Class and PAGA Payments. If Class Counsel and Defense Counsel are
22 unable to agree, they agree to submit the dispute to the Court to render a final decision. Class
23 Members will have until the Response Deadline to dispute Weeks Worked, object or opt out,
24 unless extended by the Court.

25 67. Declaration of Due Diligence. The Settlement Administrator shall provide
26 counsel for the Parties, at least five (5) days after the initial Response Deadline, a declaration of
27 due diligence and proof of mailing with regard to the mailing of the Notice Packet.
28

1 68. Class Members' Rights. Each Class Member will be fully advised of the
2 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
3 from the Class Claims portion of the Settlement. The Notice Packet will inform the Class
4 Members of the Court-established deadlines for filing objections or requesting exclusion from
5 the Settlement in accordance with the following guidelines:

6 (a) Requests for Exclusion from Class. Any Class Member, other than
7 Plaintiff, may request to be excluded from the Class by completing the Request for Exclusion
8 Form provided within the Notice Packet. The Request for Exclusion Form must be mailed to the
9 Settlement Administrator and postmarked on or before the Response Deadline in order to be
10 timely, unless the Parties otherwise agree in writing. Any such Request must be made in
11 accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
12 attach each Request for Exclusion to its declaration of due diligence and file with the Court prior
13 to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance
14 with these requirements: (i) will not have any rights under this Agreement, including the right to
15 object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments
16 under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any
17 Class Member who is an Aggrieved Employee who requests timely exclusion will still be subject
18 to the Released PAGA Claims to the fullest extent permitted by law and receive an Individual
19 PAGA Payment. All Parties and their counsel, including Defendants and their agents and
20 employees, shall not encourage or solicit opt-outs or objections, directly or indirectly, through
21 any means.

22 (b) Binding Effect on Participating Class Members. All Participating Class
23 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
24 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
25 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
26 Settlement.

27 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
28 does not submit a valid and timely Request for Exclusion may object to the terms of this

1 Agreement by completing the Objection Form provided within the Notice Packet. Any Class
2 Member that intends to object must mail the Objection Form to the Settlement Administrator.
3 The Objection Form must be postmarked on or before the Response Deadline in order to be
4 timely, unless the Parties otherwise agree in writing. Additionally, any objection must be made
5 in accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
6 provide any objections to Class Counsel and Defense Counsel within three (3) days of receipt,
7 and the Settlement Administrator shall attach the same to its declaration of due diligence and file
8 with the Court prior to the Final Approval Hearing. Any Participating Class Member who files
9 an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff
10 and Defendants shall not be responsible for any fees, costs, or expenses incurred by any Class
11 Member and/or his or her counsel related to any objections to the Settlement. Submitting an
12 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is
13 preserved by becoming a party of record by timely and properly intervening or filing a motion to
14 vacate the judgment under Code of Civil Procedure § 663.

15 (d) Failure to Object. Any Class Member who does not timely and properly
16 become a party of record by intervening or filing a motion to vacate the judgment waives any
17 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
18 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
19 under California Code of Civil Procedure § 473, and extraordinary writs.

20 (e) Responses to Objections. Counsel for the Parties may file a response to
21 any objections submitted by Objecting Class Members at least five (5) court days before the date
22 of the Final Approval Hearing.

23 (f) Class Members will have until the Response Deadline to object or submit
24 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
25 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
26 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
27 Counsel or Defense Counsel.
28

1 69. Funding of the Settlement Amount. Defendants, jointly and severally, shall fund
2 the Settlement Amount based on the payment plan discussed below by wiring the full amount of
3 each installment payment (plus any employer payroll tax obligations owed on each installment)
4 to the Settlement Administrator on or before each payment due date:

5 a. By the later of December 1, 2025, or 10 days after the Effective Date, Defendants
6 shall fund fifty percent (50%) of the Settlement Amount, plus any employer
7 payroll tax obligations, which shall be distributed in a manner that compensates
8 the Participating Class Members, the Aggrieved Employees, the LWDA, Class
9 Counsel [for fees and costs], the Class Representative, Plaintiff, and the
10 Settlement Administrator for 50% of the Court-awarded amounts;

11 b. By the later of December 1, 2026, or 10 days after the Effective Date, Defendants
12 shall fund the remaining fifty percent (50%) of the Settlement Amount, plus any
13 employer payroll tax obligations, which shall be distributed in a manner that
14 compensates the Participating Class Members, the Aggrieved Employees, the
15 LWDA, Class Counsel [for fees and costs], the Class Representative, Plaintiff,
16 and the Settlement Administrator for the remaining 50% of the Court-awarded
17 amounts.

18 70. Acceleration Clause. In the event that Defendants fail to make any payments
19 outlined above within 5 calendar days of the respective due date, Class Counsel shall send a
20 notice of default to Defense Counsel. Defendants will then have seven (7) calendar days after
21 issuance of the notice of default to cure and bring all payments up to the current required
22 amount. If Defendants fail to timely cure the late payment, all remaining balances shall
23 immediately become due and payable

24 71. Distribution of Funds. No later than ten (10) calendar days after the receipt of
25 each payment referenced in Paragraph 69 above, the Settlement Administrator will issue the
26 Individual Class Payments to the Participating Class Members, the payment to Class Counsel for
27 the Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, the
28 Release Payment to Plaintiff, the payment to the LWDA for PAGA Penalties, the Individual

1 PAGA Payments to Aggrieved Employees for PAGA Penalties, and will pay itself the Settlement
2 Administration Costs according to the percentages and/or amounts set forth herein.

3 72. Deadline for Cashing Settlement Checks. Participating Class Members and
4 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
5 Administrator to cash each settlement check. If a check is not cashed within the 180-day period,
6 the check will be voided, and a stop-payment will be issued. If the first installment is not cashed
7 within 180 days, the Settlement Administrator will hold the funds in trust, pending a request by
8 the recipient to have the payment reissued. However, once 180 days has passed after the final
9 check is mailed to the Participating Class Members and Aggrieved Employees, the Settlement
10 Administrator shall issue all unclaimed funds (from both installments) to the California State
11 Controller's Office in the name of the Participating Class Member or Aggrieved Employee. The
12 release will be binding upon all Participating Class Members and Aggrieved Employees who do
13 not cash their checks within the 180-day period. In the event that any settlement check is
14 returned to the Settlement Administrator within 180 days of mailing, the Settlement
15 Administrator will, within five (5) business days of receipt of the returned settlement check,
16 perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of
17 the results. If a new address is located by these means, the Administrator will have ten (10)
18 business days to re-issue the check. Neither Defendants, Defense Counsel, Class Counsel,
19 Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement
20 checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks.
21 Without limiting the foregoing, in the event a Participating Class Member or Aggrieved
22 Employee notifies the Settlement Administrator that he or she believes that a settlement check
23 has been lost or stolen, the Settlement Administrator shall immediately stop payment on such
24 check. If the check in question has not been negotiated prior to the stop payment order, the
25 Settlement Administrator will issue a replacement check.

26 **I. Duties of the Parties Prior to the Court's Approval**

27 73. Promptly after execution of this Agreement, Plaintiff will move the Court for
28 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order

1 accomplishing the following:

2 (a) Scheduling the Final Approval Hearing on the issue of whether this
3 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
4 and a hearing on fees, costs and the Service Payments;

5 (b) Approving as to form and content the proposed Notice Packet;

6 (c) Directing the mailing of the Notice Packet by first class mail to the Class
7 Members;

8 (d) Preliminarily approving this Settlement;

9 (e) Preliminarily certifying the class for purposes of this Settlement; and

10 (f) Advising the LWDA of the proposed Settlement.

11 **J. Duties of the Parties Following Court's Final Approval**

12 74. In connection with the Final Approval Hearing provided for in this Agreement,
13 Class Counsel shall submit a proposed Final Approval Order:

14 (a) Approving the Settlement, adjudging the terms thereof to be fair,
15 reasonable and adequate, and directing consummation of its terms and provisions;

16 (b) Approving Class Counsel's application for an award of attorneys' fees and
17 reimbursement of litigation costs and expenses, the Service Payment to the Plaintiff, and the
18 payment to the Settlement Administrator for costs of administering the settlement; and

19 (c) Entering judgment approving settlement.

20 **K. Voiding the Agreement**

21 75. If the Court fails or refuses to issue the Final Approval Order or fails to approve
22 any material condition of this Agreement which effects a fundamental change of the Settlement,
23 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the
24 option of either Party.

25 76. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will
26 have no further obligations under the Settlement, including any obligation by Defendants to pay
27 the Settlement Amount, or any amounts that otherwise would have been owed under this
28 Settlement.

1 77. If the Settlement is voided or fails for any reason, any costs incurred by the
2 Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise
3 specified in this Agreement.

4 **L. Other Terms**

5 78. Waiver. The waiver by one Party of any breach of this Agreement by another
6 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

7 79. Parties' Authority. The signatories hereto represent that they are fully authorized
8 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

9 80. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
10 accomplish the terms of this Agreement, including but not limited to, execution of such
11 documents and to take such other action as may reasonably be necessary to implement the terms
12 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
13 contemplated by this Agreement and any other efforts that may become necessary by order of the
14 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
15 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
16 cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's
17 preliminary and final approval of the settlement, and the final entry of judgment.

18 81. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
19 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
20 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
21 cause of action or rights released and discharged by this Agreement.

22 82. No Admission. Defendants deny any and all liability to Plaintiff and/or any Class
23 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
24 asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle
25 and compromise the matters at issue in the Complaint to avoid further substantial expense and
26 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
27 taken into account the uncertainty and risks inherent in litigation, and without conceding any
28 infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined

1 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
2 terms and conditions set forth in this Agreement.

3 83. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
4 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
5 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
6 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
7 Agreement with the intention of avoiding further disputes and litigation with the attendant
8 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
9 related documents such as the notices, and motions for preliminary and final approval, shall,
10 pursuant to California Evidence Code § 1152 and/or Federal Rule of Evidence 408, be
11 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
12 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
13 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
14 approved, the stipulation will be of no force or effect.

15 84. No Publicity. The Parties will not publicize the Settlement or disclose it to third
16 parties prior to the Court granting Preliminary Approval, except as required or necessary to
17 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and the
18 Plaintiff agree that they will not discuss the Settlement with the media, any settlement and
19 verdict reporting service, any social media postings or other Internet postings. Nothing herein
20 shall be construed to prevent Class Counsel from the public filing of motions or other case
21 materials in the Action related to seeking and obtaining Court approval of this Settlement and the
22 related awards of attorneys' fees and costs, or to communications with Class Members or their
23 representatives about this Settlement, including through the posting of Court-filed documents on
24 Class Counsel's websites for access solely by the Class Members, or to prevent the Parties or
25 their representatives from communicating with financial or legal advisors regarding the
26 Settlement. In response to any media inquiry, Class Counsel may state only that the Action has
27 been settled on terms mutually agreeable to the Parties.
28

1 85. Notices. Unless otherwise specifically provided herein, all notices, demands or
2 other communications given hereunder shall be in writing and shall be deemed to have been duly
3 given as of the third business day after mailing by United States registered or certified mail,
4 return receipt requested, addressed:

5 *To the Class:*

6 Brian J. Mankin
7 **brian@lmlfirm.com**
8 Lauby, Mankin & Lauby LLP
9 5198 Arlington Ave, PMB 513
 Riverside, CA 92504
 Tel: (951) 320-1444 | Fax: (951) 320-1445

10 *To Defendant:*

11 James A. Bowles
12 **jbowles@hillfarrer.com**
13 Richard S. Zuniga
14 **rzuniga@hillfarrer.com**
15 Elissa L. Gysi
16 **egysi@hillfarrer.com**
17 Hill, Farrer & Burrill LLP
18 One California Plaza
19 300 S. Grand Avenue, 37th Floor
20 Los Angeles, California 90071-3147
21 Tel: (213) 620-0460 | Fax: (213) 624-4840

22 86. Construction. The Parties hereto agree that the terms and conditions of this
23 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
24 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
25 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
26 and Defendants expressly waive the common-law and statutory rule of construction that
27 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
28 and represent that the language in all parts of this Agreement shall be in all cases construed as a
whole, according to its fair meaning.

 87. Captions and Interpretations. Paragraph titles or captions contained herein are
inserted as a matter of convenience and for reference, and in no way define, limit, extend, or

1 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
2 contractual and not merely a recital.

3 88. Modification. This Agreement may not be changed, altered, or modified, except
4 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
5 Agreement may not be discharged except by performance in accordance with its terms or by a
6 writing signed by all of the Parties hereto.

7 89. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
8 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
9 provide written notice to the other Party and allow an opportunity to cure the alleged
10 deficiencies, and Plaintiff and Defendants may agree to seek the help of the Mediator to resolve
11 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
12 own attorneys' fees and costs. This provision shall not apply to any legal action or other
13 proceeding instituted by any person or entity other than Plaintiff or Defendants.

14 90. Choice of Law. This Settlement Agreement shall be governed by and construed,
15 enforced and administered in accordance with the laws of the State of California, without regard
16 to its conflicts-of-law rules.

17 91. Integration Clause. This Settlement Agreement contains the entire agreement
18 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
19 or contemporaneous agreements, understandings, representations, and statements, whether oral
20 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
21 hereunder may be waived except in writing.

22 92. Binding On Assigns. This Agreement shall be binding upon and inure to the
23 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
24 successors and assigns.

25 93. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
26 because the members of the Class are numerous, it is impossible or impractical to have each
27 Class Member execute this Agreement. The Notice Packet will advise all Class Members of the
28 binding nature of the release provided herein and such shall have the same force and effect as if

1 this Agreement were executed by each Class Member.

2 94. Counterparts. This Agreement may be executed in counterparts, and when each
3 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
4 original, and, when taken together with other signed counterparts, shall constitute one fully
5 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
6 signatures shall have the same force and effect as an original.

7 Dated: Dec 17, 2024

PLAINTIFF AND CLASS REPRESENTATIVE

8
9 
Jonathan Nava (Dec 17, 2024 21:47 PST)

10 Jonathan Nava

11
12 Dated: _____

**DEFENDANT TEMECULA VALLEY DRYWALL,
INC.**

13
14 By: _____
15 Title: _____

16 Dated: _____

DEFENDANT

17
18 Lorry Hales

19 Dated: _____

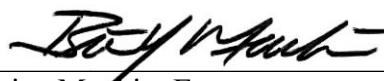
DEFENDANT

20
21 Douglas Misemer

22
23 **APPROVED AS TO FORM:**

24 Dated: Dec. 17, 2024

**CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP**

25
26 
27 Brian Mankin, Esq.
28 Attorneys for Plaintiff

1 this Agreement were executed by each Class Member.

2 94. Counterparts. This Agreement may be executed in counterparts, and when each
3 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
4 original, and, when taken together with other signed counterparts, shall constitute one fully
5 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
6 signatures shall have the same force and effect as an original.

7 Dated: _____
8

PLAINTIFF AND CLASS REPRESENTATIVE

9
10 _____
Jonathan Nava

11
12 Dated: 12.31.24

**DEFENDANT TEMECULA VALLEY DRYWALL,
INC.**

13
14 Douglas A. Misemer
By: Doug Misemer

15 Title: President

16 Dated: 12.31.24

DEFENDANT

17
18 Lorry Hales
Lorry Hales

19 Dated: 12.31.24

DEFENDANT

20
21 Douglas Misemer
Douglas Misemer

22
23 **APPROVED AS TO FORM:**

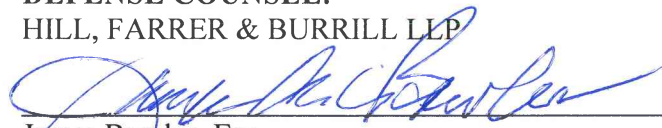
24 Dated: _____

**CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP**

25
26 _____
27 Brian Mankin, Esq.
Attorneys for Plaintiff
28

1 Dated: 1/7/25

2 **DEFENSE COUNSEL:**
3 HILL, FARRER & BURRILL LLP

4 
James Bowles, Esq.

5 Richard Zuniga, Esq.

6 Elissa L. Gysi, Esq.

7 Attorneys for Defendants
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EXHIBIT “B”

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 05 2025

E. Escobedo

SG

FEB 06 2025
R

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

JONATHAN NAVA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

TEMECULA VALLEY DRYWALL, INC.
a California Corporation; LORRY HALES,
an individual; DOUGLAS MISEMER, an
individual; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CVRI2400423

*[Assigned to Hon. Harold Hopp, Dept 1, for all
purposes]*

~~PROPOSED~~ ORDER:

- 1) **PRELIMINARILY APPROVING
CLASS ACTION AND PAGA
SETTLEMENT;**
- 2) **CONDITIONALLY CERTIFYING A
CLASS FOR SETTLEMENT
PURPOSES ONLY;**
- 3) **DIRECTING DISTRIBUTION TO THE
CLASS OF THE SETTLEMENT
NOTICE AND EXPLANATION FORM;
AND**
- 4) **SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT**

1 Having reviewed the Class Action and PAGA Settlement Agreement and Release of
2 Claims (the “Settlement Agreement” or “S.A.”), which is attached as Exhibit A to the
3 Declaration of Brian Mankin in Support of Motion for Preliminary Approval of Class Action and
4 PAGA Settlement filed on January 13, 2025, between Plaintiff Jonathan Nava and Defendants
5 Temecula Valley Drywall, Inc. (“TVDI”), Lorry Hales and Douglas Misemer (“Defendants”)
6 (collectively, the “Parties”), as well as the Memorandum of Points and Authorities in Support of
7 the Unopposed Motion for Preliminary Approval of Class Action Settlement, the documents
8 submitted in support of the motion, and all supporting legal authorities and documents, IT IS
9 HEREBY ORDERED:

10 1. The Court GRANTS preliminary approval of the Settlement based upon the terms
11 set forth in the Settlement Agreement and finds its terms to be within the range of reasonableness
12 of a settlement that ultimately could be granted final approval by the Court at a Final Approval
13 hearing. The settlement appears to be fair, adequate and reasonable to the Class. Based on a
14 review of the papers submitted by Plaintiff, the Court finds that the Settlement is the result of
15 arms-length negotiations conducted after the Parties adequately investigated and became familiar
16 with the strengths and weaknesses of the claims. The assistance of an experienced mediator in
17 the Settlement process supports the Court’s conclusion that the Settlement is non-collusive.

18 2. For settlement purposes only, the Court finds that the proposed Class is
19 ascertainable and that there is a sufficiently defined community of interest among the Class
20 Members in questions of law and fact. The Court, therefore, conditionally certifies the following
21 Class, for settlement purposes only: All current and former nonexempt (hourly paid) employees
22 employed by Defendant TVDI in California at any time during the Class Period of January 25,
23 2020, through October 16, 2024.

24 3. Additionally, the “Aggrieved Employees” are defined to include: current and
25 former nonexempt (hourly paid) employees employed by Defendant TVDI in California during
26 the PAGA Period (January 25, 2023, through October 16, 2024).

27 4. The class action settlement set forth in the Settlement Agreement between
28 Plaintiff and Defendants is preliminarily approved as it appears to be proper, to fall within the

1 range of a fair, reasonable, and adequate settlement, and to be presumptively valid, subject only
2 to any objections that may be raised at the Final Approval Hearing.

3 5. For settlement purposes only, the Court appoints Plaintiff Jonathan Nava as Class
4 Representative, and Brian Mankin and Misty Lauby as Class Counsel.

5 6. The Court approves Xpand Legal to act as the Settlement Administrator, who is
6 directed to fulfill all of the duties and services set forth in the Settlement Agreement, including
7 but not limited to paragraphs 59 to 72. The Settlement Administrator shall file a declaration
8 concurrently with the Motion for Final Approval, authenticating a copy of every Objection Form
9 and Exclusion Form received by the Settlement Administrator. Furthermore, in the event of a
10 continuance of the hearing of the motion for final approval, the Settlement Administrator must
11 give notice of such continuance to any objecting party.

12 7. The Court approves, as to form and content, the Class Notice, Exclusion Form,
13 Objection Form, and Dispute Form (attached hereto as Exhibits A, B, C, and D, respectively)
14 that the Class Members may use. The Court further finds the Class Notice, Exclusion Form,
15 Objection Form and Dispute Form fairly apprise the Class Members of the terms of the proposed
16 settlement and of their options in connection with the settlement.

17 8. Class Members who wish to request exclusion, object to the Settlement or dispute
18 Weeks Worked via the Exclusion Form and/or Objection Form and/or Dispute Form are directed
19 to mail the appropriate form above to the Settlement Administrator (and not to the Court) within
20 the time periods set forth in the Class Notice.

21 9. The Settlement Administrator is directed to mail the Notice, Request for
22 Exclusion Form, Objection Form, and Dispute Form by first class mail to the Class Members in
23 English in accordance with the Settlement Agreement and schedule set forth below.

24 10. The Court finds that the deadlines and method set forth in the Settlement
25 Agreement for the mailing of the Notice and related forms described herein meet the
26 requirements of due process, provide the best notice practicable under the circumstances,
27 constitute due and sufficient notice to all persons entitled to notice, and otherwise satisfy the
28 requirements of California law.

1 11. The Court directs the Administrator to perform address verification measures and
2 mail the Notice by first class mail to the Class Members not later than 10 days after it receives
3 the "Class Data" as defined in the Settlement Agreement and to otherwise carry out the
4 Settlement according to the terms of the Settlement Agreement and in conformity with this
5 Order. The Parties are also ordered to carry out the Settlement according to the terms of the
6 Settlement Agreement.

7 12. All Class Members shall be deemed to participate in the Settlement, although any
8 Class Member who wishes to comment on or object to the Settlement or who elects not to
9 participate in the Settlement has until forty-five (45) days after the mailing of the Class Notice to
10 submit an objection or Request to be Excluded, pursuant to the procedures set forth in the Notice.

11 13. The Court approves the handling of unclaimed funds set forth in the Settlement
12 Agreement, specifically that any unclaimed funds in the Administrator's account as a result of a
13 failure to timely cash a settlement check shall be issued to the State Controller's Office in the
14 name of the Class Member, as set forth in the Settlement Agreement.

15 14. The following dates shall govern for purposes of this settlement:

February 5, 2025	Preliminary Approval (PA) hearing
March 8, 2025 (31 days after PA)	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
April 22, 2025 (45 days after mailing)	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
Date: _____ July 15, _____, 2025 Time: 8:30 a.m.	Final Approval Hearing

1 15. A final approval hearing shall be held in this Court on the date and time above to
2 determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be
3 finally approved by the Court; (2) the amount of Attorneys' Fees and Costs Award to Class
4 Counsel; and (3) the amount of the Service Payment to the Class Representative.

5 16. Neither this Order, the Settlement Agreement, nor any document referred to
6 therein, nor any action taken to carry out the settlement embodied in the Settlement Agreement
7 may be construed as, or may be used by Plaintiff or the Class Members in this Action as an
8 admission by or against Defendants or any of the other Released Parties (as that term is defined
9 in the Settlement Agreement) of any fault, wrongdoing or liability whatsoever.

10 17. The Court may, for good cause shown, extend any of the deadlines set forth in
11 this Order. If any Class Member submits an objection to the settlement and the Final Approval
12 Hearing is continued, either Class Counsel or the Settlement Administrator are directed to give
13 notice of the new hearing date to the objecting party; and

14 18. In the event that the Settlement Agreement does not receive final approval or the
15 Effective Date of the Settlement does not occur, this Order shall be rendered null and void and
16 shall be vacated.

17
18 Date: 2/5/25


Honorable Harold Hopp

EXHIBIT “C”

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Inactive Included)
Group By Staff Member Group
Client - Project = 14000-00557 Nava v Temecula
Valley Drywall (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Jonathan Nava</u> <u>14000-00557 Nava v Temecula Valley Drywall</u>							
11-09-2023	Approved	E101 Copying 30 copies @ .20 each - OSHA Notice	Charito, Tracie	0.20	0.00	30.00	6.00
11-09-2023	Approved	E108 Postage Postage for November 2023	Charito, Tracie	45.80	0.00	1.00	45.80
01-25-2024	Approved	E108 Postage Postage for January 2024	Charito, Tracie	29.40	0.00	1.00	29.40
01-25-2024	Approved	E101 Copying 56 copies @ .20 each - Initial Letters to company	Charito, Tracie	0.20	0.00	56.00	11.20
01-25-2024	Approved	E112 Court fees Receipt for LWDA - submit PAGA letter	Charito, Tracie	75.00	0.00	1.00	75.00
01-26-2024	Approved	Attorney Service Onelgal Order #22097073 - file Complaint	Charito, Tracie	1,512.08	0.00	1.00	1,512.08
02-07-2024	Approved	Attorney Service Bosco Inv #10340027 Serve: Temecula Valley Drywall, Inc. a California Corporation Summons; Complaint; Civil Case Cover Sheet; Certificate of Counsel; Notice of Department Assignment; Notice of Case Management Conference (To: Brian J. Mankin, Esq.); Notice of Case Management Conference (To: Jonathan Nava); Notice of Case Management Conference (To: Temecula Valley Drywall, Inc.); Notice of Case Management Conference (To: Lorry Hales); Notice of Case Management Conference (To: Douglas Misemer); ADR Court: Riverside County Superior Court - Riverside Historic Courthouse Completed on: 02/01/2024	Charito, Tracie	114.65	0.00	1.00	114.65
02-07-2024	Approved	Attorney Service Bosco Inv #10340580 Serve: Douglas Misemer, an individual Summons; Complaint; Civil Case Cover Sheet; Certifc cate of Counsel; Notice of Department Assignment; Notice of Case Management Conference (To: Brian J. Mankin, Esq.); Notice of Case Management Conference (To: Jonathan Nava); Notice of CaseManagement Conference (To: Temecula Valley Drywall, Inc.); Notice of CaseManagement Conference (To: Lorry Hales); Notice of Case Management Conference (To: Douglas Misemer); ADR Court: Riverside County Superior Court - Riverside Historic Courthouse Completed on: 02/01/2024	Charito, Tracie	64.70	0.00	1.00	64.70
02-07-2024	Approved	Attorney Service	Charito, Tracie	64.70	0.00	1.00	64.70

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Inactive Included)
Group By Staff Member Group
Client - Project = 14000-00557 Nava v Temecula Valley Drywall (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Jonathan Nava</u> <u>14000-00557 Nava v Temecula Valley Drywall</u>							
Bosco Inv #10340587 Serve: Lorry Hales, an individual Summons; Complaint; Civil Case Cover Sheet; Certif cate of Counsel; Notice ofDepartment Assignment; Notice of Case Management Conference (To: Brian J. Mankin,Esq.); Notice of Case Management Conference (To: Jonathan Nava); Notice of CaseManagement Conference (To: Temecula Valley Drywall, Inc.); Notice of CaseManagement Conference (To: Lorry Hales); Notice of Case Management Conference(To: Douglas Misemer); ADR Court: Riverside County Superior Court - Riverside Historic Courthouse Completed on: 02/01/2024							
02-08-2024	Approved	Attorney Service	Charito, Tracie	19.30	0.00	1.00	19.30
Onelgal Order #22198751 - file Proofs of Service							
03-19-2024	Approved	E125 Mediation fees	Charito, Tracie	9,950.00	0.00	1.00	9,950.00
Signature Resolution Inv #PR31931 for 10/16/24 mediation w Judge Buckley (Ret.)							
03-27-2024	Approved	Attorney Service	Charito, Tracie	19.30	0.00	1.00	19.30
Onelgal Order #22511443 - file Joint Statement							
05-06-2024	Approved	Attorney Service	Charito, Tracie	19.30	0.00	1.00	19.30
Onelgal Order #22815015 - file Stip and Order to Cont CMC							
10-23-2024	Approved	Attorney Service	Charito, Tracie	42.64	0.00	1.00	42.64
Onelgal Order #23978291 - file Stip to Cont CMC and Set MPA							
10-24-2024	Approved	E119 Experts	Charito, Tracie	2,205.00	0.00	1.00	2,205.00
Berger Consulting Group Inv #12974							
11-13-2024	Approved	Attorney Service	Charito, Tracie	42.64	0.00	1.00	42.64
Onelgal Order #24113284 - file Stip and Order to File FAC							
11-22-2024	Approved	Attorney Service	Charito, Tracie	20.96	0.00	1.00	20.96
Onelgal Order #24172234 - file FAC							
01-14-2025	Approved	Attorney Service	Charito, Tracie	86.01	0.00	1.00	86.01
Onelgal Order #24492957 - file MPA							
02-07-2025	Approved	E112 Court fees	Charito, Tracie	13.00	0.00	1.00	13.00
Receipt for Riverside Superior Court - copy of signed PA order							
06-20-2025	Approved	Attorney Service	Charito, Tracie	150.00	0.00	1.00	150.00
Estimated cost to file MFA and supporting documents via Onelgal							
Project Total							14,491.68
Client Total							14,491.68
Grand Total							14,491.68

EXHIBIT “D”