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LEO TIDWELL EXCAVATING CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

FLAVIO RAMIREZ, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

LEO TIDWELL EXCAVATING
CORPORATION, a California corporation;
and DOES 1 through 100, inclusive,

Defendant.

CASE NO.: 24CECG01275

[Assigned for all purposes to Honorable
Kristi Culver Kapetan in Dept. 502]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: March 22, 2024

Trial Date: None Set

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Flavio Ramirez (“Plaintiff”) and defendant Leo Tidwell Excavating
3 Corporation (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as
4 “Parties,” or individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Defendant, captioned *Flavio Ramirez v. Leo Tidwell Excavating Corporation., et al.*, Case No.
8 24CECG01275, initiated on March 22, 2024, and pending in Superior Court of the State of
9 California, County of Fresno.

10 1.2. “Administrator” means Phoenix Class Action Administration Solutions (“Phoenix”), the
11 neutral entity the Parties have agreed to appoint to administer the Settlement.

12 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
13 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
14 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
15 Preliminary Approval of the Settlement.

16 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
17 classified as a non-exempt, hourly-paid employee who worked for Defendant during the PAGA
18 Period.

19 1.5. “Class” means all persons employed by Defendant in California and classified as a non-
20 exempt, hourly-paid employee who worked for Defendant during the Class Period.

21 1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,
22 P.C.

23 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
24 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
25 expenses, respectively, incurred to prosecute the Action.

26 1.8. “Class Data” means Class Member identifying information in Defendant’s custody,
27 possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3)
28 last known telephone number(s); (4) last known Social Security Number(s); and (5) the dates of

employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)). The Class Data shall be based on Defendant's payroll, personnel, and other business records.

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from March 22, 2020 to March 1, 2025.

1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of Fresno.

1.16. "Defendant" means named Defendant Leo Tidwell Excavating Corporation.

1.17. "Defense Counsel" means Nicholas A. Deming and Landon Sciacca of Gordon Rees Scully Mansukhani, LLP.

1.18. "Effective Date" means the later of: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the

Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final Approval.

1.22. “Gross Settlement Amount” means \$480,000.00 (Four Hundred Eighty Thousand Dollars and Zero Cents) which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and Administrator’s Expenses.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel

Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1.31. “PAGA Period” means the period from March 22, 2023 through the end of the Class Period.

1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

1.33. “PAGA Notice” means Plaintiff’s March 22, 2024 letter to Defendant and the LWDA, providing notice pursuant to Labor Code section 2699.3 subd. (a).

1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, \$35,000.00, allocated 25% to the Aggrieved Employees (\$8,750.00) and the 75% to the LWDA (\$26,250.00) in settlement of PAGA claims.

1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. “Plaintiff” means Flavio Ramirez the named plaintiff in the Action.

1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.38. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval and Approval of PAGA Settlement.

1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4 below.

1.41. “Released Parties” means: Defendant, its predecessors, successors, parent companies, related entities, subsidiaries, affiliates, investors, management companies, franchisees, owners,

attorneys, vendors, and assigns, and their directors, officers, members, investors, trustees, employees, agents, insurers, and re-insurers, whether in their individual or official capacities.

1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline has expired.

1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.45. “Workweek” means any week during which a Class Member worked for Defendant, for at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

2. RECITALS

2.1. On March 22, 2024, Plaintiff commenced this Action by filing a complaint against Defendant for: failure to pay overtime and minimum wages; failure to provide meal breaks, rest breaks, or compensation in lieu thereof; waiting time penalties; wage statement violations; failure to timely pay wages during employment; failure to indemnify; failure to pay interest on deposits; violation of Labor Code § 227.3; and unfair competition (“Action”).

2.2. On March 22, 2024, Plaintiff filed with the LWDA and served on Defendant a notice (the “PAGA Notice”) under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code violations.

2.3. On May 28, 2024, after sixty-five (65) days had passed since Plaintiff filed and served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor Code violations, Plaintiff filed a separate representative action in Fresno County Superior Court, Case

1 Number 24CECG02260, under the Labor Code Private Attorneys' General Act of 2004 seeking
2 civil penalties against Defendant for the Labor Code violations alleged in the PAGA Notice (the
3 "PAGA Action").

4 2.4. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

5 2.5. Prior to mediation Plaintiff obtained, through informal discovery: (a) time and payroll
6 records for 21% of Class Members through the date of mediation; (b) class data points, including
7 rates of pay; (c) wage and hour policy documents; and (d) all documents pertaining to Plaintiff
8 available to Defendant.

9 2.6. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in
10 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
11 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

12 2.7. On November 26, 2024, the Parties participated in an all-day mediation presided over by
13 Monique Ngo-Bonnici, Esquire, and through continuing negotiations with the aid of the
14 mediator, the Parties agreed to globally resolve all class and PAGA claims in the Action.

15 2.8. As part of this Agreement, the Parties further agree to stipulate to Plaintiff filing a First
16 Amended Complaint in the Action adding Plaintiff's claims alleged in the PAGA Action, and
17 thereafter, filing a request for dismissal of the PAGA Action without prejudice to effectively
18 consolidate the PAGA Action within the Action for the purpose of settlement approval. The
19 Parties further agree that Plaintiff's allegations will relate back to the filing date of his PAGA
20 Notice and Defendant will be estopped from making any argument that there is any adverse effect
21 of the statute of limitations caused by the dismissal of the PAGA Action to effectuate this
22 consolidation.

23 2.9. Defendant's Reasons for Settlement. Defendant recognizes that the defense of this
24 litigation will be protracted and expensive. Substantial amounts of time, energy, and resources
25 of Defendant has been and, unless this Settlement is made, will continue to be devoted to the
26 defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the
27 manner and upon the terms set forth in this Agreement to put to rest the Released Claims.

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1 2.10. Defendant's Denial of Wrongdoing. Defendant and the Released Parties deny that they
2 have engaged in any unlawful activity, have failed to comply with the law in any respect, have
3 any liability to anyone under the claims asserted in the Action, or that but for the Settlement a
4 class should be certified in the Action. This Agreement is entered into solely for the purpose of
5 compromising highly disputed claims. Nothing in this Agreement is intended or will be construed
6 as an admission of liability or wrongdoing by Defendant or the Released Parties. This Settlement
7 and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing
8 on, and will not be admissible in connection with, any litigation (other than solely in connection
9 with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall
10 be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiff, Class
11 Members, or any other person, and Defendant specifically disclaims any such liability or
12 wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law
13 in this matter or any other matter that a class action is appropriate. The Parties have entered into
14 this Settlement with the intention of avoiding further disputes and litigation with the attendant
15 inconvenience, expenses and risks. Defendant agrees to certification of this class solely for
16 purposes of this settlement. It is not an admission that class certification is proper. Should any
17 part of this settlement not be approved or be terminated, the settlement class (if certified) will be
18 decertified and the conditional agreement to class certification will be inadmissible and have no
19 effect on any future actions related to this litigation.

20 2.11. The Court has not granted class certification.

21 2.12. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any
22 other pending matter or action asserting claims that will be extinguished or affected by the
23 Settlement.

24 **3. MONETARY TERMS**

25 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below,
26 Defendant promise to pay \$480,000.00 as the Gross Settlement Amount, unless increased
27 pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll
28 taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation

1 to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in
2 Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement
3 Amount without asking or requiring Participating Class Members or Aggrieved Employees to
4 submit any claim as a condition of payment. None of the Gross Settlement Amount will revert
5 to Defendant.

6 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
7 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
8 in the Final Approval:

9 To Plaintiff: Class Representative Service Payment to Plaintiff of not more than
10 \$15,000.00 in addition to any Individual Class Payment and any Individual PAGA
11 Payment Plaintiff is entitled to receive as a Participating Class Member. Defendant will
12 not oppose Plaintiff's request for a Class Representative Service Payment that does not
13 exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
14 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
15 Representative Service Payments prior to the Final Approval Hearing. If the Court
16 approves a Class Representative Service Payment less than the amount requested, the
17 Administrator will retain the remainder in the Net Settlement Amount. The
18 Administrator will pay the Class Representative Service Payment using IRS Form 1099.
19 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
20 Representative Service Payment. The Parties expressly agree that the Court's approval
21 or denial of any request for a Class Representative Service Payment is not a material
22 condition to this agreement and is to be considered by the Court separately from the
23 fairness, reasonableness, adequacy, and good faith of the settlement. Any order or
24 proceeding relating to the application by Class Counsel of a Class Representative
25 Service Payment shall not operate to terminate or cancel this Agreement. To the extent
26 the Court awards less than the amount of the requested Class Representative Service
27 Payment amount, the consideration referenced above shall not be affected and the
28 requirement for and/or validity of an executed general release by the Class

Representative shall remain in force and effect. To the extent the Court awards less than the amount of the requested Class Representative Service Payment amount, any remaining amount will become part of the Net Settlement Amount to be distributed amongst Participating Class Members on a pro rata basis.

3.2.1. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this Agreement, is currently estimated to be \$168,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$30,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will endeavor to file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments. There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breach this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

1 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed
2 \$7,250.00 except for a showing of good cause and as approved by the Court. To the
3 extent the Administration Expenses are less or the Court approves payment less than
4 \$7,250.00, the Administrator will retain the remainder in the Net Settlement Amount.

5 3.2.3. To Each Participating Class Member: An Individual Class Payment calculated
6 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
7 by all Participating Class Members during the Class Period and (b) multiplying the result
8 by each Participating Class Member's Workweeks.

9 3.2.3.1. Tax Allocation of Individual Class Payments. 20% of each Participating
10 Class Member's Individual Class Payment will be allocated to settlement of
11 wage claims (the "Wage Portion"). The Wage Portions are subject to tax
12 withholding and will be reported on an IRS W-2 Form. The 80% of each
13 Participating Class Member's Individual Class Payment will be allocated to
14 settlement of claims for interest and penalties (the "Non-Wage Portion"). The
15 Non-Wage Portions are not subject to wage withholdings and will be reported
16 on IRS 1099 Forms. Participating Class Members assume full responsibility
17 and liability for any employee taxes owed on their Individual Class Payment.

18 3.2.3.2. Effect of Non-Participating Class Members on Calculation of Individual
19 Class Payments. Non-Participating Class Members will not receive any
20 Individual Class Payments. The Administrator will retain amounts equal to
21 their Individual Class Payments in the Net Settlement Amount for distribution
22 to Participating Class Members on a pro rata basis.

23 3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
24 \$35,000.00 to be paid from the Gross Settlement Amount, with 75% (\$26,250.00)
25 allocated to the LWDA PAGA Payment and 25% (\$8,750.00) allocated to the Individual
26 PAGA Payments.

27 3.2.4.1. The Administrator will calculate each Individual PAGA
28 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share

of PAGA Penalties \$8,750.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Workweeks. Based on a review of its records to date, Defendant estimates there are 113 Class Members who collectively worked a total of 13,748 Workweeks.

4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant' share of payroll taxes by transmitting the funds to the Administrator no later than fifteen (15) days after the Effective Date.

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1 4.4. Payments from the Gross Settlement Amount. Within 7 days after Defendant fully funds
2 the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
3 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
4 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
5 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
6 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
7 Service Payment shall not precede disbursement of Individual Class Payments, and the Individual
8 PAGA Payments.

9 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
10 Individual PAGA Payments and send them to the Class Members via First Class U.S.
11 Mail, postage prepaid. The face of each check shall prominently state the date (not less
12 than 180 days after the date of mailing) when the check will be voided. The
13 Administrator will cancel all checks not cashed by the void date. The Administrator
14 will send checks for Individual Settlement Payments to all Participating Class Members
15 (including those for whom Class Notice was returned undelivered). The Administrator
16 will send checks for Individual PAGA Payments to all Aggrieved Employees including
17 Non-Participating Class Members who qualify as Aggrieved Employees (including
18 those for whom Class Notice was returned undelivered). The Administrator may send
19 Participating Class Members a single check combining the Individual Class Payment
20 and the Individual PAGA Payment. Before mailing any checks, the Settlement
21 Administrator must update the recipients' mailing addresses using the National Change
22 of Address Database.

23 4.4.2. The Administrator must conduct a Class Member Address Search for all other
24 Class Members whose checks are returned undelivered without USPS forwarding
25 address. Within 7 days of receiving a returned check the Administrator must re-mail
26 checks to the USPS forwarding address provided or to an address ascertained through
27 the Class Member Address Search. The Administrator need not take further steps to
28 deliver checks to Class Members whose re-mailed checks are returned as undelivered.

1 The Administrator shall promptly send a replacement check to any Class Member whose
2 original check was lost or misplaced, requested by the Class Member prior to the void
3 date.

4 4.4.3. For any Class Member whose Individual Class Payment check or Individual
5 PAGA Payment check is uncashed and cancelled after the void date, the Administrator
6 shall transmit the funds represented by such checks to the *cy pres* recipient, Legal Aid
7 at Work, for use in Los Angeles County.

8 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
9 not obligate Defendant to confer any additional benefits or make any additional
10 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
11 specified in this Agreement.

12 **5. RELEASE OF CLAIMS**

13 Effective upon entry of Judgment, the Order granting Final Approval of this Settlement,
14 and on the date when Defendant fully fund the entire Gross Settlement Amount and funds all
15 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,
16 Class Members, and Class Counsel will release claims against all Released Parties as follows:

17 5.1. Plaintiff's Release. Plaintiff and his or her respective former and present spouses,
18 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
19 and discharge Released Parties from all claims, demands, rights, liabilities and causes of action
20 of every nature and description whatsoever, known or unknown, asserted or that might have been
21 asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation
22 arising out of, relating to, or in connection with any act or omission by or on the part of any of
23 the Released Party committed or omitted prior to the execution hereof. ("Plaintiff's Release.")
24 Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any
25 claims for vested benefits, unemployment benefits, disability benefits, social security benefits,
26 workers' compensation benefits that arose at any time, or based on occurrences outside the Class
27 Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in
28 addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless,

that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release only, Plaintiff stipulates and agrees that he is not due and owed any additional monies and expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of section 1542 of the California Civil Code, or any other provision under federal or state law, which provides:

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

5.2. Release by Participating Class Members: For the duration of the Class Period, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were asserted in the Action, or that arise from or reasonably could have been asserted, based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including, but not limited to: Labor Code §§ 200, 201, 202, 203, 204, 226, 226.7, 227.3, 245, 510, 512, 1194, 1197, 2802, and the related IWC Wage Order s and Business & Professions Code §§ 17200, et seq., claims based on alleged violations of these Labor Code and Wage Order provisions, and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) waiting time penalties; (6) failure to provide accurate itemized wage statements; (7) failure to timely pay employees upon separation or discharge; (8) failure to indemnify; (9) failure to pay interest on deposits; (10) violation of Labor Code section 227.3;

(11) all related violations of California’s unfair competition law; and (12) interest, fees, and costs (“Class Released Claims”). The enumeration of these specific statutes shall neither enlarge nor narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in any Complaint on file in the Action.

5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

5.4. LWDA’s PAGA Release: By and through Plaintiff, acting as an agent and proxy of the State of California and the LWDA, for the duration of the PAGA Period, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 227.3, 245, 510, 512, 1194, 1197, 2802, and the related IWC Wage Orders.

6. MOTION FOR PRELIMINARY APPROVAL

The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1. Plaintiff’s Responsibilities. Plaintiff will prepare and to deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting

1 to its willingness to serve; competency; operative procedures for protecting the security of Class
2 Data; amounts of insurance coverage for any data breach, defalcation of funds or other
3 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
4 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
5 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
6 and disclosing all facts relevant to any actual or potential conflicts of interest with Class
7 Members; (v) a signed declaration from each Class Counsel firm attesting to its competency to
8 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA
9 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
10 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
11 subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class
12 Members and the Administrator.

13 6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
14 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full
15 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
16 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary
17 Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the
18 Administrator.

19 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
20 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
21 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
22 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
23 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
24 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
25 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
26 Court's concerns.

27 6.4. At the same time that Plaintiff files his Motion for Preliminary Approval, Plaintiff shall
28 send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA.

1 6.5. At the Preliminary Approval hearing, Plaintiff will support the granting of the motion,
2 and submit a proposed order granting conditional certification of the Class and Preliminary
3 Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement
4 Administrator; approving the Class Notice; and setting the Final Approval hearing.

5 6.6. Effect of Denial of Preliminary Approval. Should the Court decline to conditionally
6 certify the Class or to Preliminarily Approve all material aspects of the Settlement, and if the
7 Parties are unable to fix the perceived defects in the Settlement preventing preliminary approval
8 after good faith efforts to do so, the Settlement Agreement will be null and void, and the Parties
9 will have no further obligations under it. Provided, however, that the amounts of the Individual
10 PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class
11 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration
12 Expenses Payment shall be determined by the Court, and the Court's determination on these
13 amounts shall be final and binding, and that the Court's approval or denial of any amount
14 requested for these items are not conditions of this Settlement Agreement, and are to be
15 considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement
16 Agreement. Any order or proceeding relating to an application for the Individual PAGA
17 Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel
18 Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses
19 Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this
20 Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court
21 to award less than the requested Individual PAGA Payments, the LWDA PAGA Payment, Class
22 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
23 Expenses Payment, and Administration Expenses Payment.

24 **7. SETTLEMENT ADMINISTRATION**

25 7.1. Selection of Administrator. The Parties have jointly selected Phoenix to serve as the
26 Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by
27 this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange
28 for payment of Administration Expenses. The Parties and their Counsel represent that they have

no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1. Any interest that accrues on the GSA sums paid into the QSF prior to distribution by the Administrator will become part of the Net Settlement Amount for distribution to Participating Class Members.

7.4. Notice to Class Members

7.4.1. No later than five (5) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3. Not later than five (5) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address

1 Search, and re-mail the Class Notice to the most current address obtained. The
2 Administrator has no obligation to make further attempts to locate or send Class Notice
3 to Class Members whose Class Notice is returned by the USPS a second time.

4 7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks
5 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
6 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
7 notice is re-mailed. The Administrator will inform the Class Member of the extended
8 deadline with the re-mailed Class Notice.

9 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
10 discovers any persons who believe they should have been included in the Class Data
11 and should have received Class Notice, the Parties will expeditiously meet and confer,
12 and in good faith, in an effort to agree on whether to include them as Class Members.
13 If the Parties agree, such persons will be Class Members entitled to the same rights as
14 other Class Members, and the Administrator will send, via email or overnight delivery,
15 a Class Notice requiring them to exercise options under this Agreement not later than
16 15 days after receipt of Class Notice, or the deadline dates in the Class Notice, which
17 ever are later.

18 7.5. Requests for Exclusion (Opt-Outs).

19 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
20 must send the Administrator, by mail, a signed written Request for Exclusion not later
21 than 45 days after the Administrator mails the Class Notice (plus an additional 15 days
22 for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
23 from a Class Member or his/her representative that reasonably communicates the Class
24 Member's election to be excluded from the Settlement and includes the Class Member's
25 name, address and email address or telephone number. To be valid, a Request for
26 Exclusion must be timely postmarked by the Response Deadline.

27 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
28 fails to contain all the information specified in the Class Notice. The Administrator

1 shall accept any Request for Exclusion as valid if the Administrator can reasonably
2 ascertain the identity of the person as a Class Member and the Class Member's desire
3 to be excluded. The Administrator's determination shall be final and not appealable or
4 otherwise susceptible to challenge. If the Administrator has reason to question the
5 authenticity of a Request for Exclusion, the Administrator may demand additional proof
6 of the Class Member's identity. The Administrator's determination of authenticity shall
7 be final and not appealable or otherwise susceptible to challenge.

8 7.5.3. Every Class Member who does not submit a timely and valid Request for
9 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
10 to all benefits and bound by all terms and conditions of the Settlement, including the
11 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,
12 regardless whether the Participating Class Member actually receives the Class Notice
13 or objects to the Settlement.

14 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
15 Non-Participating Class Member and shall not receive an Individual Class Payment or
16 have the right to object to the class action components of the Settlement. Because future
17 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
18 Participating Class Members who are Aggrieved Employees are deemed to release the
19 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual
20 PAGA Payment.

21 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
22 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose
23 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods
24 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge
25 the allocation by communicating with the Administrator via mail. The Administrator must
26 encourage the challenging Class Member to submit supporting documentation. In the absence
27 of any contrary documentation, the Administrator is entitled to presume that the Workweeks
28 contained in the Class Notice are correct so long as they are consistent with the Class Data. The

1 Administrator's determination of each Class Member's allocation of Workweeks and/or Pay
2 Periods shall be final and not appealable or otherwise susceptible to challenge. The
3 Administrator shall promptly provide copies of all challenges to calculation of Workweeks
4 and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination
5 the challenges.

6 7.7. Objections to Settlement

7 7.7.1. Only Participating Class Members may object to the class action components of
8 the Settlement and/or this Agreement, including contesting the fairness of the
9 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
10 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

11 7.7.2. Participating Class Members may send written objections to the Administrator, by
12 mail. In the alternative, Participating Class Members may appear in Court (or hire an
13 attorney to appear in Court) to present verbal objections at the Final Approval Hearing.
14 A Participating Class Member who elects to send a written objection to the
15 Administrator must do so not later than 45 days after the Administrator's mailing of the
16 Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-
17 mailed).

18 7.7.3. Non-Participating Class Members have no right to object to any of the class action
19 components of the Settlement.

20 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
21 performed or observed by the Administrator contained in this Agreement or otherwise.

22 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
23 and use an internet website to post information of interest to Class Members including
24 the date, time and location for the Final Approval Hearing and copies of the Settlement
25 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
26 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
27 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,
28 the Final Approval and the Judgment. The Administrator will also maintain and monitor

an email address and a toll-free telephone number to receive Class Member calls and emails.

7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5. Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a declaration suitable

1 for filing in Court attesting to its due diligence and compliance with all of its obligations
2 under this Agreement, including, but not limited to, its mailing of Class Notice, the
3 Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to
4 locate Class Members, the total number of Requests for Exclusion from Settlement it
5 received (both valid or invalid), the number of written objections and attach the
6 Exclusion List. The Administrator will supplement its declaration as needed or
7 requested by the Parties and/or the Court. Class Counsel is responsible for filing the
8 Administrator's declaration(s) in Court.

9 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
10 disburses all funds in the Gross Settlement Amount, the Administrator will provide
11 Class Counsel and Defense Counsel with a final report detailing its disbursements by
12 employee identification number only of all payments made under this Agreement. At
13 least fifteen (15) days before any deadline set by the Court, the Administrator will
14 prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable
15 for filing in Court attesting to its disbursement of all payments required under this
16 Agreement. Class Counsel is responsible for filing the Administrator's declaration in
17 Court.

18 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

19 Based on its records, Defendant estimates there are 113 Class Members who collectively
20 worked a total of 13,748 Workweeks.

21 8.1. Increase in Workweeks. Defendant represents that there are no more than 13,748
22 Workweeks worked during the Class Period. In the event the number of Workweeks worked by
23 Class Members during the Class Period increases by more than 10%, or 1,375 Workweeks, then
24 the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of
25 15,123 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated
26 by dividing the originally agreed-upon Gross Settlement Amount (\$480,000.00) by 13,748,
27 which amounts to a Workweek Value of \$34.91. Thus, for example, should there be 15,500
28 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by

1 \$13,161.07 ((15,500 Workweeks – 15,123 Workweeks) x \$34.91 per Workweek). Alternatively,
2 at its option, Defendant may agree to shorten the Class Period to the date on which 15,122
3 Workweeks are met.

4 **9. DEFENDANT’S RIGHT TO WITHDRAW**

5 If Class Members representing more than 10 percent of the total Workweeks in the Class
6 Period submit exclusion forms of any kind, Defendant may exercise the option to withdraw from
7 the settlement and this Agreement is entirely void. If Defendant exercises this option, they must
8 inform Plaintiff’s counsel in writing within 14 days of the close of the opt out period and pay the
9 Administrator costs.

10 **10. MOTION FOR FINAL APPROVAL**

11 Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will
12 file in Court, a motion for final approval of the Settlement that includes a request for approval of
13 the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order
14 and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide
15 drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class
16 Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve
17 any disagreements concerning the Motion for Final Approval.

18 10.1. Response to Objections. Each Party retains the right to respond to any objection raised
19 by a Participating Class Member, including the right to file responsive documents in Court no
20 later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
21 by the Court.

22 10.2. Denial or Appeal of Final Approval. If the Court does not grant Final Approval of the
23 Settlement, or if the Court’s Final Approval of the Settlement is reversed or materially modified
24 on appellate review, and if the Parties are unable to fix the perceived defects in the Settlement
25 preventing final approval after good faith efforts to do so, then this Settlement will become null
26 and void. If that occurs, the Parties will have no further obligations under the Settlement,
27 including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that
28 otherwise would have been owed under this Agreement. Further, should this occur, the Parties

1 agree they shall be equally responsible for the Settlement Administrator's Administration
2 Expenses through that date.

3 10.3. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
4 Approval on any material change to the Settlement (including, but not limited to, the scope of
5 release to be granted by Class Members), the Parties will expeditiously work together in good
6 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
7 Approval. The Court's decision to award less than the amounts requested for the Class
8 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
9 Expenses Payment, Administrator Expenses Payment and/or individual claims of plaintiff for
10 alleged wrongful termination, shall not constitute a material modification to the Agreement
11 within the meaning of this paragraph.

12 10.4. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
13 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
14 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
15 and (iii) addressing such post-Judgment matters as are permitted by law.

16 10.5. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
17 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
18 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
19 respective counsel, and all Participating Class Members who did not object to the Settlement as
20 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
21 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
22 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
23 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
24 Parties' obligations to perform under this Agreement will be suspended until such time as the
25 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
26 the amount of the Net Settlement Amount.

27 10.6. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
28 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material

modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged

11. AMENDED JUDGMENT

If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS

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

12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement

1 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
2 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
3 or indirectly, specifically or generally, to any person, corporation, association, government
4 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
5 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
6 extent necessary to report income to appropriate taxing authorities; (4) in response to a court
7 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
8 government agency. Each Party agrees to immediately notify each other Party of any judicial or
9 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant
10 and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or
11 other communication, before the filing of the Motion for Preliminary Approval, any with third
12 party regarding this Agreement or the matters giving rise to this Agreement except to respond
13 only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class
14 Counsel's communications with Class Members in accordance with Class Counsel's ethical
15 obligations owed to Class Members.

16 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
17 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
18 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
19 ability to communicate with Class Members in accordance with Class Counsel's ethical
20 obligations owed to Class Members.

21 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
22 together with its attached exhibits shall constitute the entire agreement between the Parties
23 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
24 inducements made to or by any Party.

25 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
26 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
27 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
28

1 its terms, and to execute any other documents reasonably required to effectuate the terms of this
2 Agreement including any amendments to this Agreement.

3 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
4 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
5 Settlement Agreement, submitting supplemental evidence and supplementing points and
6 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
7 or content of any document necessary to implement the Settlement, or on any modification of the
8 Agreement that may become necessary to implement the Settlement, the Parties will seek the
9 assistance of a mediator and/or the Court for resolution.

10 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not
11 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
12 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
13 action, or right released and discharged by the Party in this Settlement.

14 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
15 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
16 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
17 Part 10, as amended) or otherwise.

18 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
19 modified, changed, or waived only by an express written instrument signed or agreed to by all
20 Parties or their representatives, and approved by the Court. Plaintiff and Defendant expressly
21 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any
22 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any
23 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on
24 behalf of the Parties once fully executed, which includes, but is not limited to, authorization of
25 the use of signatures previously provided by the Parties.

26 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
27 the benefit of, the successors of each of the Parties.

28 ///

1 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
2 governed by and interpreted according to the internal laws of the state of California, without
3 regard to conflict of law principles.

4 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
5 this Agreement. This Agreement will not be construed against any Party on the basis that the
6 Party was the drafter or participated in the drafting

7 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
8 during Action and in this Agreement relating to the confidentiality of information shall survive
9 the execution of this Agreement

10 12.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
11 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant
12 in connection with the mediation, other settlement negotiations, or in connection with the
13 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not
14 be used in any way that violates any existing contractual agreement, statute, or rule of court.

15 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
16 inserted for convenience of reference only and does not constitute a part of this Agreement.

17 12.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
18 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
19 weekend or federal legal holiday, such date or deadline shall be on the first business day
20 thereafter.

21 12.17. Notice. All notices, demands or other communications between the Parties in
22 connection with this Agreement will be in writing and deemed to have been duly given as of
23 the third business day after mailing by United States mail, or the day sent by email or
24 messenger, addressed as follows:

25 ///

26 ///

27 ///

28 ///

To Plaintiff:

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan (SBN 287811)
david@tomorrowlaw.com
Vedang J. Patel (SBN 328647)
vedang@tomorrowlaw.com
Brandon Chang (SBN 316197)
brandon@tomorrowlaw.com
1460 Westwood Boulevard
Los Angeles, California 90024
Tel: (310) 438-5555; Fax: (310) 300-1705

To Defendant:

Nicholas A. Deming
Landon Sciacca
Gordon Rees Scully Mansukhani, LLP
315 Pacific Avenue
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054
ndeming@grsm.com
lsciacca@grsm.com

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

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

12.20. Severability. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant' Counsel

1 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
2 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
3 Agreement.

4 **IT IS SO AGREED:**

6 Dated: 25/05/2025, 2025

PLAINTIFF

7 
8 Flavio Ramirez (May 25, 2025 08:22 PDT)

Flavio Ramirez

10 Dated: 6/18, 2025

LEO TIDWELL EXCAVATING
CORPORATION

11 
12

13 By: Leo Tidwell, Jr.

14 Title: Owner

15 **APPROVED AS TO FORM AND CONTENT**

16 BIBIYAN LAW GROUP, P.C.

17 Dated: May 29, 2025

18 By: Vedang J. Patel

David D. Bibiyan

Vedang J. Patel

19 Attorneys for Plaintiff and the Settlement Class

20 GORDON & REES SCULLY
21 MANSUKHANI, LLP

22 Dated: June 18, 2025

23 By: 

Nicholas A. Deming

Landon Sciacca

24 Attorneys for Defendant

25 Leo Tidwell Excavating Corporation

EXHIBIT A

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1 **COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND**
2 **HEARING DATE FOR FINAL COURT APPROVAL**

3 *Flavio Ramirez v. Leo Tidwell Excavating Corporation., et al., Case No. 24CECG01275*

4 *The Superior Court for the State of California authorized this Notice. Read it Carefully!*
5 *It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.*

6 **You may be eligible to receive money** from an employee class action lawsuit
7 ("Action") against Leo Tidwell Excavating Corporation ("Defendant" is used herein as a
8 placeholder) for alleged wage and hour violations. The Action was filed by a former employee
9 Flavio Ramirez ("Plaintiff") and seeks payment of (1) back wages and other relief for a class of
10 hourly employees ("Class Members") who worked for Defendant during the Class Period
11 (March 22, 2020 to March 1, 2025); and (2) penalties under the California Private Attorneys
12 General Act ("PAGA") for all hourly employees who worked for Defendant during the PAGA
13 Period (March 22, 2023 to March 1, 2025) ("Aggrieved Employees").

14 The proposed Settlement has two main parts: (1) a Class Settlement requiring
15 Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant
16 to fund individual PAGA Payments and pay penalties to the California Labor and Workforce
17 Development Agency ("LWDA").

18 Based on Defendant's records, and the Parties' current assumptions, **your Individual**
19 **Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA**
20 **Payment is estimated to be \$_____.** The actual amount you may receive likely will be
21 different and will depend on a number of factors. (If no amount is stated for your Individual
22 PAGA Payment, then according to Defendant's records you are not eligible for an Individual
23 PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

24 The above estimates are based on Defendant's records showing that **you worked**
25 **_____ workweeks** during the Class Period and **you worked _____ pay periods** during
26 the PAGA Period. If you believe that you worked more workweeks during either period, you
27 can submit a challenge by the deadline date. See Section 4 of this Notice.

28 The Court has already preliminarily approved the proposed Settlement and approved
this Notice. The Court has not yet decided whether to grant final approval. Your legal rights
are affected whether you act or not act. Read this notice carefully. You will be deemed to have
carefully read and understood it. At the Final Approval Hearing, the Court will decide whether
to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and
Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment
that requires Defendant to make payments under the Settlement and requires Class Members
and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have
two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed
Settlement and be eligible for an Individual Class Payment and/or an Individual
PAGA Payment. As a Participating Class Member, though, you will give up your

right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
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You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement.
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The Opt-out Deadline is _____	See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
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Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
Written Objections Must be Submitted by _____	

You Can Participate in the _____ Final Approval Hearing

The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

You Can Challenge the Calculation of Your Workweeks/Pay Periods

The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

Written Challenges Must be Submitted by _____

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C. ("Class Counsel.")

Defendant has denied and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiff's claims. By agreeing to settle, Defendant is not admitting guilt, wrongdoing, or liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims. Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court

preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

A. Defendant Will Pay \$480,000 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 15 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

B. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- i. Up to \$168,000 (35% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$30,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without any compensation or payment.
- ii. Up to \$15,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- iii. Up to \$7,250.00 to the Administrator for services administering the Settlement.
- iv. Up to \$35,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

C. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable

wages (“Wage Portion”) and 80% to e.g., interest, etc. (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. (Defendant will separately pay employer payroll taxes it owes on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

E. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, email address or telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

G. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

H. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

I. Participating Class Members’ Release. Effective upon entry of Judgment, the Order granting Final Approval of the Settlement, and on the date when Defendant fully funds the entire Gross Settlement Amount and

1 funds all employer payroll taxes owed on the Wage Portion of the Individual Class
2 Payments, for the duration of the Class Period, all Participating Class Members, on behalf
3 of themselves and their respective former and present representatives, agents, attorneys,
4 heirs, administrators, successors, and assigns, release Defendant, its predecessors,
5 successors, parent companies, related entities, subsidiaries, affiliates, investors,
6 management companies, franchisees, owners, attorneys, vendors, and assigns, and their
7 directors, officers, members, investors, trustees, employees, agents, insurers, and re-
8 insurers, whether in their individual or official capacities (“Released Parties”) from all
9 claims that were asserted in the Action, or that arise from or reasonably could have been
10 asserted, based on any of the facts, circumstances, transactions, events, occurrences, acts,
11 disclosures, statements, omissions or failures to act alleged in Plaintiff’s Complaint,
12 regardless of whether such claims arise under federal, state and/or local law, statute,
13 ordinance, regulation, common law, or other source of law, including, but not limited to:
14 Labor Code §§ 200, 201, 202, 203, 204, 226, 226.7, 227.3, 245, 510, 512, 1194, 1197,
15 2802, and the related IWC Wage Order s and Business & Professions Code §§ 17200, et
16 seq., claims based on alleged violations of these Labor Code and Wage Order provisions,
17 and all other claims, such as those under the California Labor Code, Wage Orders,
18 regulations, and/or other provisions of law, that could have been pleaded based on the
19 facts asserted in the Action, including: (1) failure to pay overtime wages; (2) failure to
20 pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest
21 breaks; (5) waiting time penalties; (6) failure to provide accurate itemized wage
22 statements; (7) failure to timely pay employees upon separation or discharge; (8) failure
23 to indemnify; (9) failure to pay interest on deposits; (10) violation of Labor Code section
24 227.3; (11) all related violations of California’s unfair competition law; and (12) interest,
25 fees, and costs (“Class Released Claims”). The enumeration of these specific statutes
26 shall neither enlarge nor narrow the scope of res judicata based on the claims that were
27 asserted in the Action or could have been asserted in the Action based on the facts and
28 circumstances alleged in any Complaint on file in the Action.

17 J. LWDA’s PAGA Release.

18 By and through Plaintiff, acting as an agent and proxy of the State of California and the
19 LWDA, for the duration of the PAGA Period, all Aggrieved Employees are deemed to
20 release, on behalf of themselves and their respective former and present representatives,
21 agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties
22 from all claims for PAGA penalties that were alleged, or reasonably could have been
23 alleged, based on the facts stated in the Operative Complaint and the PAGA Notice,
24 including Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 227.3, 245, 510,
25 512, 1194, 1197, 2802, and the related IWC Wage Orders.

24 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

25 A. Individual Class Payments. The Administrator will calculate Individual Class Payments
26 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
27 by all Participating Class Members, and (b) multiplying the result by the number of
28 Workweeks worked by each individual Participating Class Member.

B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
Payments by (a) dividing \$XXXXX by the total number of PAGA Pay Periods worked

by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.

C. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Court has the power to make the final determination on challenges.

5. HOW WILL I GET PAID?

A. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member who is also an Aggrieved Employee).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, email address or telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as Ramirez v. Leo Tidwell Excavating Corp., et al., and include your identifying information (full name, address, email address or telephone number, and approximate dates of employment for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant is asking the Court to approve. At least 16 business days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) _____ or the Court's website

<https://publicportal.fresno.courts.ca.gov/FRESNOPORTAL/>

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and include any facts or legal authority that would support your objection. Make sure you identify the Action as Ramirez v. Leo Tidwell Excavating Corp., et al. and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Department 502 of the Fresno Superior Court, located at 1130 O St, Fresno, CA 93721. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making any decisions. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity) _____'s website at _____ (url) _____.

1 You can also telephone or send an email to Class Counsel or the Administrator using the
2 contact information listed below or consult the Superior Court website by going to
3 (<https://publicportal.fresno.courts.ca.gov/FRESNOPORTAL/>) and entering the Case
4 Number for the Action, Case No. 24CECG01275. You can also make an appointment to
5 personally review court documents in the Clerk's Office at the B.F. Sisk Courthouse by
6 calling (559) 457-2000.

7 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION**
8 **ABOUT THE SETTLEMENT.**

9 Class Counsel:

10 BIBIYAN LAW GROUP, P.C.

11 David D. Bibiyan (SBN 287811)

12 *david@tomorrowlaw.com*

13 Vedang J. Patel (SBN 328647)

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15 1460 Westwood Boulevard

16 Los Angeles, California 90024

17 Tel: (310) 438-5555; Fax: (310) 300-1705

18 Attorneys for Defendant:

19 GORDON REES SCULLY MANSUKHANI

20 Nicholas Deming, Esq.

21 Landon Sciacca Esq.

22 315 Pacific Avenue, San Francisco, CA 94111

23 Telephone: (415) 986-5900

24 Settlement Administrator:

25 Name of Company:

26 Email Address:

27 Mailing Address:

28 Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund https://www.sco.ca.gov/Files-UPD/guide_upd_claiming.pdf for instructions on how to retrieve the funds

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.