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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA**

ELMER HERCULES, an individual, on behalf
of himself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

PACIFIC STATES INDUSTRIES, INC., a
California Corporation; and DOES 1 TO 50,

Defendants.

Case No.: 24CV03671

**Settlement Agreement and Release of Class
and PAGA Action**

LITTLER MENDELSON, P.C.

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Attorneys for Defendant Pacific States Industries, Inc.

SETTLEMENT AGREEMENT AND RELEASE OF CLASS AND PAGA ACTION

This Settlement Agreement and Release of Class and PAGA Action (“Settlement Agreement”) is made and entered into by: **(1)** Plaintiff Elmer Hercules (“Plaintiff”), individually and in his representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and **(2)** Defendant Pacific States Industries, Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, if the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

1.1. ACTION

“Action” shall mean the following civil action: *Elmer Hercules v. Pacific States Industries, Inc.*, case number 24CV03671, currently pending before the Superior Court of the State of California for the County of Sonoma.

1.2. ADMINISTRATIVE EXPENSES

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator: Simpluris, Inc., which are estimated not to exceed \$8,000.00.

1.3. APPLICABLE WAGE ORDER

“Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case, including IWC Wage Order 1-2001 and others that may be applicable. (Cal. Code of Regs., tit. 8, § 11010.)

1 **1.4. CLAIMS**

2 “Claims” shall mean of all claims that were alleged, or reasonably could have been alleged,
3 based upon the facts that were alleged in the letter submitted by Plaintiff to the Labor Workforce
4 Development Agency or in any complaint filed in the Action accrued during the Class Period.

5 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

6 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
7 attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class
8 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e.,
9 \$104,166.67), as approved by the Court, and the award of costs and expenses shall be up to an
10 additional \$20,000.00. If the Escalator Provision described below is triggered so as to increase the
11 Gross Settlement Amount, the Parties agree that the fee portion of the Class Attorney Fees and
12 Expenses will increase proportionally such that the total amount of attorneys’ fees remains one-third
13 of the Gross Settlement Amount *after* the upward adjustment required by the Escalator Provision is
14 implemented.

15 **1.6. CLASS COUNSEL**

16 “Class Counsel” shall mean Jonathan Melmed, Kyle D. Smith, and Jaqueline Antillón of
17 Melmed Law Group P.C.

18 **1.7. CLASS MEMBER**

19 “Class Member” shall mean any person who is a prospective member of the Settlement Class,
20 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-
21 in-interest.

22 **1.8. CLASS NOTICE**

23 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
24 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
25 Class Members along with the Share Form.

1.9. CLASS PARTICIPANTS

“Class Participants” shall mean all Class Members who do not timely request exclusion from the Class Settlement.

1.10. CLASS PERIOD

“Class Period” shall mean the period from May 18, 2023, through May 28, 2025, which is not covered by the prior class action settlement in *Valente Velasco Jimenez v. Pacific States Industries, Incorporated* (“Jimenez Action”), Sonoma Superior Court, Case No. SCV- 270920.

1.11. CLASS REPRESENTATIVE

“Class Representative” shall mean Plaintiff Elmer Hercules.

1.12. CLASS SETTLEMENT

“Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is subject to Court approval.

1.13. COMPLAINT

“Complaint” shall mean the currently-operative complaint in the Action.

1.14. COURT

“Court” shall mean the Superior Court of the State of California for the County of Sonoma.

1.15. DEFENDANT

“Defendant” shall mean Defendant Pacific States Industries, Inc.

1.16. DEFENSE COUNSEL

“Defense Counsel” shall mean Alka Ramchandani-Raj and Nicholas Gioiello of Littler Mendelson, P.C.

1.17. EFFECTIVE DATE

“Effective Date” shall mean the later of the following events: five (5) calendar days after the period for filing any appeal, writ, or other appellate proceeding opposing Final Approval and judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed, *i.e.*, 65 days from the date the court grants final approval and enters judgment; or (b) if any appeal, writ, or other appellate proceeding opposing Final Approval has been filed within that timeframe, five (5) business days after

any appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief. Defendant will provide the Gross Settlement Amount within 14 calendar days of the Effective Date. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will make all payments to the Class.

1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING

"Employee's Taxes and Required Withholding" shall mean the employee's share of any and all applicable federal, state, or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement Amount that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld from and paid out of the Individual Settlement Amounts paid from the Net Settlement Amount.

1.19. EMPLOYER'S TAXES

"Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g., Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages. The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross Settlement Amount or Net Settlement Amount.

1.20. FINAL APPROVAL AND FAIRNESS HEARING

"Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

1.21. GROSS SETTLEMENT AMOUNT

"Gross Settlement Amount" is the agreed upon non-reversionary settlement amount totaling \$312,500.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case, inclusive of the Administrative Expenses, the Employee's Taxes and Required Withholdings, the Class Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendant shall separately pay its share of the Employer's Taxes in addition to the Gross Settlement Amount on the portion of each Individual Settlement Amount allocated as wages.

1.22. HEARING ON PRELIMINARY APPROVAL

“Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary approval of the Class Settlement.

1.23. INCENTIVE AWARD

“Incentive Award” shall mean any additional monetary payment provided to the Class Representative for his efforts and risks on behalf of the Settlement Class in this Action.

1.24. INDIVIDUAL SETTLEMENT AMOUNT

“Individual Settlement Amount” shall mean the amount which is ultimately distributed to each Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement Amount does not include any portion of the PAGA Payment.

1.25. NET SETTLEMENT AMOUNT

“Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative Expenses; Class Counsel’s Fees and Expenses; 65% of the share of the Gross Settlement Amount allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”), codified at Labor Code sections 2698 through 2699.8, which are payable to the California Labor and Workforce Development Agency (“LWDA”); and Plaintiff’s Incentive Award.

1.26. OPT OUT

“Opt Out” shall refer to the process of submitting a timely and valid request for exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

1.27. OPT-OUTS

“Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

1.28. PAGA PAYMENT

“PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$31,250.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699

and is to be distributed as follows: sixty-five percent (65%) (i.e., \$20,312.50) to the LWDA and thirty-five percent (35%) (i.e., \$10,937.50) to the PAGA Settlement Class. Class Counsel shall give timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699.

1.29. PAGA PERIOD

“PAGA Period” shall mean the period from May 18, 2023, through May 28, 2025 , which is not covered by the prior PAGA settlement in *Valente Velasco Jimenez v. Pacific States Industries, Incorporated* (“Jimenez Action”), Sonoma Superior Court, Case No. SCV- 270920.

1.30. PAGA SETTLEMENT CLASS

“PAGA Settlement Class” shall mean all individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period. Defendant represents that, as of the date of mediation, the PAGA Settlement Class consists of approximately 420 employees that worked a total of approximately 15,560 pay periods during the PAGA Period.

1.31. PARTIES

“Parties” shall mean Plaintiff and Defendant.

1.32. PLAINTIFF

“Plaintiff” shall mean Plaintiff Elmer Hercules.

1.33. PRELIMINARY APPROVAL DATE

“Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Settlement Agreement.

1.34. RELEASED CLAIMS

“Released Claims” shall mean those claims arising out of, relating to, or which reasonably could have been alleged based upon the allegations set forth in the Complaint and/or PAGA notice to the LWDA, which arose during the Class Period, including the following claims:

1. minimum wage violations, including regular rate of pay violations (Wage Order No. 1; Labor Code §§ 204, 218.5, 1194, 1194(a), 1194.2, 1194.2(a), 1197, 1197.1, 1197.1(a), 1198, 1199; Code of Civil Procedure § 1021.5; Cal. Code of Regs., tit. 8, § 11010); failure to pay all overtime wages, including regular rate of pay violations (Wage Order

No. 1; Labor Code §§ 204, 510, 510(a), 1194, 1199; Code of Civil Procedure § 1021.5; and Cal. Code of Regs., tit. 8, § 11010); rest break violations, which includes the failure to pay any premiums at the regular rate of pay (Wage Order No. 1; Labor Code §§ 226.7, 226.7(b), 226.7(c); and Cal. Code of Regs., tit. 8, § 11010); meal period violations, which includes the failure to pay any premiums at the regular rate of pay (Wage Order No. 1; Labor Code §§ 226.7, 226.7(b), 226.7(c), 512, 512(a); Civil Code §§ 3287(b), 3289; and Cal. Code of Regs., tit. 8, § 11010); failure to maintain accurate employment records (Labor Code §§ 226, 226(a), 226.3, 1174(d), 1174.5; failure to timely pay wages during employment (Labor Code §§ 200, 203, 204, 210, 210(a), 216, 218, 218.5); failure to pay all wages earned and unpaid separation (i.e., waiting time penalties) (Labor Code §§ 201, 202, 203 and DLSE Manual, § 4.3.4; failure to indemnify all necessary business expenditures, including, but not limited to cell phone and mileage (Labor Code §§ 2802, 2802(b), 2802(c), 2804); failure to provide accurate itemized wage statements (i.e., wage statement violations) (Labor Code §§ 226, 226(a), 226(e)); regular rate of pay (Labor Code §§ 226.7, 226.7(c), 510, 510(a)); unfair competition or unlawful business practices (Bus. & Prof. Code § 17200 et seq. and Common Law); claims for civil penalties pursuant to California's Private Attorneys General Act of 2004 ("PAGA", Lab. Code § 2698 et seq.); or premiums in connection with any of the preceding claims, as well as any claims under the California Labor Code, California Industrial Welfare Commission's Wage Orders, or the California Code of Regulations, which were alleged or which could have been alleged under the same or similar facts alleged in the *Hercules* Action or letters submitted to the LWDA, which includes, but is not limited to: 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, 2698–2699.6 and California Industrial Welfare Commission Wage Orders Wage Order 1-2001, Cal. Code of Regs., tit. 8, § 11010; and others that may be applicable.

2. Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts pleaded in the complaints; and
3. Any and all other claims under California common law, the California Labor Code including the California Private Attorneys General Act (“PAGA”), the Fair Labor Standards Act (“FLSA”), California Industrial Welfare Commission Wage Orders, and the California Business and Professions Code alleged in or that could have been alleged under the same facts pleaded in the Operative Complaint. In addition, to the extent required by law, the cashing of the settlement check by the Settlement Class Member shall be deemed to be an opt-in for purposes of releasing the Released Parties from any claims predicated under the FLSA that could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Class Lawsuit.

No other claims are released other than those claims arising out of, relating to, or which reasonably could have been alleged based upon the allegations set forth in the Complaint and/or PAGA notice to the LWDA or otherwise specifically identified herein. This Settlement Agreement will not release any person, party, or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

1.35. RELEASED PAGA CLAIMS

“Released PAGA Claims” shall mean all claims and civil penalties arising out of, relating to, or which reasonably could have been alleged based upon the allegations set forth in the Complaint and/or PAGA notice to the LWDA, which arose during the Class Period, including the following

claims: minimum wage violations, including regular rate of pay violations (Wage Order No. 1; Labor Code §§ 204, 218.5, 1194, 1194(a), 1194.2, 1194.2(a), 1197, 1197.1, 1197.1(a), 1198, 1199; Code of Civil Procedure § 1021.5; Cal. Code of Regs., tit. 8, § 11010); failure to pay all overtime wages, including regular rate of pay violations (Wage Order No. 1; Labor Code §§ 204, 510, 510(a), 1194, 1199; Code of Civil Procedure § 1021.5; and Cal. Code of Regs., tit. 8, § 11010); rest break violations, which includes the failure to pay any premiums at the regular rate of pay (Wage Order No. 1; Labor Code §§ 226.7, 226.7(b), 226.7(c); and Cal. Code of Regs., tit. 8, § 11010); meal period violations, which includes the failure to pay any premiums at the regular rate of pay (Wage Order No. 1; Labor Code §§ 226.7, 226.7(b), 226.7(c), 512, 512(a); Civil Code §§ 3287(b), 3289; and Cal. Code of Regs., tit. 8, § 11010); failure to maintain accurate employment records (Labor Code §§ 226, 226(a), 226.3, 1174(d), 1174.5; failure to timely pay wages during employment (Labor Code §§ 200, 203, 204, 210, 210(a), 216, 218, 218.5); failure to pay all wages earned and unpaid separation (i.e., waiting time penalties) (Labor Code §§ 201, 202, 203 and DLSE Manual, § 4.3.4; failure to indemnify all necessary business expenditures, including, but not limited to cell phone and mileage (Labor Code §§ 2802, 2802(b), 2802(c), 2804); failure to provide accurate itemized wage statements (i.e., wage statement violations) (Labor Code §§ 226, 226(a), 226(e)); regular rate of pay (Labor Code §§ 226.7, 226.7(c), 510, 510(a)) or premiums in connection with any of the preceding claims, as well as any claims under the California Labor Code, California Industrial Welfare Commission’s Wage Orders, or the California Code of Regulations, which were alleged or which could have been alleged under the same or similar facts alleged in the Hercules Action or letters submitted to the LWDA, which includes, but is not limited to: Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, 2698–2699.6 and California Industrial Welfare Commission Wage Orders Wage Order 1-2001, Cal. Code of Regs., tit. 8, § 11010; and others that may be applicable.

1.36. RELEASED PARTIES

“Released Parties” shall mean Defendant Pacific States Industries, Inc., and any of their past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as

1 well as each of their past, present, and future officers, directors, employees, partners, members, owners,
2 shareholders, agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly
3 liable with Pacific States Industries, Inc.

4 **1.37. RELEASING PARTIES**

5 “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their
6 behalf or purporting to assert a claim under or through them, including, but not limited to, their
7 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,
8 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,
9 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

10 **1.38. RESPONSE DEADLINE**

11 “Response Deadline” shall mean the date forty-five (45) days following the date on which the
12 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class
13 Members may submit a request for exclusion and/or objection to Class Settlement.

14 **1.39. SETTLEMENT ADMINISTRATOR**

15 “Settlement Administrator” shall mean Simpluris, Inc. (or other administrator agreed on by the
16 parties) which the Parties have agreed will be responsible for administration of the Class Settlement
17 and related matters.

18 **1.40. SETTLEMENT CLASS**

19 “Settlement Class” shall mean all individuals who are or were employed by Defendants as non-
20 exempt employees in California during the Class Period. Defendant represents that, as of the date of
21 mediation, the Settlement Class consists of approximately 420 Class Members that worked a total of
22 approximately 30,282 workweeks during the Class Period.

23 **1.41. SHARE FORM**

24 “Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of
25 **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class
26 Members along with the Class Notice.

2. FACTUAL AND PROCEDURAL BACKGROUND

2.1. PLAINTIFF’S CLAIMS

On June 20, 2024, Plaintiff filed a letter with the California Labor and Workforce Development Agency (“LWDA”) alleging claims against Defendant for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, and California Industrial Welfare Commission Wage Orders Wage Order 4-2001, and others that may be applicable. (Cal. Code of Regs., tit. 8, § 11040.)

On June 20, 2024, Plaintiff, as an individual, on behalf of himself and all other similarly situated, filed a wage-and-hour representative action in the Superior Court of the State of California, for the County of Sonoma, Case No. 24CV03671, alleging: (1) failure to pay all minimum wages; (2) pay all overtime wages; (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period premiums; (5) failure to maintain accurate employment records; (6) failure to pay wages timely during employment; (7) failure to pay all wages earned and unpaid at separation; (8) failure to indemnify all necessary business expenditures; (9) failure to furnish accurate itemized wage statements; and (10) violations of California’s unfair competition law.

On August 26, 2024, Plaintiff filed a First Amended Complaint to add an eleventh cause of action for penalties pursuant to the Labor Code Private Attorneys General Act of 2004 for violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor Code.

2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION

Class Counsel has conducted significant informal discovery during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a dozen telephonic conferences with Plaintiff; **(b)** inspection and analysis of hundreds of pages of documents and other information produced by Plaintiff and Defendant; **(c)** analysis of employment data from a sample of Class Members; **(d)** an analysis of the legal positions taken by Defendant; **(d)** investigation into the viability of class treatment of the claims asserted in the Action; **(e)** analysis

1 of potential class-wide damages, including information sufficient to understand Defendant's potential
2 defenses to Plaintiff's claims; (f) research of the applicable law with respect to the claims asserted in
3 the Complaint and the potential defenses thereto; and (g) assembling and analyzing of data for
4 calculating damages.

5 Class Counsel and the Class Representative have vigorously prosecuted this case, and
6 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and
7 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to
8 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation
9 with an experienced employment law mediator, which culminated in a settlement in principle, the terms
10 of which are elaborated in this Settlement Agreement.

11 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF** 12 **CLASS SETTLEMENT**

13 The document and data exchange in this matter, as well as discussions between counsel, have
14 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits
15 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery
16 conducted in this Action and the information exchanged by the Parties through pre-mediation
17 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
18 compromise the issues on a fair and equitable basis.

19 The Class Representative and Class Counsel believe that the claims, causes of action,
20 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
21 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
22 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
23 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
24 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
25 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
26 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
27 alleged in the Action.
28

1 The Class Representative and Class Counsel believe that the settlement set forth in this
2 Settlement Agreement is reasonable and confers substantial benefits upon Plaintiff and the Settlement
3 Class and that an independent review of this Settlement Agreement by the Court in the approval process
4 will confirm this conclusion. Based on their own independent investigation and evaluation, Class
5 Counsel has determined that the settlement set forth in this Settlement Agreement is reasonable and in
6 the best interests of Plaintiff and the Class Members.

7 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

8 Defendant denies and continues to deny all allegations, claims, and contentions alleged by
9 Plaintiff in the Action. Defendant denies and continues to deny all charges of wrongdoing or liability
10 against it arising out of any of the conduct, statements, acts, or omissions alleged in the Action.
11 Defendant contends that it complied with California and federal wage and hour laws and has dealt
12 legally and fairly with Plaintiff and the Class Members. In entering into this Agreement, Defendant
13 does not admit, and specifically denies, that it has violated any federal, state, or local law; violated any
14 regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations,
15 or legal requirements; breached any contract; violated or breached any duty; engaged in any
16 misrepresentation or deception; or engaged in any other unlawful conduct with respect to their
17 employees.

18 Defendant further denies that, for any purpose other than settling this Action, these claims are
19 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further
20 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
21 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
22 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendant's
23 respective businesses without further expensive litigation and the distraction and diversion of their
24 personnel with respect to matters at issue in the Action. Defendant has also taken into account the
25 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
26 Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled
27 in the manner and upon the terms and conditions set forth in this Settlement Agreement. However,
28

neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law, regulation, or legal requirement. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action proceeding to establish any liability or admission of any nature on the part of Defendant, or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local, or other applicable law.

2.5. INTENT OF THE CLASS SETTLEMENT

The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an order approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge of the Released Parties from liability for any and all of the Released Claims; and **(4)** discharge of Defendant from liability for any and all claims arising out of the Action.

3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS

For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this conditional certification is appropriate because the Released Claims are being compromised without need to establish the elements of those claims on which liability turns. The certification of the Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by Defendant, including without limitation, that certification of a class for trial purposes is or would be warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class treatment of any of the claims in the Action.

If the Settlement Agreement is not finally approved by the Court, the Effective Date is not achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null and void as set forth herein, then certification of the Settlement Class shall be automatically vacated, shall be void *ab initio*, of no force or effect, and shall not constitute evidence or a binding determination that the requirements for certification of a class for trial purposes in this Action or in any other action which have been, are or can be, satisfied. Further, if the Agreement does not reach the Effective Date, Plaintiff

1 agrees that Plaintiff will not argue, claim, reference, or otherwise raise any preliminary approval of the
2 Settlement Class in connection with any later proceeding before the Court.

3 **4. APPOINTMENT OF CLASS COUNSEL**

4 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
5 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
6 Class Settlement pursuant to this Settlement Agreement.

7 **5. CONSIDERATION**

8 **5.1. SETTLEMENT AMOUNT**

9 The Parties agree to settle this Action for the Gross Settlement Amount of \$312,500.00. There
10 shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross
11 Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate
12 consideration for the Class Settlement and will be made in full and final settlement of: the Released
13 Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the
14 PAGA Payment (and any payments to individual PAGA Class Members resulting from the PAGA
15 Payment), and any other obligation of Defendant under this Settlement Agreement (other than the
16 Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).

17 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
18 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
19 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
20 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each
21 Class Member ("Workweeks"), as well as the estimated amount of the Individual Settlement Amount
22 the Class Member can expect to receive once the Class Settlement becomes effective on the Effective
23 Date. Class Members shall be given the opportunity to challenge their Workweeks information.

24 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

25 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$5,000.00
26 for Elmer Hercules to acknowledge his efforts on behalf of the Settlement Class in this Action,
27 including assisting in the investigation and consulting with Class Counsel and providing crucial
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documents to Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive Award in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled as a Class Participant. Any Incentive Award approved by the Court shall not be considered wages, and the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award approved by the Court and shall hold Defendant harmless from all liability with regard thereto.

5.3. PAYMENT TO CLASS PARTICIPANTS

Each Class Participant shall be eligible to receive payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked by the Class Members during the Class Period as a proportion of all weeks worked by all Class Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount and shall hold Defendant harmless from any and all liability with regard thereto.

5.4. PAYMENT TO PAGA SETTLEMENT CLASS

Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$31,250.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: sixty-five percent (65%) (i.e., \$20,312.50) to the LWDA and thirty-five percent (35%) (i.e., \$10,937.50) to the PAGA Settlement Class. The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked by all members of the PAGA Settlement Class.

1 **5.5. TAX TREATMENT AND PAYMENT**

2 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
3 Settlement Amounts for Class Participants (including any payments to the Class Representative but
4 exclusive of his Incentive Award), the Parties agree that 25% of each Individual Settlement Amount
5 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
6 W-2 for such payment to him or her), and 75% of each Individual Settlement Amount shall constitute
7 penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment
8 to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total
9 Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants'
10 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net
11 Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final
12 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage
13 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant
14 to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the
15 Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely
16 responsible for all other individual tax obligations.

17 With respect to the PAGA Payment and any payments made to individual members of the
18 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
19 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
20 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
21 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
22 to them.

23 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

24 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
25 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
26 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
27 benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies,
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1 or bonus programs. The payments made under the terms of this Settlement Agreement shall not be
2 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
3 form of compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program.
4 Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs
5 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are
6 not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined
7 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or
8 any other purpose, and that additional contributions or benefits are not required by this Settlement
9 Agreement. Defendant does not consider the Class Settlement payments "compensation" for purposes
10 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
11 or any other plan sponsored by Defendant.

12 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

13 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
14 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
15 Settlement Amount (i.e., \$104,166.67) and the award of costs and expenses up to an additional
16 \$20,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those
17 amounts.

18 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
19 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
20 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
21 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
22 Class Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less
23 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
24 Attorney Fees and Expenses awarded.

25 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
26 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
27 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
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1 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
2 (c) all work to be performed and costs and expenses, if any, incurred in connection with administering
3 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and (d) may
4 be based on the “catalyst theory” and/or the “common fund doctrine.”

5 **6. SETTLEMENT ADMINISTRATION**

6 **6.1. COSTS AND EXPENSES**

7 All costs and expenses due to the Settlement Administrator in connection with its administration
8 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
9 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment
10 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the
11 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
12 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
13 Amount, and is not expected to exceed \$8,000.00.

14 **6.2. PAYMENT BY DEFENDANT**

15 Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
16 employer-side payroll taxes to the Settlement Administrator within seven (7) days of the Effective
17 Date. In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator
18 more than \$312,500.00 plus the Employer’s Taxes, except where the Escalator Provision is triggered.

19 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

20 **7.1. THE SETTLEMENT ADMINISTRATOR**

21 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
22 (Exhibit 1 and Exhibit 2, respectively) to Class Members; posting notice of entry of final order and
23 judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries
24 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;
25 determining individual payments to members of the PAGA Settlement Class; maintaining the
26 settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing
27 Individual Settlement Amounts to Class Participants; preparing, administering, and distributing
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1 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA
2 Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties
3 may direct. Additionally, the Settlement Administrator will handle all tax document preparation and
4 reporting, including state and federal tax forms, if any.

5 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
6 Defense Counsel with summary information updating them as to the number of validated and timely
7 objections and Opt Out requests. The Settlement Administrator will serve on Defense Counsel via e-
8 mail date-stamped copies of the original Opt Out requests and objections no later than seven (7) days
9 after their receipt. The Settlement Administrator will provide Class Counsel with proof of mailing of
10 the Class Notice, without listing individual Class Member names which the Settlement Administrator
11 will file with the Court at the time Class Counsel files its motion in support of the Court's Final
12 Approval and Fairness Hearing.

13 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement
14 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
15 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class
16 Participant, without any identifying personal information; **(b)** the number of Class Participants to
17 receive such payments, and **(c)** the final number of Opt-Outs and objections.

18 Administrative Expenses are not anticipated to exceed \$8,000.00. Prior to the calculation and
19 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
20 total Administrative Expenses through the conclusion of their services and such actual amount will be
21 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
22 Amounts.

23 **7.2. NOTICE TO CLASS MEMBERS**

24 Notice shall be provided to Class Members in the following manner: Within fourteen (14) days
25 after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an
26 updated list of Class Members and members of the PAGA Settlement Class containing names, social
27 security numbers, dates of employment, last-known addresses, and phone numbers (the "Database").
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The Database shall be marked “Confidential – Settlement Administrator’s Eyes Only.” Class Counsel shall not receive a copy of this list.

Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement Administrator shall determine the number of workweeks worked by each Class Member, populate the data for each Class Member accordingly, and send each Class Member the Class Notice, in English and Spanish, via first-class, United States mail. The Class Notice shall also contain an easily-understood statement alerting the Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing and waiving all Released Claims against the Released Parties.

The Class Notice will inform Class Members of their estimated share of the settlement and the number of workweeks they worked during the Class Period. Class Members may dispute their workweeks if they believe they worked more weeks in the Class Period than Defendant’s records show by submitting information to the Settlement Administrator no later than forty-five (45) days after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the workweeks to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Class Member and Defendant.

7.3. OPT OUT PROCEDURE

Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate in the Class Settlement and shall become Class Participants without having to submit a claim form or take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state the Class Member’s name, address, telephone number, and signature. The Opt Out request should state something to the effect of:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *ELMER HERCULES V. PACIFIC STATES INDUSTRIES, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL

1 NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS
2 LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.”

3 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. If prior
4 to the Response Deadline any Class Notice mailed to a Class Member is returned as having been
5 undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace
6 search and seek an address correction for such Class Members, and a second Class Notice will be sent
7 to any new or different address obtained. Such Class Members shall have an additional fourteen (14)
8 days from the date of the mailing of the second Class Notice in which to Opt Out, object, or dispute
9 the information provided in the Share Form if the Response Deadline would have otherwise passed
10 prior to fourteen (14) days from the date of the mailing of the second Class Notice.

11 It will be presumed that, if an envelope containing the Class Notice has not been returned within
12 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)
13 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
14 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
15 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
16 specify the number of Class Members to whom the Class Notice was sent and the number of Class
17 Members to whom the Class Notice was not delivered, as well as information relating to the number
18 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

19 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
20 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
21 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
22 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
23 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
24 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

25 Class Participants will be bound by the Release of Released Claims set forth in the definition
26 of “Released Claims” provided in this Settlement Agreement.
27
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1 A request to Opt Out of the Class Settlement shall *not* serve to exclude the Class Member from
2 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
3 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
4 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

5 **7.4. OBJECTION PROCEDURE**

6 The Class Notice shall inform the Class Members of their right to object to the Class Settlement
7 if they do not Opt Out. Any Class Participants who wish to object to the Class Settlement may submit
8 a written objection to the Settlement Administrator no later than the Response Deadline. Only Class
9 Participants may object to the Settlement. The objection should include the case name and number and
10 must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the
11 Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class
12 and the reasons why the Class Settlement should not be approved, including the legal and factual
13 arguments supporting the objection. If an objector also wishes to appear at the Final Approval and
14 Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator will
15 promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense
16 Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness
17 Hearing, either in person or through a lawyer retained at their own expense.

18 **7.5. NOTICE OF FINAL JUDGMENT**

19 Within seven (7) days after the Court has held a Final and Fairness Approval Hearing and
20 entered a final order certifying the Class for settlement purposes only and approving the Class
21 Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to
22 rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on
23 its website at a web address to be included in the Class Notice.

24 **8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

25 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

26 The claims of all Class Members are settled for the Gross Settlement Amount of \$312,500.00,
27 which will be allocated as follows:
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1. The Administrative Expenses, estimated not to exceed \$8,000.00;
2. Class Counsel's attorney fees not to exceed \$104,166.67;
3. Class Counsel's litigation costs and expenses not to exceed \$20,000.00;
4. The Incentive Award, not to exceed \$5,000.00; and
5. PAGA Payment to LWDA of \$20,312.50.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement Administrator shall recalculate the final Net Settlement Amount based on the actual values of the amounts in each category.

8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a "checks cashed" basis based on the proportional number of weeks worked by each Class Member during the Class Period.

Defendant will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of workweeks for each Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. Defendant shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement Agreement, shall have no involvement in or responsibility for the determination or payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors made with respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants

1 represent and understand that they shall be solely responsible for any and all tax obligation associated
2 with their respective Individual Settlement Amounts and Incentive Awards.

3 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**
4 **THE PAGA SETTLEMENT CLASS**

5 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
6 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
7 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
8 is \$31,250.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section
9 2699 and is to be distributed as follows: sixty-five percent (65%) (i.e., \$20,312.50) to the LWDA and
10 thirty-five percent (35%) (i.e., \$10,937.50) to the PAGA Settlement Class.

11 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the
12 PAGA Settlement Class based on the pro rata number of pay periods worked by each particular PAGA
13 Settlement Class member during the PAGA Period as a proportion of all pay periods worked by all
14 PAGA Settlement Class members during the PAGA Period. Each member of the PAGA Settlement
15 Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required
16 Withholding with respect to their share of the PAGA Payment and shall hold Defendant harmless from
17 any and all liability with regard thereto.

18 Defendant will provide the Settlement Administrator with any information reasonably
19 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class
20 member, and any other reasonably required information the Settlement Administrator requests to
21 perform the calculations required under this Settlement Agreement. Defendant shall have no
22 responsibility for deciding the validity of the individual payment amounts allocated to each member of
23 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall
24 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
25 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
26 Taxes and Required Withholding.

1 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
2 obligation associated with their respective shares of the PAGA Payment.

3 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

4 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
5 approved by the Court no later than fourteen (14) days after the Effective Date.

6 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

7 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
8 Court no later than fourteen (14) days after the Effective Date.

9 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

10 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
11 due to it and approved by the Court no later than fourteen (14) days after the Effective Date.

12 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
13 **INDIVIDUAL SETTLEMENT AMOUNTS**

14 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
15 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
16 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
17 last-known address no later than fourteen (14) days after the Effective Date. If the Settlement
18 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
19 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required
20 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
21 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
22 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
23 remaining monetary obligations have been calculated and accounted for.

24 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class
25 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
26 declaration of payment. If any Class Participant is deceased, payment shall be made payable to the
27 estate of that Class Member and delivered to the executor or administrator of that estate, unless the
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1 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code
2 section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

3 **8.8. NON-CASHED SETTLEMENT CHECKS**

4 Any funds associated with checks that have not been cashed within one hundred eighty (180)
5 days, will become void and the Individual Settlement Amount associated with the uncashed check will
6 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
7 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. The
8 Parties agree that this disposition results in no “unpaid residue” within the meaning of California Civil
9 Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Class Participants,
10 whether or not they all cash their Individual Settlement Amount checks. Therefore, Defendant shall not
11 be required to pay any interest on said amount. For the purposes of determining whether Defendant has
12 met their financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to
13 have fulfilled its obligation upon the mailing of the check to the Class Member, regardless of whether
14 such Class Member subsequently negotiates the check.

15 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR**
16 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

17 Class Member Workweeks and the corresponding Individual Settlement Amount shall be
18 calculated using the employment and payroll records of Defendant, which presumptively shall be
19 deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome
20 that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount
21 of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other
22 written employment records, to the Settlement Administrator. Each Class Member may dispute the
23 number of Workweeks or their estimated Individual Settlement Amount contained on their Class
24 Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed or faxed to the
25 Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response
26 Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for
27 Defendant, shall inform Class Counsel of the dispute without disclosing the identity of the Class
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Member making the dispute, and shall immediately attempt to resolve all such disputes directly with relevant Class Members with the assistance of Defendant, Defense Counsel, and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement Amount has been distributed, the initial calculation shall stand (as Defendant shall be under no obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT

9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT

The Class Settlement and conditional class certification shall be considered null and void, and neither the Class Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with the Court, if any of the following occur: **(a)** the Court should for any reason fail to approve this Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties agree in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR PROVISION

Defendant represents that, at the time of mediation, there are approximately 30,282 workweeks worked by the Class Members during the Class Period. Should the total number of workweeks worked by the Class Members during the Class Period ultimately increase by more than 10% (i.e., if the workweeks exceed 33,310), the Gross Settlement Amount shall be increased on a proportional basis equal to the percentage increase in number of workweeks worked by the Class Members above the

1 10% (i.e., if there was 11% increase in the number workdays during the Class Period, Defendant would
2 agree to increase the Gross Settlement Amount by 1%).

3 If this provision is triggered so as to increase the Gross Settlement Amount, the Parties agree
4 that the amount of the settlement attributable to attorneys' fees will increase proportionally such that
5 the total amount of attorneys' fees remains one-third of the Gross Settlement Amount after the upward
6 adjustment required by this provision is implemented.

7 At the same time that Defendant has provided the Settlement Administrator with the Class
8 Member Database following preliminary approval, Defendant shall provide Plaintiff's counsel with a
9 declaration from its person(s) most knowledgeable attesting to the accuracy of the data submitted,
10 including the number of Class Members and the number of Workweeks for the Class during the Class
11 Period, and the number in the PAGA Settlement Class and the number of PAGA pay periods during
12 the PAGA Period.

13 **9.3. INVALIDATION**

14 Invalidation of any material portion of this Settlement Agreement shall invalidate the Class
15 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions
16 of the Class Settlement are to remain in full force and effect. However, before declaring any provision
17 of this Settlement Agreement invalid, the Court shall first attempt to construe the provision as valid to
18 the fullest extent possible consistent with applicable precedents so as to define all provisions of this
19 Agreement valid and enforceable. Any invalid, illegal, or unenforceable provision determined by the
20 Court shall in no way affect any other provision if Defense Counsel and Class Counsel, on behalf of
21 the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or
22 unenforceable provision had never been included in this Agreement.

23 **9.4. STAY ON APPEAL**

24 If a timely appeal from the approval of the Class Settlement and judgment, the judgment shall
25 be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any other
26 actions required by this Settlement Agreement until all appeal rights have been exhausted by operation
27 of law.
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1 **10. MOTIONS FOR COURT APPROVAL**

2 **10.1. PRELIMINARY APPROVAL**

3 Within fourteen (14) business days of the execution of this Settlement Agreement, Class
4 Counsel will submit this Settlement Agreement to the Court along with a Motion for Preliminary
5 Approval of the Class Settlement. Each party shall cooperate to present the Class Settlement to the
6 Court for preliminary approval in a timely fashion.

7 **10.2. FINAL APPROVAL**

8 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
9 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the
10 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,
11 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,
12 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent
13 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.
14 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may
15 be required for the Court's determination.

16 **11. RELEASES AND WAIVERS**

17 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

18 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released
19 Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It
20 is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise,
21 and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant,
22 will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of
23 the final judgment and the satisfaction of such judgment. Class Participants will be deemed to have
24 acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and
25 that their Individual Settlement Amount constitutes payment of all sums allegedly due to them. Class
26 Participants will be deemed to have acknowledged and agreed that California Labor Code section 206.5
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1 is not applicable to the Individual Settlement Amount. That section provides in pertinent part as
2 follows:

3 An employer shall not require the execution of a release of a claim or
4 right on account of wages due, or to become due, or made as an advance
5 on wages to be earned, unless payment of those wages has been made.

6 **11.2. CIRCULAR 230 DISCLAIMER**

7 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
8 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
9 acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written
10 communication or disclosure between or among the parties or their attorneys and other advisers, is or
11 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
12 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
13 C.F.R. Part 10); **(2)** the Acknowledging Party **(a)** has relied exclusively upon her or its own
14 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
15 Agreement, **(b)** has not entered into this Settlement Agreement based upon the recommendation of any
16 other party or any attorney or advisor to any other party, and **(c)** is not entitled to rely upon any
17 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that
18 may be imposed on the Acknowledging Party; and **(3)** no attorney or advisor to any other party has
19 imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies
20 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
21 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
22 Settlement Agreement.

23 **12. DUTIES OF THE PARTIES**

24 **12.1. MUTUAL FULL COOPERATION**

25 The Parties agree to cooperate fully with one another to accomplish and implement the terms
26 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
27 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
28 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated

1 by this Settlement Agreement and any other efforts that may become necessary by court order or
2 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
3 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and
4 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
5 this Settlement Agreement.

6 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

7 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
8 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
9 legal challenge, whether by appeal or collateral attack.

10 **12.3. DUTIES PRIOR TO COURT APPROVAL**

11 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
12 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly
13 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
14 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
15 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form
16 and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**,
17 respectively, and directing the mailing of the Class Notice to Class Members. While Defendant can
18 reserve its right to object to facts or assertions made in the moving papers, Defense Counsel shall file
19 a notice of non-opposition to the granting of the motion for preliminary approval or join in the motion,
20 only so long as Defendant is afforded an opportunity to review and comment on the moving papers
21 prior to filing.

22 **13. MISCELLANEOUS PROVISIONS**

23 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

24 Pending Court approval and other than as provided herein, if any of the conditions set forth in
25 this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the option of
26 either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and may not be
27 used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.
28

1 If either Party decides to void the Settlement Agreement, then the Settlement Agreement and
2 conditional class certification shall be considered void, and neither the Settlement Agreement,
3 conditional class certification, nor any of the related negotiations or proceedings, shall be of any force
4 or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement
5 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the
6 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator
7 fees and costs actually incurred.

8 **13.2. OPT-OUTS**

9 If 5% or more Settlement Class timely opt out of the class settlement, Defendant shall have the
10 sole and absolute discretion to rescind/void the Settlement Agreement within fifteen (15) calendar days
11 after receiving from the Settlement Administrator the final list of opt-outs. Defendant agrees to meet
12 and confer in good faith with Class Counsel before rescinding or voiding the Settlement Agreement.
13 In the event that Defendant elects to rescind/void the Settlement Agreement, Defendant shall provide
14 written notice of such rescission to Class Counsel. Such rescission shall have the same effect as a
15 termination of the Settlement Agreement for failure to satisfy a condition of settlement, and the
16 Settlement Agreement shall become null and void and have no further force or effect. In the event
17 Defendant rescinds the settlement, Defendant shall be solely responsible for any fees and costs incurred
18 by the Settlement Administrator.

19 The Parties agree that they shall take no steps to encourage or solicit opt outs from the
20 Settlement Class. In the event that Defendant encourages or solicits opt outs, Defendant shall lose its
21 right to rescind/void the Settlement Agreement under this provision. In the event that Plaintiff
22 encourages or solicits opt outs, Defendant shall have the immediate right to rescind/void the Settlement
23 Agreement.

24 **13.3. DIFFERENT FACTS**

25 The Parties acknowledge that, except for matters expressly represented herein, the facts in
26 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
27 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
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1 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
2 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
3 and binding despite such difference.

4 **13.4. NO PRIOR ASSIGNMENTS**

5 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
6 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
7 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
8 except as set forth herein.

9 **13.5. NON-ADMISSION**

10 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
11 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other
12 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
13 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
14 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
15 and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or
16 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
17 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to
18 claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
19 an admission by Defendant that the Action was properly brought as a class or representative action
20 other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each
21 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,
22 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
23 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
24 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
25 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the
26 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of
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1 any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in
2 any court, administrative agency, or other tribunal.

3 **13.6. NON-EVIDENTIARY USE**

4 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
5 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any
6 individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their
7 respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
8 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and
9 the Released Parties to prove or defend against any claim released herein by any Class Member in any
10 judicial, quasi-judicial, administrative, or governmental proceeding.

11 **13.7. MEDIA OR PRESS**

12 Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the
13 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the
14 Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and
15 all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
16 obtained during the course of the Action, shall not be discussed with or presented to the media or press.

17 **13.8. NON-RETALIATION**

18 Defendant understands and acknowledges that it has a legal obligation to not retaliate against
19 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class
20 Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement
21 Administrator or Class Counsel and will not discourage Class Members who are employees, directly
22 or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties,
23 or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or
24 indirectly, to Opt Out of the Class Settlement.

25 **13.9. CONSTRUCTION**

26 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
27 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
28

1 Agreement is not to be construed in favor of or against any party by reason of the extent to which any
2 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
3 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
4 next business day.

5 **13.10. GOVERNING LAW**

6 This Settlement Agreement is intended to and shall be governed by the laws of the State of
7 California, without regard to conflict of law principles, in all respects, including execution,
8 interpretation, performance, and enforcement.

9 **13.11. NOTICES**

10 Except for Class Member notices required to be made by the Settlement Administrator, all
11 notices or other communications required or permitted under this Settlement Agreement shall be in
12 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
13 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
14 party appearing in this Settlement Agreement.

15 **13.12. CAPTIONS AND INTERPRETATIONS**

16 Section titles or captions contained herein are inserted as a matter of convenience and for
17 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
18 or any provision thereof.

19 **13.13. MODIFICATION**

20 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
21 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement
22 Agreement has been granted by the Court, then any such amendments or modifications to this
23 Settlement Agreement shall be approved by the Court. This Settlement Agreement may not be
24 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

25 **13.14. INTEGRATION CLAUSE**

26 This Settlement Agreement contains the entire agreement between the Parties relating to the
27 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
28

1 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
2 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
3 Settlement Agreement may be waived except in writing as provided above.

4 **13.15. SUCCESSORS AND ASSIGNS**

5 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
6 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
7 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,
8 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
9 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
10 successors, and assigns.

11 **13.16. CORPORATE SIGNATORIES**

12 Any person executing this Settlement Agreement or any such related document on behalf of a
13 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
14 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
15 this Settlement Agreement or any such related document.

16 **13.17. EXECUTION IN COUNTERPARTS**

17 This Settlement Agreement shall become effective upon its execution by all of the undersigned.
18 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall
19 have the same force and effect as if all Settling Parties had signed the same instrument.

20 **13.18. ATTORNEY FEES, COSTS, AND EXPENSES**

21 Except as otherwise specifically provided for herein, each party shall bear her or its own
22 attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action
23 and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

24 **13.19. ACTION TO ENFORCE AGREEMENT**

25 In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be
26 entitled to recover her or its attorney fees and costs.
27
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14. EXECUTION

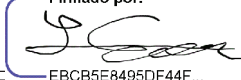
The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

[Signature On The Following Page]

APPROVAL AND EXECUTION BY PARTIES

CLASS REPRESENTATIVE:

Dated: 5/11/2025 _____

Firmado por:

EBCB5E8495DF44F...
Eimer Hercules
Plaintiff and Class Representative

DEFENDANT:

Dated: _____

Pacific States Industries, Inc.

By: _____

Title: _____

APPROVED AS TO FORM BY COUNSEL

CLASS COUNSEL:

Dated: May 8, 2025 _____

Melmed Law Group P.C.



Kyle D. Smith
Attorneys for Plaintiff

DEFENDANT'S COUNSEL:

Dated: _____

Littler Mendelson, P.C.

Nicholas Gioiello
Attorneys for Defendant

APPROVAL AND EXECUTION BY PARTIES

CLASS REPRESENTATIVE:

Dated: _____

Elmer Hercules
Plaintiff and Class Representative

DEFENDANT:

Dated: May 9, 2025

Pacific States Industries, Inc.


By: Joseph Burch
Title: Vice President

APPROVED AS TO FORM BY COUNSEL

CLASS COUNSEL:

Dated: _____

Melmed Law Group P.C.

Kyle D. Smith
Attorneys for Plaintiff

DEFENDANT'S COUNSEL:

Dated: May 12, 2025

Littler Mendelson, P.C.

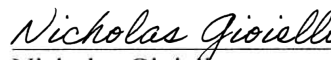

Nicholas Gioiello
Attorneys for Defendant

EXHIBIT 1

Notice of Proposed Class and PAGA Action Settlement

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA**

ELMER HERCULES, an individual, on behalf
of himself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

PACIFIC STATES INDUSTRIES, INC., a
California Corporation; and DOES 1 TO 50,

Defendants.

Case No.: 24CV03671

**Notice of Proposed Class and PAGA Action
Settlement**

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

NOTICE OF PROPOSED CLASS AND PAGA ACTION SETTLEMENT

You may be eligible to receive a settlement payment. Please read this notice carefully.

A proposed class action settlement agreement (the “Settlement”) has been reached between: (1) Plaintiff Elmer Hercules (“Plaintiff”), individually and in his representative capacity on behalf of a group of prospective class members defined below, and as a private attorney general on behalf of the State of California; and (2) Defendant Pacific States Industries, Inc. (“Defendant”). The Settlement resolves disputed claims against Defendant arising out of its compensation practices during the period from May 18, 2023, through May 28, 2025 (the “Class Period”) as applied to all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period (“Class Members”).

The Court has granted preliminary approval of the Settlement and ordered this notice to be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you are a Class Member (as defined above) and received this notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment. If you accept your settlement amount, you will release the claims described below.

1. DESCRIPTION OF THE LAWSUIT

Plaintiff, individually and in his representative capacity on behalf of the Class Members, and as a private attorney general on behalf of the State of California, is pursuing a lawsuit against Defendant in the Superior Court of the State of California for the County of Sonoma in the matter of *Elmer Hercules v. Pacific States Industries, Inc.*, case number **24CV03671** (the “Action”). The Action sought recovery for Defendant’s alleged: (1) failure to pay all minimum wages; (2) pay all overtime wages; (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period premiums; (5) failure to maintain accurate employment records; (6) failure to pay wages timely during employment; (7) failure to pay all wages earned and unpaid at separation; (8) failure to indemnify all necessary business expenditures; (9) failure to furnish

1 accurate itemized wage statements; (10) violations of California’s unfair competition law; and (11)
2 penalties pursuant to the Labor Code Private Attorneys General Act of 2004.

3 Defendant denies and continues to deny any and all charges of wrongdoing or liability and
4 allegations, claims, and contentions alleged by Plaintiff in the Action and has raised various defenses
5 to the claims. Defendant asserts that it fully complied with all California and federal wage and hour
6 laws and has dealt legally and fairly with Plaintiff and the Class Members, and contends that civil
7 penalties under Labor Code Private Attorneys General Act of 2004 are not warranted. Defendant also
8 denies that the Action is suitable for class certification. Defendant has entered into the Settlement solely
9 for purposes of resolving this dispute to avoid costly, disruptive, and time-consuming litigation and
10 does not admit to any wrongdoing or liability. By entering the Settlement, Defendant does not admit,
11 and specifically denies, that it has violated any federal, state, or local law; violated any regulations or
12 guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal
13 requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation
14 or deception; or engaged in any other unlawful conduct with respect to their employees.

15 The Court has not ruled on the merits in the Action. By approving the Settlement and issuing
16 this notice, the Court is *not* suggesting which side would win or lose the case if it went to trial or
17 whether the claims are suitable for class certification. To avoid the additional expense, inconvenience,
18 and risk of continued litigation, however, Plaintiff and Defendant (the “Parties”) have concluded that
19 it is in their respective best interests and the interests of the Class Members to settle the Action on the
20 terms summarized in this notice. The Settlement was reached after Defendant provided extensive
21 information and documents to Plaintiff’s counsel, and after lengthy arms-length non-collusive
22 negotiations between the Parties, including mediation with an experienced and well-respected mediator
23 in California. In these negotiations, both sides recognized the substantial risk of the Court deciding
24 against them at trial and determined that the Settlement was a fair, reasonable, and adequate way to
25 resolve the disputed claims.

26 Plaintiff and Plaintiff’s counsel—Jonathan Melmed, Kyle D. Smith, and Jaqueline Antillon of
27 Melmed Law Group P.C. (“Class Counsel”)—support the Settlement. Among the reasons for support
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1 are the defenses to liability potentially available to Defendant, the risk of denial of class certification,
2 the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.
3 Plaintiff and Class Counsel believe that the settlement described in this notice is fair, adequate,
4 reasonable, and in the best interests of Plaintiff and the Class Members.

5 Under the Settlement, the following settlement class will be certified under California law: *all*
6 *individuals who are or were employed by Defendants as non-exempt employees in California during*
7 *the Class Period*. The “Class Period” is defined as the period from May 18, 2023, through May 28,
8 2025. The Settlement provides for a gross settlement amount of \$312,500.00, a share of which is to be
9 distributed to the Class Members based on the pro rata number of weeks worked by the Class Members
10 during the Class Period as a proportion of all weeks worked by all Class Members. In exchange for
11 their share of the settlement amount, all participating Class Members will be deemed to have released
12 Defendant from liability on the terms described in this notice.

13 On [date of preliminary approval], the Court preliminarily approved the Settlement and
14 conditionally certified the settlement class. This notice is being sent to you because Defendant’s records
15 indicate that you worked for Defendant during the Class Period and that you meet the definition
16 required to be treated as a Class Member.

17 **2. IF YOU ARE STILL EMPLOYED BY DEFENDANT, THIS SETTLEMENT WILL**
18 **NOT AFFECT YOUR EMPLOYMENT.**

19 California law strictly prohibits retaliation. Further, Defendant is prohibited by law from taking
20 any adverse action against or otherwise target, retaliate, or discriminate against any Class Member
21 because of the Class Member’s participation or decision not to participate in the Settlement.

22 **3. TERMS OF THE SETTLEMENT**

23 Defendant has agreed to pay \$312,500.00 (the “Gross Settlement Amount”) to resolve the
24 claims in the Action. The Parties agreed to the following payments from the Gross Settlement Amount:

- 25 1. **Settlement Administration Costs.** The Court has approved Simpluris, Inc. to act as the
26 “Settlement Administrator,” who is sending this notice to you and will perform many
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other duties relating to the Settlement. Under the Settlement, up to \$8,000.00 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

2. **Attorneys' Fees and Expenses.** Class Counsel have been prosecuting the Action on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. To date, the Parties have aggressively litigated many aspects of the case including investigation, settlement efforts, and a full-day mediation session. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of one-third of the Gross Settlement Amount (i.e., \$104,166.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in the Action. Class Counsel also will ask for reimbursement of up to \$20,000.00 for the costs Class Counsel incurred in connection with the Action.

3. **Service Payment to Class Representative.** Class Counsel will ask the Court to provide a service payment to Plaintiff in the amount of \$5,000.00 for Elmer Hercules to compensate him for his efforts on behalf of the Class Members in the Action, including assisting in the investigation and consulting with Class Counsel and providing crucial documents to Class Counsel. Plaintiff also may receive a share of the Settlement as a Class Member.

4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$31,250.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: sixty-five percent (65%) (i.e., \$20,312.50) to the LWDA and thirty-five percent (35%) (i.e., \$10,937.50) to the individuals who come within the definition of an "aggrieved employee" for the purposes of the Settlement (i.e., all individuals who are or were employed by Defendants as non-exempt employees in

California during the PAGA Period). The “PAGA Period” is defined for these purposes to mean the period from May 18, 2023, through April 28, 2025.

After deducting the amounts above, the balance of the settlement amount will form the “Net Settlement Amount” for distribution to the Class Members.

4. **DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS**

Each eligible Class Member who does not request exclusion from the Settlement will be deemed a “Class Participant” and will receive a share from the Net Settlement Amount which will be distributed pro rata based on the proportional number of weeks worked by each Class Member during the Class Period (the “Individual Settlement Amount”). If any Class Member requests exclusion from the Settlement, his or her share will be distributed to the remaining Class Participants.

Twenty percent (25%) of each Individual Settlement Amount will constitute payment in the form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her), and Eighty percent (75%) of each Individual Settlement Amount will constitute penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

Defendant, or its proxies, shall take all usual and customary deductions from the Individual Settlement Amount payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest or penalty distribution—it will, however, be reported on IRS Form 1099 as income. Class Participants are responsible for the proper income tax treatment of their Individual Settlement Amount. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

The workweeks you worked for Defendant during the Class Period will be calculated based on Defendant’s records. If you feel that you were not credited with the correct number of workweeks worked during the Class Period, you may submit evidence to the Settlement Administrator on or before **[Response Deadline]** with documentation to establish the number of workweeks you claim to have actually worked during the Class Period. **Documentation sent to the Settlement Administrator will**

1 **not be returned or preserved, so do *not* send originals.** The Parties and the Settlement Administrator
 2 will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should
 3 be credited. The Settlement Administrator will make the final decision as to how many weeks are
 4 credited and report the outcome to the Class Participant. If you are unsatisfied with the decision, you
 5 may submit an objection, which is explained below.

6 Settlement checks will be mailed to all Class Participants after the Court grants final approval
 7 of the Settlement and judgment is entered.

8 **5. THE RELEASE OF CLAIMS**

9 If the Court approves the Settlement, the Court will enter judgment and the Settlement will bind
 10 all Class Participants. The Class Participants will then be barred from bringing any “Released Claims”
 11 against the “Released Parties” as those terms are defined below.

12 The “Released Parties” are Defendant Pacific States Industries, Inc., and any of their past,
 13 present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as
 14 well as each of their past, present, and future officers, directors, employees, partners, members, owners,
 15 shareholders, agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly
 16 liable with Pacific States Industries, Inc.

17 The “Released Claims” are those claims arising out of, relating to, or which reasonably could
 18 have been alleged based upon the allegations set forth in the Complaint and/or PAGA notice to the
 19 LWDA, which arose during the Class Period, including the following claims: (1) minimum wage
 20 violations, including regular rate of pay violations (Wage Order No. 1; Labor Code §§ 204, 218.5,
 21 1194, 1194(a), 1194.2, 1194.2(a), 1197, 1197.1, 1197.1(a), 1198, 1199; Code of Civil Procedure §
 22 1021.5; Cal. Code of Regs., tit. 8, § 11010); failure to pay all overtime wages, including regular rate of
 23 pay violations (Wage Order No. 1; Labor Code §§ 204, 510, 510(a), 1194, 1199; Code of Civil
 24 Procedure § 1021.5; and Cal. Code of Regs., tit. 8, § 11010); rest break violations, which includes the
 25 failure to pay any premiums at the regular rate of pay (Wage Order No. 1; Labor Code §§ 226.7,
 26 226.7(b), 226.7(c); and Cal. Code of Regs., tit. 8, § 11040); meal period violations, which includes the
 27 failure to pay any premiums at the regular rate of pay (Wage Order No. 1; Labor Code §§ 226.7,
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226.7(b), 226.7(c), 512, 512(a); Civil Code §§ 3287(b), 3289; and Cal. Code of Regs., tit. 8, § 11010); failure to maintain accurate employment records (Labor Code §§ 226, 226(a), 226.3, 1174(d), 1174.5; failure to timely pay wages during employment (Labor Code §§ 200, 203, 204, 210, 210(a), 216, 218, 218.5); failure to pay all wages earned and unpaid separation (i.e., waiting time penalties) (Labor Code §§ 201, 202, 203 and DLSE Manual, § 4.3.4; failure to indemnify all necessary business expenditures, including, but not limited to cell phone and mileage (Labor Code §§ 2802, 2802(b), 2802(c), 2804); failure to provide accurate itemized wage statements (i.e., wage statement violations) (Labor Code §§ 226, 226(a), 226(e)); regular rate of pay (Labor Code §§ 226.7, 226.7(c), 510, 510(a)); unfair competition or unlaw business practices (Bus. & Prof. Code § 17200 et seq. and Common Law); claims for civil penalties pursuant to California’s Private Attorneys General Act of 2004 (“PAGA”, Lab. Code § 2698 et seq.); or premiums in connection with any of the preceding claims, as well as any claims under the California Labor Code, California Industrial Welfare Commission’s Wage Orders, or the California Code of Regulations, which were alleged or which could have been alleged under the same or similar facts alleged in the *Hercules* Action or letters submitted to the LWDA, which includes, but is not limited to: 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, 2698–2699.6 and California Industrial Welfare Commission Wage Orders Wage Order 1-2001, Cal. Code of Regs., tit. 8, § 11010; and others that may be applicable; (2) any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts pleaded in the complaints; and (2) any and all other claims under California common law, the California Labor Code including PAGA, the Fair Labor Standards Act (“FLSA”), California Industrial Welfare Commission Wage Orders, and the California Business and Professions Code alleged in or that could have been alleged under the same facts pleaded in the Operative Complaint. In addition, to the extent required by law, the cashing of the settlement check by the Settlement Class Member shall be deemed to be an opt-in for purposes of releasing the Released Parties from any claims predicated under the FLSA that could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Class Lawsuit.

The “Released PAGA Claims” are those claims and civil penalties arising out of, relating to, or which reasonably could have been alleged based upon the allegations set forth in the Complaint and/or PAGA notice to the LWDA, which arose during the Class Period, including the following claims: minimum wage violations, including regular rate of pay violations (Wage Order No. 1; Labor Code §§ 204, 218.5, 1194, 1194(a), 1194.2, 1194.2(a), 1197, 1197.1, 1197.1(a), 1198, 1199; Code of Civil Procedure § 1021.5; Cal. Code of Regs., tit. 8, § 11010); failure to pay all overtime wages, including regular rate of pay violations (Wage Order No. 1; Labor Code §§ 204, 510, 510(a), 1194, 1199; Code of Civil Procedure § 1021.5; and Cal. Code of Regs., tit. 8, § 11010); rest break violations, which includes the failure to pay any premiums at the regular rate of pay (Wage Order No. 1; Labor Code §§ 226.7, 226.7(b), 226.7(c); and Cal. Code of Regs., tit. 8, § 11010); meal period violations, which includes the failure to pay any premiums at the regular rate of pay (Wage Order No. 1; Labor Code §§ 226.7, 226.7(b), 226.7(c), 512, 512(a); Civil Code §§ 3287(b), 3289; and Cal. Code of Regs., tit. 8, § 11010); failure to maintain accurate employment records (Labor Code §§ 226, 226(a), 226.3, 1174(d), 1174.5; failure to timely pay wages during employment (Labor Code §§ 200, 203, 204, 210, 210(a), 216, 218, 218.5); failure to pay all wages earned and unpaid separation (i.e., waiting time penalties) (Labor Code §§ 201, 202, 203 and DLSE Manual, § 4.3.4; failure to indemnify all necessary business expenditures, including, but not limited to cell phone and mileage (Labor Code §§ 2802, 2802(b), 2802(c), 2804); failure to provide accurate itemized wage statements (i.e., wage statement violations) (Labor Code §§ 226, 226(a), 226(e)); regular rate of pay (Labor Code §§ 226.7, 226.7(c), 510, 510(a)) or premiums in connection with any of the preceding claims, as well as any claims under the California Labor Code, California Industrial Welfare Commission’s Wage Orders, or the California Code of Regulations, which were alleged or which could have been alleged under the same or similar facts alleged in the Hercules Action or letters submitted to the LWDA, which includes, but is not limited to: Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, 2698–2699.6 and California Industrial Welfare Commission Wage Orders Wage Order 1-2001, Cal. Code of Regs., tit. 8, § 11010; and others that may be applicable.

1 The Settlement does *not* release Defendant or any person, party, or entity from claims, if any,
2 by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor
3 does it release any claims, actions, or causes of action which may be possessed by Class Members
4 under state or federal discrimination statutes, including, without limitation, the California Fair
5 Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code,
6 § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.);
7 the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income
8 Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and
9 interpretive guidelines.

10 Class Members who do not request exclusion from the Settlement will be deemed to have
11 acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that
12 the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be
13 deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable
14 to the Settlement payments. That section provides in pertinent part as follows:

15 “An employer shall not require the execution of a release of a claim or right on account
16 of wages due, or to become due, or made as an advance on wages to be earned, unless
17 payment of those wages has been made.”
18

19 **6. YOUR OPTIONS**

20 **6.1. DO NOTHING AND RECEIVE YOUR PORTION OF THE SETTLEMENT**

21 If you do nothing, you will be automatically included as a Class Participant in the Settlement
22 and will receive a settlement payment. You do *not* have to take any further action to receive your
23 settlement payment. It is, however, the responsibility of all Class Members to ensure that the Settlement
24 Administrator has your current address on file, or you may not receive important information or a
25 settlement payment. The estimated amount of your settlement payment if you do nothing is included
26 on the attached *Class Action Settlement Share Form*.
27
28

6.2. REQUEST EXCLUSION FROM THE CLASS AND THE SETTLEMENT

If you do **not** wish to take part in the class action portion of the Settlement (the “Class Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by sending the Settlement Administrator a letter or card postmarked no later than [Response Deadline] that specifically requests exclusion from the Class Settlement in this case. The request for exclusion must include your name, address, telephone number, and signature, and it should state:

“I wish to be excluded from the settlement class in the case of *Elmer Hercules v. Pacific States Industries, Inc.*. I understand that if I ask to be excluded from the settlement class, I will not receive any money from the settlement of this lawsuit and will not be releasing any claims I might have.”

Send the request for exclusion directly to the Settlement Administrator at the following address **by no later than [Response Deadline]:**

Simpluris, Inc.
P.O. Box 26170
Santa Ana, California 92799

Any person who submits a timely request for exclusion from the Class Settlement shall, upon receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and shall receive no benefits from the class action portion of the Settlement. If you want confirmation of receipt of your request for exclusion, please send it by United States certified mail, return receipt requested, or contact the Settlement Administrator.

Importantly, Class Members who timely and validly request exclusion from the Class Settlement will *not* be excluded from the Released PAGA Claims or their share of the PAGA Payment. Requesting exclusion from the Class Settlement applies solely to the Class Members’ entitlement to the class action portion of the Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class Settlement you will still be entitled to your share, if any, of the PAGA Payment.

6.3. OBJECT TO THE SETTLEMENT

You have the right to object to the terms of the Settlement if you do not request exclusion. If, however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator and the Court a written objection stating your name, address, telephone number, dates of employment with Defendant, the case name and number, each specific reason in support of your objection, and any legal support for each objection. Objections in writing must be mailed to the Settlement Administrator—Simpluris, Inc., P.O. Box 26170, Santa Ana, California 92799—by no later than [Response Deadline] to be considered. **Objections that do not include all required information, or that are not timely submitted, might not be considered by the court.**

If you choose to object to the Settlement, you may also appear to speak at the final approval and fairness hearing scheduled for [Final Approval Hearing Date], at [Final Approval Hearing Time] in Department [Court Department] of the Superior Court of the State of California for the County of Sonoma, located at [Court Location]. You have the right to appear either in person or through your own attorney at this hearing.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

The Court may, at the time of the final approval and fairness hearing, have certain social distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose information is provided below, for more information about the Court's current social distancing procedures. You may also review the Court's website for the most current information.

7. HOW TO UPDATE OR CHANGE YOUR ADDRESS

If you move after receiving this notice or if it was misaddressed, please contact the Settlement Administrator, Simpluris, Inc., at (888) 369-3780 or by email at casesupport@simpluris.com, as soon

as possible. **This is important to ensure that future notices and/or the Settlement payment reach you.**

8. NOTICE OF FINAL JUDGMENT IF THE SETTLEMENT IS APPROVED

Within seven (7) days after the Court has held a final and fairness approval hearing and entered a final order approving the Settlement, if it chooses to do so, the Settlement Administrator will post a copy of that order and final judgment on its website at the following website address:

[Case-Specific Settlement URL (to be added by Settlement Administrator)]

9. IF THE SETTLEMENT IS NOT APPROVED

If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the Settlement may be voided, in which case no money will be paid, and the case will return to litigation. If that happens, there is no assurance: **(1)** that the class will be certified by the Court; **(2)** that any decision at trial would be in favor of Class Members; **(3)** that a trial decision, if any, would be as favorable to the Class Members as the Settlement; or **(4)** that any favorable trial decision would be upheld if an appeal was filed.

10. QUESTIONS OR COMMENTS

PLEASE DO NOT CALL OR CONTACT THE COURT. If you have any questions about the settlement, you may contact the Settlement Administrator at: **(888) 369-3780** or by e-mail at **casesupport@simpluris.com**. You may also contact Class Counsel or Defense Counsel at the addresses or phone numbers listed below.

Lawyers Representing Plaintiff and the Class Members

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Lawyers Representing Pacific States Industries, Inc.

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EXHIBIT 2

Class Action Settlement Share Form

CLASS ACTION SETTLEMENT SHARE FORM

Elmer Hercules v. Pacific States Industries, Inc.

Case Number 24CV03671

Superior Court of the State of California for the County of Sonoma

The proposed class action settlement agreement (the “Settlement”) described in the accompanying *Notice of Proposed Class Action Settlement* resolves the disputed claims against Defendant Pacific States Industries, Inc. (“Defendant”) during the period from May 18, 2023, through May 28, 2025 (the “Class Period”) as applied to all individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period (“Class Members”).

You are receiving this form because you are believed to be a Class Member. **According to Defendant’s records, you worked ____ workweeks for Defendant during the Class Period. Accordingly, your share of the Settlement is currently estimated to be \$ _____**, which is an estimate of your allocated portion the Net Settlement Amount, as that term is defined in the accompanying *Notice of Proposed Class Action Settlement*. Your estimated share of the Settlement may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement.

You do not need to do anything to receive money under the Settlement.

If you believe the information provided above as to the number of your workweeks is incorrect and wish to dispute it, please contact the Settlement Administrator no later than **[Response Deadline]** at:

Simpluris, Inc.,
(888) 369-3780
casesupport@simpluris.com
P.O. Box 26170
Santa Ana, California 92799

If you dispute the information stated above, the information Defendant provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked no later than **[Response Deadline]**.

Do not send originals; documentation sent to the claims administrator will not be returned or preserved.