

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or  
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Victor De La Cruz  
4 (“Plaintiff” or “Class Representative”), individually, and on behalf of all others similarly situated and  
5 on behalf of the State of California with respect to aggrieved employees, and Defendant Northwest  
6 Pipe Company (“Defendant”) (together, Plaintiff and Defendant are referred to as “Parties” and  
7 individually as “Party”).

8 This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as  
9 defined herein), the State of California as to the employment of PAGA Employees (as defined herein),  
10 PAGA Employees (as defined herein), and Defendant, subject to the terms and conditions hereof and  
11 the approval of the Court.

12 **RECITALS**

13 1. On May 25, 2022, Plaintiff provided written notice to the Labor and Workforce  
14 Development Agency (“LWDA”) by online submission and to Defendant by U.S. Certified Mail,  
15 pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor  
16 Code alleged to have been violated by Defendant (“PAGA Letter”). Also on May 25, 2022, Plaintiff  
17 filed a Class Action Complaint for Damages in the action entitled *Victor De La Cruz v. Northwest*  
18 *Pipe Company*, San Bernardino County Superior Court Case No. CIVSB2211140 (“Action”), thereby  
19 commencing a putative class action against Defendant. On February 2, 2023, Plaintiff filed a First  
20 Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys  
21 General Act, California Labor Code §§ 2698 *Et Seq.* (“Operative Complaint”), which added a cause  
22 of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section  
23 2698 *et seq.* (“PAGA”). The Operative Complaint alleges nine (9) causes of action for violations of  
24 the California Labor code for failure to pay overtime wages, failure to pay minimum wages, failure to  
25 provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant  
26 rest periods and premiums payments in lieu thereof, failure to provide accurate wage statements,  
27 failure to timely pay wages upon termination, and failure to reimburse necessary business expenses,  
28 for violations of California Business & Professions Code Section 17200, *et seq.* based on the

1   aforementioned California Labor Code violations, and for civil penalties under PAGA based on the  
2   aforementioned California Labor Code violations.

3           2.       Defendant denies all materials allegations set forth in the Action and has asserted  
4   numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,  
5   Defendant desires to fully and finally settle the Action, Released Class Claims (as defined herein), and  
6   Released PAGA Claims (as defined herein).

7           3.       Class Counsel diligently investigated the class and PAGA claims against Defendant,  
8   including any and all applicable defenses and the applicable law. The investigation included, *inter*  
9   *alia*, the exchange of information, data, and documents, and review of corporate policies and practices.  
10   The Parties have engaged in sufficient formal and informal discovery and investigation to assess the  
11   relative merits of the claims and contentions of the Parties.

12          4.       On July 17, 2023, the Parties participated in mediation with Todd Smith, Esq. (the  
13   “Mediator”), a respected mediator of complex wage and hour actions, which did not result in a  
14   settlement at that time. After continued negotiations, and with the assistance of the Mediator’s  
15   evaluations, the Parties reached the settlement that is memorialized herein. The Parties’ settlement  
16   discussions were conducted at arms’ length, and the Settlement is the result of an informed and detailed  
17   analysis of Defendant’s potential liability and exposure in relation to the costs and risks associated  
18   with continued litigation. Based on Class Counsel’s investigation and evaluation, Class Counsel  
19   believes that the settlement with Defendant for the consideration and on the terms set forth in this  
20   Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members,  
21   State of California, and PAGA Employees in light of all known facts and circumstances, including the  
22   risk of significant delay and uncertainty associated with litigation and various defenses asserted by  
23   Defendant.

24          5.       The Parties expressly acknowledge that this Settlement Agreement is entered into  
25   solely for the purpose of compromising significantly disputed claims and that nothing herein is an  
26   admission of liability or wrongdoing by Defendant. If for any reason this Settlement Agreement is  
27   not approved, it will be of no force or effect, and the Parties shall be returned to their original respective  
28   positions.

1 **DEFINITIONS**

2 6. The following definitions are applicable to this Settlement Agreement. Definitions  
3 contained elsewhere in this Settlement Agreement will also be effective.

4 a. "Attorneys' Fees and Costs" means attorneys' fees approved by the Court for  
5 Class Counsel's litigation and resolution of the Action and all actual costs and expenses incurred and  
6 to be incurred by Class Counsel in connection with the Action, as set forth in Paragraph 9.

7 b. "Class" or "Class Member(s)" means all current and former hourly-paid and/or  
8 non-exempt employees who worked for Defendant in the State of California at any time during the  
9 Class Period. This shall include both individuals employed pursuant to a collective bargaining  
10 agreement and individuals not employed pursuant to a collective bargaining agreement.

11 c. "Class Counsel" means Jonathan M. Genish, Miriam L. Schimmel, Joana Fang,  
12 and Alexandra Rose of Blackstone Law, APC, who will seek to be appointed counsel for the Class.

13 d. "Class List" means a complete list of all Class Members that Defendant will  
14 diligently and in good faith compile from its records and provide to the Settlement Administrator. The  
15 Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the following  
16 information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security  
17 number; (4) dates worked for Defendant during the Class Period; and (5) such other information as is  
18 necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (if  
19 applicable).

20 e. "Class Notice" means the Notice of Class Action Settlement, substantially in  
21 the form attached hereto as "**Exhibit A**." The Class Notice shall constitute notice to the Class pursuant  
22 to California Rule of Court 3.769(f) and, once approved by the Court, shall be deemed compliant with  
23 California Rule of Court 3.766.

24 f. "Class Period" means the period from May 25, 2018 through July 17, 2023.

25 g. "Class Settlement" means the settlement and resolution of all Released Class  
26 Claims.

27 h. "Court" means the Superior Court of the State of California for the County of  
28 San Bernardino.

1 i. “Defendant’s Counsel” means Bryan L. Hawkins and Robert A. Sarkisian of  
2 Stoel Rives LLP.

3 j. “Effective Date” means the date when all of the following events have occurred:  
4 (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant’s  
5 Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has been  
6 mailed to the Class Members, providing them with an opportunity to object to the terms of the Class  
7 Settlement or opt out of the Class Settlement; (4) the Court has had a Final Approval Hearing and  
8 entered a Final Approval Order and Judgment; (5) sixty-five calendar days have passed since the Court  
9 entered a Final Approval Order and Judgment; and (6) in the event there are written objections to the  
10 Class Settlement filed prior to the Final Approval Hearing which are not later withdrawn or denied,  
11 the later of the following events: five business days after the period for filing any appeal, writ, or other  
12 appellate proceeding opposing the Court’s Final Approval Order and Judgment has elapsed without  
13 any appeal, writ, or other appellate proceeding having been filed, or, if any appeal, writ, or other  
14 appellate proceeding opposing the Court’s Final Approval Order and Judgment has been filed, five  
15 business days after any appeal, writ, or other appellate proceedings opposing the Court’s Final  
16 Approval Order and Judgment has finally and conclusively dismissed with no right to pursue further  
17 remedies or relief.

18 k. “Employer Taxes” means the employer’s share of taxes and contributions in  
19 connection with the wages portion of Individual Settlement Shares, which shall be paid by Defendant  
20 in addition to the Gross Settlement Amount.

21 l. “Enhancement Payment” means the amount to be paid to Plaintiff, in  
22 recognition of his effort and work in prosecuting the Action on behalf of Class Members and PAGA  
23 Employees, and general release of claims, as set forth in Paragraph 10.

24 m. “Final Approval” means the determination by the Court that the Settlement is  
25 fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

26 n. “Final Approval Hearing” means the hearing at which the Court will consider  
27 and determine whether the Settlement should be granted Final Approval.

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1           o.       “Final Approval Order and Judgment” means the order granting final approval  
2 of the Settlement and entering judgment thereon, in a form and content mutually agreed to by the  
3 Parties, and subject to approval by the Court.

4           p.       “Gross Settlement Amount” means the amount of Six Hundred Fifty-One  
5 Thousand Dollars and Zero Cents (\$651,000.00) to be paid by Defendant in full satisfaction of the  
6 Action, Released Class Claims, and Released PAGA Claims, which includes all Attorneys’ Fees and  
7 Costs, Enhancement Payment, PAGA Amount, Settlement Administration Costs, and Net Settlement  
8 Amount to be paid to the Settlement Class Members. Defendant shall pay the Employer Taxes  
9 separately and in addition to the Gross Settlement Amount. The Gross Settlement Amount is non-  
10 reversionary; no portion of the Gross Settlement Payment will return to Defendant. The Gross  
11 Settlement Amount is subject to increase, as provided in Paragraph 13.

12           q.       “Individual PAGA Payment” means the *pro rata* share of the PAGA Employee  
13 Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement, to be  
14 calculated in accordance with Paragraph 15.

15           r.       “Individual Settlement Payment” means the net payment of each Settlement  
16 Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and  
17 withholdings with respect to the wages portion of the Individual Settlement Share, as provided in  
18 Paragraph 16.

19           s.       “Individual Settlement Share” means the *pro rata* share of the Net Settlement  
20 Amount that a Class Member may be eligible to receive under the Class Settlement, to be calculated  
21 in accordance with Paragraph 14.

22           t.       “LWDA Payment” means the amount of Thirty Thousand Dollars and Zero  
23 Cents (\$30,000.00), i.e., 75% of the PAGA Amount, that the Parties have agreed to pay to the LWDA  
24 under the PAGA Settlement, as set forth in Paragraph 11.

25           u.       “Net Settlement Amount” means the portion of the Gross Settlement Amount  
26 that is available for distribution to Settlement Class Members, which is the Gross Settlement Amount  
27 less the Court-approved Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, and  
28 Settlement Administration Costs.

1 v. “Notice of Objection” means a Settlement Class Member’s written objection to  
2 the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the  
3 objector’s full name, signature, address, telephone number, and the last four (4) digits of the objector’s  
4 Social Security number; (c) contain a written statement of all grounds for the objection accompanied  
5 by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents  
6 upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the  
7 specified address, postmarked on or before the Response Deadline.

8 w. “PAGA Amount” means the allocation of Forty Thousand Dollars and Zero  
9 Cents (\$40,000.00) from the Gross Settlement Amount for the PAGA Settlement. Seventy-five  
10 percent (75%) of the PAGA Amount, or \$30,000.00, will be paid to the LWDA (i.e., the LWDA  
11 Payment) and the remaining twenty-five percent (25%), or \$10,000.00, will be distributed to the  
12 PAGA Employees (i.e., the PAGA Employee Amount).

13 x. “PAGA Employees” means all current and former hourly-paid and/or non-  
14 exempt employees who worked for Defendant in the State of California at any time during the PAGA  
15 Period. This shall include both individuals employed pursuant to a collective bargaining agreement  
16 and individuals not employed pursuant to a collective bargaining agreement.

17 y. “PAGA Employee Amount” means the amount of Ten Thousand Dollars and  
18 Zero Cents (\$10,000.00), i.e., 25% of the PAGA Amount, to be distributed to PAGA Employees on a  
19 *pro rata* basis based on their PAGA Workweeks.

20 z. “PAGA Period” means the period from May 25, 2021 through July 17, 2023.

21 aa. “PAGA Settlement” means the settlement and resolution of all Released PAGA  
22 Claims.

23 bb. “PAGA Workweeks” means the number of weeks each PAGA Employee  
24 worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA  
25 Period. The PAGA Workweeks will be calculated by the Settlement Administrator based on each  
26 PAGA Employee’s start date or the beginning of the PAGA Period, whichever is later, and separation  
27 date or the last day of the PAGA Period, whichever is earlier, based on the Class List provided by  
28 Defendant.

1 cc. “Preliminary Approval” means the date on which the Court enters the  
2 Preliminary Approval Order.

3 dd. “Preliminary Approval Order” means the order granting preliminary approval  
4 of the Settlement, in a form and content mutually agreed to by the Parties, and subject to approval by  
5 the Court.

6 ee. “Released Class Claims” means any and all claims, debts, liabilities, demands,  
7 obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action which were  
8 alleged or which could have been alleged based on the factual allegations in the Operative Complaint,  
9 arising during the Class Period, under any federal, state, or local law, and shall specifically include  
10 claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal  
11 and rest periods and associated premium payments, timely pay wages upon termination, provide  
12 accurate wage statements, and reimburse necessary business-related expenses in violation of  
13 California Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800,  
14 and 2802, and Industrial Welfare Commission Wage Orders, and all claims for attorneys’ fees and  
15 costs and statutory interest in connection therewith, California Business and Professions Code sections  
16 17200, *et seq.*, and any other claims, including claims for statutory penalties, pertaining to the Class  
17 Members.

18 ff. “Released PAGA Claims” means any and all claims arising from any of the  
19 factual allegations in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for  
20 civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698  
21 *et seq.*, including all claims for attorneys’ fees and costs related thereto, for Defendant’s alleged failure  
22 to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium  
23 payments, timely pay wages during employment and upon termination, provide complaint wage  
24 statements, maintain complete and accurate payroll records, and reimburse necessary business-related  
25 expenses in violation of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),  
26 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders,  
27 including *inter alia*, Wage Order 16-2001.

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1 gg. “Released Parties” means Defendant and its current and former officers,  
2 directors, management-level employees, members, insurers, shareholders, subsidiaries, affiliates,  
3 predecessors, successors, and assigns.

4 hh. “Request for Exclusion” means a letter submitted by a Class Member indicating  
5 a request to be excluded from the Class Settlement, which must: (a) contain the case name and number  
6 of the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and  
7 last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the Class  
8 Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the  
9 Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

10 ii. “Response Deadline” means the deadline by which Class Members must submit  
11 a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute, which shall be the date that  
12 is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement  
13 Administrator to Class Members, unless the 45th day falls on a Sunday or Federal holiday, in which  
14 case the Response Deadline will be extended to the next day on which the United States Postal service  
15 is open. The Response Deadline may also be extended by express agreement between Class Counsel  
16 and Defendant’s Counsel. Under no circumstances, however, will the Settlement Administrator have  
17 the authority to extend the Response Deadline. In the event that a Class Notice is re-mailed to a Class  
18 Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days  
19 from the original Response Deadline.

20 jj. “Settlement Administrator” means Apex Class Action LLC, or any other third-  
21 party class action settlement administrator agreed to by the Parties and approved by the Court for  
22 purposes of administering the Settlement. The Parties and their counsel each represent that they do  
23 not have any financial interest in the Settlement Administrator or otherwise have a relationship with  
24 the Settlement Administrator that could create a conflict of interest.

25 kk. “Settlement Administration Costs” means the costs payable from the Gross  
26 Settlement Amount to the Settlement Administrator for administering the Settlement, as set forth in  
27 Paragraph 12.

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1 **TERMS OF THE AGREEMENT**

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

4 9. Attorneys’ Fees and Costs. Defendant agrees not to oppose or impede any application  
5 or motion by Class Counsel for attorneys’ fees in the amount up to one-third (1/3) of the Gross  
6 Settlement Amount (i.e., \$217,000.00 if the Gross Settlement Amount is \$651,000.00) and  
7 reimbursement of actual costs and expenses associated with Class Counsel’s litigation and settlement  
8 of the Action, in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00),  
9 both of which will be paid from the Gross Settlement Amount. These amounts will cover any and all  
10 work performed and any and all costs incurred by Class Counsel in connection with the litigation of  
11 the Action, including without limitation all work performed and costs incurred to date, and all work  
12 to be performed and all costs to be incurred in connection with obtaining the Court’s approval of this  
13 Settlement Agreement, including any objections raised and any appeals necessitated by those  
14 objections. Class Counsel shall be solely and legally responsible for correctly characterizing this  
15 compensation for tax purposes and for paying any taxes on the amounts received. The Settlement  
16 Administrator shall issue an IRS Form 1099 to Class Counsel for the Attorneys’ Fees and Costs. Any  
17 portion of the requested Attorneys’ Fees and Costs that is not awarded by the Court to Class Counsel  
18 shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.  
19 The Court’s ruling on the request for Attorneys’ Fees and Costs shall not affect the enforceability of  
20 this Agreement or the terms contained herein.

21 10. Enhancement Payment. Defendant agrees not to oppose or impede any application or  
22 motion by Plaintiff for an Enhancement Payment in the amount up to Seven Thousand Five Hundred  
23 Dollars and Zero Cents (\$7,500.00). The Enhancement Payment, which will be paid from the Gross  
24 Settlement Amount, subject to Court approval, will be in addition to his Individual Settlement Payment  
25 as a Settlement Class Member and Individual PAGA Payment as a PAGA Employee. Plaintiff shall  
26 be solely and legally responsible for correctly characterizing this compensation for tax purposes and  
27 for paying any taxes on the amounts received. The Settlement Administrator shall issue an IRS Form  
28 1099 to Plaintiff for the Enhancement Payment. Any portion of the requested Enhancement Payment

1 that is not awarded by the Court to Plaintiff shall be reallocated to the Net Settlement Amount for the  
2 benefit of the Settlement Class Members. The Court's ruling on the request for the Enhancement  
3 Payment shall not affect the enforceability of this Agreement or the terms contained herein.

4 11. PAGA Amount. Subject to approval by the Court, the Parties agree that the amount of  
5 Forty Thousand Dollars and Zero Cents (\$40,000.00) shall be allocated from the Gross Settlement  
6 Amount toward penalties under the Private Attorneys General Act, California Labor Code Section  
7 2698, *et seq.* (i.e., the PAGA Amount), of which seventy-five percent (75%), or \$30,000.00, will be  
8 paid to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%), or \$10,000.00, will be  
9 distributed to PAGA Employees (i.e., the PAGA Employee Amount) on a *pro rata* basis, based on the  
10 total number of PAGA Workweeks worked by each PAGA Employee during the PAGA Period (i.e.,  
11 the Individual PAGA Payments).

12 12. Settlement Administration Costs. The Settlement Administrator will be paid for the  
13 reasonable costs of administration of the Settlement and distribution of payments under the Settlement,  
14 which is currently not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). These costs,  
15 which will be paid from the Gross Settlement Amount, subject to Court approval, will include, *inter*  
16 *alia*, translating the Class Notice to Spanish, printing, distributing, and tracking Class Notices and  
17 other documents for the Settlement, calculating and distributing payments due under the Settlement,  
18 issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and  
19 remittances, providing necessary reports and declarations, and other duties and responsibilities set  
20 forth herein to process the Settlement, and as requested by the Parties. To the extent the actual  
21 Settlement Administrator's costs are greater than the estimated amount stated herein, such excess  
22 amount will be deducted from the Gross Settlement Amount, subject to approval by the Court. Any  
23 portion of the estimated, designated, and/or awarded Settlement Administration Costs which are not  
24 in fact required to fulfill payment to the Settlement Administrator to undertake the required settlement  
25 administration duties shall be reallocated to the Net Settlement Amount for the benefit of the  
26 Settlement Class Members.

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1           13.    Escalator Clause. Defendant has represented that the Class Members worked a total of  
2 46,500 Workweeks during the Class Period. If it is determined by the Settlement Administrator that  
3 the total number of Workweeks worked by the Class Members during the Class Period actually  
4 exceeds 46,500 by more than 10% (i.e., by more than 51,150 Workweeks), then the Gross Settlement  
5 Amount will be increased on a *pro rata* basis equal to the percentage increase in the number of  
6 Workweeks worked by the Class Members above 10%. For example, if the number of Workweeks  
7 increases by 11% to 51,615 Workweeks, then the Gross Settlement Amount will increase by 1%.

8           14.    Individual Settlement Share Calculations. Individual Settlement Shares will be  
9 calculated and apportioned from the Net Settlement Amount based on the Class Members' number of  
10 Workweeks, as follows:

11           a.     After Preliminary Approval, the Settlement Administrator will divide the Net  
12 Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek  
13 Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value  
14 to yield each Class Member's estimated Individual Settlement Share that each Class Member may be  
15 entitled to receive under the Class Settlement.

16           b.     After Final Approval, the Settlement Administrator will divide the final Net  
17 Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek  
18 Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek  
19 Value to each Settlement Class Member's final Individual Settlement Share.

20           15.    Individual PAGA Payment Calculations. Individual PAGA Payments will be  
21 calculated and apportioned from the PAGA Employee Amount based on the PAGA Employees'  
22 number of PAGA Workweeks, as follows: The Settlement Administrator will divide the PAGA  
23 Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Workweeks of all PAGA  
24 Employees to yield the "PAGA Workweek Value," and multiply each PAGA Employee's individual  
25 PAGA Workweeks by the PAGA Workweek Value to yield each PAGA Employee's Individual  
26 PAGA Payment.

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1           16.    Tax Treatment of Individual Settlement Shares and Individual PAGA Payments. Each  
2 Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and eighty  
3 percent (80%) penalties, interest, and non-wage damages. The portion allocated to wages will be  
4 reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages  
5 will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. The Settlement  
6 Administrator will withhold the employee's share of taxes and withholdings with respect to the wages  
7 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their  
8 Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes  
9 and withholdings). The Employer Taxes will be paid separately and in addition to the Gross  
10 Settlement Amount. Each Individual PAGA Payment will be allocated as one hundred percent (100%)  
11 penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.

12           17.    Administration of Taxes by the Settlement Administrator. The Settlement  
13 Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA  
14 Employees, and Class Counsel any tax forms (i.e., IRS Forms W-2, IRS Forms 1099, etc.) as may be  
15 required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement  
16 Administrator will also be responsible for calculating the Employer Taxes and forwarding all payroll  
17 taxes and other legally required withholdings to the appropriate government authorities.

18           18.    Tax Liability. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel do not  
19 intend anything contained in this Settlement Agreement to constitute advice regarding taxes or  
20 taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Settlement  
21 Class Members, and PAGA Employees are not relying on any statement, representation, or calculation  
22 by Defendant, the Settlement Administrator, or Class Counsel in this regard. Plaintiff, Settlement  
23 Class Members, and PAGA Employees understand and agree that Plaintiff, Settlement Class  
24 Members, and PAGA Employees will be solely responsible for the payment of any taxes and penalties  
25 assessed on the payments described in this Settlement Agreement. Plaintiff, Settlement Class  
26 Members, and PAGA Employees should consult with their tax advisors concerning the tax  
27 consequences of any payment they receive under the Settlement. The Parties agree that except for the  
28 PAGA Amount, which is a civil penalty, all other portions of the Gross Settlement Amount are not,

1 and are not intended to be made as amounts paid or incurred to, or at the direction of, a government,  
2 governmental entity, or non-governmental entity in relation to the violation of law, or investigation or  
3 inquiry into a potential violation of such law within the meaning of section 162(f) of the Internal  
4 Revenue Code of 1986, as amended. Except for the PAGA Amount, all payments under the Gross  
5 Settlement Amount are considered restitution, remediation, or are being paid to come into compliance  
6 with the law.

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

1 CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

2 20. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the  
3 Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually  
4 are issued to the payee. It is expressly understood and agreed that payments made under this  
5 Settlement shall not in any way entitle Plaintiff, Settlement Class Members, or any PAGA Employee  
6 to additional compensation or benefits under any new or additional compensation or benefits, or any  
7 bonus, contest, or other compensation or benefit plan or agreement in place during the Class Period,  
8 nor will it entitle Plaintiff, Settlement Class Members, or any PAGA Employee to any increased  
9 retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding  
10 any contrary language or agreement in any benefit or compensation plan document that might have  
11 been in effect during the Class Period).

12 21. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.  
13 Upon execution of this Settlement Agreement, Plaintiff will obtain a hearing date from the Court for  
14 Plaintiff's motion for preliminary approval of the Settlement, which Plaintiff and Class Counsel will  
15 be responsible for drafting, and submit this Settlement Agreement to the Court in support of said  
16 motion. Class Counsel will provide Defendant's Counsel a draft of the preliminary approval motion  
17 before filing it with the Court to give Defendant's Counsel an adequate opportunity to review and  
18 provide comments to the motion in good-faith. Defendant agrees not to oppose the jointly-approved  
19 motion for preliminary approval of the Settlement consistent with this Settlement Agreement. By way  
20 of said motion, Plaintiff will apply for the entry of the Preliminary Approval Order seeking the  
21 following:

- 22 a. Conditionally certifying the Class for settlement purposes only;
- 23 b. Granting Preliminary Approval of the Settlement;
- 24 c. Preliminarily appointing Plaintiff as the representative of the Class;
- 25 d. Preliminarily appointing Class Counsel as counsel for the Class;
- 26 e. Approving as to form and content, the mutually-agreed upon and proposed  
27 Class Notice and directing its mailing by First Class U.S. Mail;

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1 f. Approving the manner and method for Class Members to request exclusion  
2 from or object to the Class Settlement as contained herein and within the Class Notice;

3 g. Scheduling a Final Approval Hearing at which the Court will determine whether  
4 Final Approval of the Settlement should be granted.

5 22. Notice of Settlement to the LWDA. Pursuant to California Labor Code § 2699(1)(2),  
6 Class Counsel shall notify the LWDA of the Settlement upon filing the motion for preliminary  
7 approval of the Settlement.

8 23. Delivery of Class List. Within fourteen (14) calendar days of Preliminary Approval,  
9 Defendant will provide the Class List to the Settlement Administrator. If any or all this information  
10 is unavailable to Defendant, Defendant will inform Class Counsel, and the Parties will make their best  
11 efforts to reconstruct or otherwise agree upon how to deal with the unavailable information.

12 24. Notice by First-Class U.S. Mail.

13 a. Within seven (7) calendar days after receiving the Class List from Defendant,  
14 the Settlement Administrator will perform a search based on the National Change of Address Database  
15 or any other similar services available, such as provided by Experian, for information to update and  
16 correct for any known or identifiable address changes, and will mail a Class Notice in English and  
17 Spanish (in the form attached as **Exhibit A** to this Settlement Agreement) to all Class Members via  
18 First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement  
19 Administrator.

20 b. Any Class Notice returned to the Settlement Administrator as undeliverable on  
21 or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding  
22 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on  
23 the Class Notice. If no forwarding address is provided, the Settlement Administrator will promptly  
24 attempt to determine the correct address using a skip-trace or other search, using the name, address,  
25 and/or Social Security number of the Class Member, and perform a single re-mailing within five (5)  
26 calendar days.

27 c. Compliance with the procedures described herein above shall constitute due and  
28 sufficient notice to Class Members of the Settlement and shall satisfy the requirements of due process.



1 Nothing else shall be required of or done by the Parties, Class Counsel, or Defendant's Counsel to  
2 provide notice of the Settlement.

3       25.     Disputes Regarding Workweeks and/or PAGA Workweeks. Class Members will have  
4 an opportunity to dispute the number of Workweeks and/or PAGA Workweeks to which they have  
5 been credited, as reflected in their respective Class Notices, by submitting a timely and valid  
6 Workweeks Dispute to the Settlement Administrator, by mail, postmarked on or before the Response  
7 Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to  
8 determine whether a Workweeks Dispute has been timely submitted. Absent evidence rebutting the  
9 accuracy of Defendant's records and data as they pertain to the number of Workweeks and/or PAGA  
10 Workweeks to be credited to a disputing Class Member, Defendant's records will be presumed to be  
11 correct and determinative of the dispute. However, if a Class Member produces information and/or  
12 documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the  
13 Class Member and the Settlement Administrator will resolve and determine the number of eligible  
14 Workweeks and/or PAGA Workweeks that the disputing Class Member should be credited with under  
15 the Settlement. The Settlement Administrator's decision on such disputes will be final.

16       26.     Requesting Exclusion from the Class Settlement. Any Class Member wishing to be  
17 excluded from the Class Settlement must submit a timely and valid Request for Exclusion to the  
18 Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the  
19 postmark on the return mailing envelope will be the exclusive means to determine whether a Request  
20 for Exclusion has been timely submitted. The Settlement Administrator will certify jointly to Class  
21 Counsel and Defendant's Counsel the number of timely and valid Requests for Exclusion that are  
22 submitted, and also identify the individuals who have submitted a timely and valid Request for  
23 Exclusion in a declaration that is to be filed with the Court in advance of the Final Approval Hearing.  
24 At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members  
25 to request exclusion from the Class Settlement. Any Class Member who submits a Request for  
26 Exclusion is prohibited from making any objection to the Class Settlement. Any Class Member who  
27 submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will  
28 not be issued an Individual Settlement Payment. Any Class Member who does not affirmatively

1 request exclusion from the Class Settlement by submitting a timely and valid Request for Exclusion  
2 will be bound by all of the terms of the Class Settlement, including and not limited to those pertaining  
3 to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants  
4 Final Approval to the Settlement. Notwithstanding the above, all PAGA Employees will be bound to  
5 the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they  
6 submit a Request for Exclusion.

7       27.    Objecting to the Class Settlement. To object to the Class Settlement, Settlement Class  
8 Members must submit a timely and complete Notice of Objection to the Settlement Administrator, by  
9 mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing  
10 envelope will be the exclusive means to determine whether a Notice of Objection has been timely  
11 submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendant's  
12 Counsel the number of Notices of Objection that are submitted (specifying which ones were timely  
13 and complete and which were not), and also attach them to a declaration that is to be filed with the  
14 Court in advance of the Final Approval Hearing. At no time will any of the Parties or their counsel  
15 seek to solicit or otherwise encourage Settlement Class Members to object to the Class Settlement or  
16 appeal from the Final Approval Order and Judgment. Settlement Class Members, individually or  
17 through counsel, may also present their objection orally at the Final Approval Hearing, regardless of  
18 whether they have submitted a Notice of Objection.

19       28.    Reports by the Settlement Administrator. The Settlement Administrator shall provide  
20 weekly reports to counsel for the Parties providing: (a) the number of undeliverable and re-mailed  
21 Class Notices; (ii) the number of Class Members who have submitted Workweeks Disputes; (iii) the  
22 number of Class Members who have submitted Requests for Exclusion; and (iv) the number of  
23 Settlement Class Members who have submitted Notices of Objection. Additionally, the Settlement  
24 Administrator will provide to counsel for the Parties any updated reports regarding the administration  
25 of the Settlement Agreement as needed or requested, and immediately notify the Parties when it  
26 receives a request from an individual or any other entity regarding inclusion in the Class and/or  
27 Settlement or regarding a Workweeks Dispute.

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1           29.    Defendant’s Right to Rescind. If more than ten percent (10%) of the Class Members  
2 submit timely and valid Requests for Exclusion, Defendant may elect to rescind the Settlement  
3 Agreement. Defendant must exercise this right of rescission in writing that is provided to Class  
4 Counsel within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of  
5 the number of Class Members who have submitted timely and valid Requests for Exclusion following  
6 the Response Deadline. If Defendant exercises this option, Defendant shall pay any costs of settlement  
7 administration owed to the Settlement Administrator incurred up to that date.

8           30.    Certification of Completion. Upon completion of administration of the Settlement, the  
9 Settlement Administrator will provide a written declaration under oath to certify such completion to  
10 the Court and counsel for all Parties.

11           31.    Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After  
12 the Response Deadline, a Final Approval Hearing will be conducted to determine whether Final  
13 Approval of the Settlement should be granted, along with the amounts properly payable for: (a)  
14 Individual Settlement Shares; (b) Individual PAGA Payments; (c) LWDA Payment; (d) Attorneys’  
15 Fees and Costs; (e) Enhancement Payment; and (e) Settlement Administration Costs. The Final  
16 Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline.  
17 Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the  
18 Settlement. Class Counsel will provide Defendant’s Counsel a draft of the final approval motion  
19 before filing it with the Court to give Defendant’s Counsel an adequate opportunity to review and  
20 provide comments to the motion in good-faith. By way of said motion, Plaintiff will apply for the  
21 entry of the Final Approval Order and Judgment, which will provide for, in substantial part, the  
22 following:

- 23           a.       Approval of the Settlement as fair, reasonable, and adequate, and directing  
24 consummation of its terms and provisions;
- 25           b.       Certification of the Settlement Class;
- 26           c.       Approval of the application for Attorneys’ Fees and Costs to Class Counsel;
- 27           d.       Approval of the application for Enhancement Payment to Plaintiff;

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1 e. Directing Defendant to fund all amounts due under the Settlement Agreement  
2 and ordered by the Court; and

3 f. Entering judgment in the Action, while maintaining continuing jurisdiction, in  
4 conformity with California Rules of Court 3.769 and the Settlement Agreement.

5 32. Funding of the Gross Settlement Amount. No later than five (5) business days after  
6 the Effective Date, Defendant will deposit the Gross Settlement Amount into a Qualified Settlement  
7 Fund (“QSF”) within the meaning of Treasury Regulation Section 1.468B-1, *et seq.*, to be established  
8 by the Settlement Administrator. Defendant shall provide all information necessary for the Settlement  
9 Administrator to calculate necessary payroll taxes including its official name, 8-digit state  
10 unemployment insurance tax ID number, and other information requested by the Settlement  
11 Administrator, no later than five (5) business days after the Effective Date.

12 33. Distribution of the Gross Settlement Amount. Within five (5) business days of the  
13 funding of the Gross Settlement Amount, the Settlement Administrator will issue the Individual  
14 Settlement Payments to Settlement Class Members, Individual PAGA Payments to PAGA Employees,  
15 LWDA Payment to the LWDA, Enhancement Payment to Plaintiff, Attorneys’ Fees and Costs to Class  
16 Counsel, and Settlement Administration Costs to itself. The Settlement Administrator shall also set  
17 aside the Employer Taxes and all employee-side payroll taxes, contributions, and withholding, and  
18 timely forward these to the appropriate government authorities.

19 34. Settlement Checks. The Settlement Administrator will be responsible for undertaking  
20 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way  
21 of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the  
22 PAGA Employees in accordance with this Settlement Agreement. When issuing payments, the  
23 Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA  
24 Payment into one check if the intended recipient for both payments is one individual. Settlement Class  
25 Members and PAGA Employees are not required to submit a claim to be issued an Individual  
26 Settlement Payment and/or Individual PAGA Payment. Each Individual Settlement Payment and  
27 Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180)  
28 calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds  
associated with such canceled checks shall be distributed by the Settlement Administrator to the State

1 of California's Unclaimed Property Division in the name of the Settlement Class Member and/or  
2 PAGA Employee. The Parties agree that this disposition results in no "unpaid residue" under  
3 California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to  
4 Settlement Class Members, whether or not they cash their settlement checks. Therefore, Defendant  
5 will not be required to pay any interest on such amounts. The Settlement Administrator shall undertake  
6 amended and/or supplemental tax filings and reporting required under applicable local, state, and  
7 federal tax laws that are necessitated due to the cancelation of any Individual Settlement Payment  
8 and/or Individual PAGA Payment checks. Settlement Class Members whose Individual Settlement  
9 Payment checks are canceled shall, nevertheless, be bound by the Class Settlement, and PAGA  
10 Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by  
11 the PAGA Settlement.

12 35. Class Settlement Release. Upon the full funding of the Gross Settlement Amount,  
13 Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released,  
14 settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.  
15 Settlement Class Members further covenant not to sue concerning the Released Class Claims. It is the  
16 intent of the Parties that the Final Approval Order and Judgment when entered by the Court shall have  
17 full res judicata effect and be final and binding upon Settlement Class Members regarding the Released  
18 Class Claims.

19 36. PAGA Settlement Release. Upon the full funding of the Gross Settlement Amount,  
20 Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will  
21 be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and  
22 discharged the Released Parties of all Released PAGA Claims.

23 37. Plaintiff's General Release. Upon the full funding of the Gross Settlement Amount,  
24 Plaintiff, individually and on his own behalf, will be deemed to have fully, finally, and forever  
25 released, settled, compromised, relinquished, and discharged the Released Parties from any and all  
26 claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages,  
27 or causes of action of any kind or nature whatsoever, known or unknown, suspected or unsuspected,  
28 asserted or unasserted, which Plaintiff, at any time of execution of this Settlement Agreement, had or

1 claimed to have or may have, including but not limited to any and all claims arising out of, relating to,  
2 or resulting from his employment and/or separation of employment with the Released Parties,  
3 including any claims arising under any federal, state, or local law, statute, ordinance, rule, or regulation  
4 or Executive Order relating to employment, including, but in no way limited to, any claim under Title  
5 VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 1981; the Americans with  
6 Disabilities Act (“ADA”); the Family and Medical Leave Act (“FMLA”); the Employee Retirement  
7 Income Security Act (“ERISA”); the California Family Rights Act (“CFRA”); the California Fair  
8 Employment and Housing Act (“FEHA”); all claims for wages or penalties under the Fair Labor  
9 Standards Act (“FLSA”); all claims for wages or penalties under the California Labor Code; Business  
10 and Professions Code sections 17200 *et seq.*; all laws relating to violation of public policy, retaliation,  
11 or interference with legal rights; any and all other employment or discrimination laws; whistleblower  
12 claims; any tort, fraud, or constitutional claims; and any breach of contract claims or claims of  
13 promissory estoppel. It is agreed that this is a general release and is to be broadly construed as a  
14 release of all claims, provided that, notwithstanding the foregoing, this Paragraph expressly does not  
15 include a release of any claims that cannot be released hereunder by law. Plaintiff understands and  
16 expressly agrees that this Settlement Agreement extends to claims that he has against Defendant, of  
17 whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past,  
18 present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on  
19 or before the execution of this Settlement Agreement. Any and all rights granted under any state or  
20 federal law or regulation limiting the effect of this Settlement Agreement, including the provisions of  
21 Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of  
22 the California Civil Code reads as follows:

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

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1           38.   Final Approval Order and Judgment. The Parties shall provide the Settlement  
2 Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court,  
3 and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for  
4 sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment to the  
5 Class will be required.

6           39.   Continued Jurisdiction. After entry of the judgment pursuant to the Settlement, the  
7 Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and  
8 Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the  
9 interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters,  
10 and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this  
11 Settlement Agreement.

12           40.   Effects of Termination or Rescission of Settlement. Termination or rescission of the  
13 Settlement Agreement shall have the following effects:

14               a.       The Settlement Agreement shall be void and shall have no force or effect, and  
15 no Party shall be bound by any of its terms;

16               b.       In the event the Settlement Agreement is terminated, Defendant shall have no  
17 obligation to make any payments to any Party, Class Member, or attorney, except that the terminating  
18 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement  
19 Administrator is notified that the Settlement has been terminated;

20               c.       The Preliminary Approval Order, Final Approval Order and Judgment,  
21 including any order certifying the Class, shall be vacated;

22               d.       The Settlement Agreement and all negotiations, statements, and proceedings  
23 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be  
24 restored to their respective positions in the Action prior to the execution of the Settlement Agreement;

25               e.       Neither this Settlement Agreement, nor any ancillary documents, actions,  
26 statements, or filings in furtherance of the Settlement (including all matters associated with the  
27 mediation) shall be admissible or offered into evidence in the Action or any other action for any  
28 purpose whatsoever; and

1 f. Any documents generated to bring the Settlement into effect, will be null and  
2 void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will  
3 likewise be treated as void from the beginning.

4 41. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant  
5 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
6 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause  
7 of action or right herein released and discharged.

8 42. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set  
9 forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein.  
10 Any exhibits to this Settlement Agreement are an integral part of the Settlement.

11 43. Limitations on Publicity. Plaintiff and Class Counsel agree that, prior to Preliminary  
12 Approval, they will keep the terms of this Settlement confidential except for purposes of  
13 communicating with Plaintiff only. Plaintiff shall be informed that the Settlement is confidential and  
14 shall be advised to keep the Settlement confidential. From and after Preliminary Approval, Plaintiff  
15 and Class Counsel agree to limit their statements regarding the terms of this Settlement, whether oral,  
16 written, or electronic, to say the Action has been resolved. Nothing in this Paragraph is intended to  
17 interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class  
18 Counsel, including but not limited to, communicating with Class Members regarding this Settlement.  
19 Nothing herein will restrict Class Counsel from including publicly available information regarding  
20 this Settlement in future judicial submissions regarding Class Counsel's qualifications and experience.  
21 Furthermore, Plaintiff and Class Counsel will undertake any and all disclosures required to be made  
22 to the LWDA in conformity with PAGA.

23 44. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the  
24 entirety of the Parties' agreement relating to the settlement and transaction completed thereby, and all  
25 prior or contemporaneous agreements, understandings, representations, and statements, whether oral  
26 or written and whether by a Party or such Party's legal counsel, are merged herein. No other prior or  
27 contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties  
28 expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a),  
which provide that a written agreement is to be construed according to its terms and may not be varied  
or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written



1 representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.

2 45. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in  
3 the Action (including with respect to California Code of Civil Procedure § 583.310), except such  
4 proceedings necessary to implement and complete this Settlement Agreement, pending the Final  
5 Approval Hearing to be conducted by the Court.

6 46. Amendment or Modification. Prior to the filing of the motion for preliminary approval  
7 of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement  
8 except by written agreement signed by counsel for all Parties. After the filing of the motion for  
9 preliminary approval of the Settlement, the Parties may not amend or modify any provision of this  
10 Settlement Agreement except by written agreement signed by counsel for all the Parties and subject  
11 to Court approval. A waiver or amendment of any provision of this Settlement Agreement will not  
12 constitute a waiver of any other provision.

13 47. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and  
14 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement  
15 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant  
16 to this Settlement Agreement to effectuate its terms and to execute any other documents required to  
17 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have  
18 full authority to enter into this Settlement Agreement, and further intend that this Settlement  
19 Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible  
20 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation  
21 confidentiality provisions that otherwise might apply under state or federal law.

22 48. Signatories. It is agreed that because the members of the Class are so numerous, it is  
23 impossible or impractical to have each Settlement Class Member or PAGA Employee execute this  
24 Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the  
25 Class Settlement as to the Settlement Class Members and the binding nature of the PAGA Settlement  
26 as to the PAGA Employees, and the releases provided for by this Settlement Agreement shall have  
27 the same force and effect as if this Settlement Agreement were executed by each Settlement Class  
28 Member and PAGA Employee.

49. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,  
and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

1           50.    California Law Governs. All terms of this Settlement Agreement and attached exhibits  
2 hereto will be governed by and interpreted according to the laws of the State of California.

3           51.    Execution and Counterparts. This Settlement Agreement is subject only to the  
4 execution of all Parties. However, this Settlement Agreement may be executed in one or more  
5 counterparts. All executed counterparts and each of them, including facsimile, electronic, and scanned  
6 copies of the signature page, will be deemed to be one and the same instrument.

7           52.    Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this  
8 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at  
9 this Settlement after arm's length negotiations and in the context of adversarial litigation, taking into  
10 account all relevant factors, present and potential. The Parties further acknowledge that they are each  
11 represented by competent counsel and that they have had an opportunity to consult with their counsel  
12 regarding the fairness and reasonableness of this Settlement Agreement. In addition, if necessary to  
13 obtain approval of the Settlement, the Mediator may execute a declaration supporting the Settlement  
14 and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to  
15 discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

16           53.    Invalidity of Any Provision. Before declaring any provision of this Settlement  
17 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent  
18 possible consistent with applicable precedents so as to define all provisions of this Settlement  
19 Agreement valid and enforceable.

20           54.    Plaintiff's Cooperation. Plaintiff agrees to sign this Settlement Agreement and, by  
21 signing this Settlement Agreement, is hereby bound by the terms herein and agrees to fully cooperate  
22 to implement the Settlement.

23           55.    Non-Admission of Liability. The Parties enter into this Settlement Agreement to  
24 resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of  
25 continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and  
26 specifically denies, it has violated any federal, state, or local law; violated any regulations or guidelines  
27 promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements;  
28 breached any contract; violated or breached any duty; engaged in any misrepresentation or deception;

1 or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement  
2 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be  
3 construed as an admission or concession by Defendant of any such violations or failures to comply  
4 with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement  
5 Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received  
6 as evidence in any action or proceeding to establish any liability or admission on the part of Defendant  
7 or to establish the existence of any condition constituting a violation of, or a non-compliance with,  
8 federal, state, local or other applicable law.

9 56. Captions. The captions and paragraph numbers in this Settlement Agreement are  
10 inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or  
11 intent of the provisions of this Settlement Agreement.

12 57. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
13 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be  
14 construed more strictly against one Party than another merely by virtue of the fact that it may have  
15 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length  
16 negotiations between the Parties, all Parties have contributed equally to the preparation of this  
17 Settlement Agreement.

18 58. Representation By Counsel. The Parties acknowledge that they have been represented  
19 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and  
20 that this Settlement Agreement has been executed with the consent and advice of counsel, and  
21 reviewed in full.

22 59. All Terms Subject to Final Court Approval. All amounts and procedures described in  
23 this Settlement Agreement herein will be subject to final Court approval.

24 60. Notices. All notices, demands, and other communications to be provided concerning  
25 the Settlement Agreement shall be in writing and deemed to have been duly given as of the third  
26 business day after mailing by First Class U.S. Mail, or the day sent by email or messenger, addressed  
27 as follows:

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1 To Plaintiff and Class Counsel:

2 Jonathan M. Genish

3 jgenish@blackstonepc.com

4 Miriam L. Schimmel

5 mschimmel@blackstonepc.com

6 Joana Fang

7 jfang@blackstonepc.com

8 Alexandra Rose

9 arose@blackstonepc.com

10 **BLACKSTONE LAW, APC**

11 8383 Wilshire Boulevard, Suite 745

12 Beverly Hills, California 90211

13 Tel: (310) 622-4278 / Fax: (855) 786-6356

14 To Defendant:

15 Bryan L. Hawkins

16 bryan.hawkins@stoel.com

17 Robert A. Sarkisian

18 robert.sarkisian@stoel.com

19 **STOEL RIVES LLP**

20 500 Capitol Mall, Suite 1600

21 Sacramento, California 95814

22 Tel: (916) 447-0700 / Fax: (916) 447-4781

23 61. Cooperation and Execution of Necessary Documents. All Parties and their counsel will  
24 cooperate with each other in good faith and use their best efforts to implement the Settlement,  
25 including and not limited to, executing all documents to the extent reasonably necessary to effectuate  
26 the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or  
27 content of any document needed to implement the Settlement Agreement, or on any supplemental  
28 provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties  
may seek the assistance of the Mediator and then the Court to resolve such disagreement.

**IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily executed this Joint  
Stipulation of Class Action and PAGA Settlement between Plaintiff and Defendant:

**IT IS SO AGREED.**

**PLAINTIFF VICTOR DE LA CRUZ**

Dated: 02/27/2024

  
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Plaintiff Victor De La Cruz

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**DEFENDANT NORTHWEST PIPE COMPANY**

Dated: \_\_\_\_\_

\_\_\_\_\_

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

On behalf of Defendant Northwest Pipe Company

**APPROVED AS TO FORM ONLY:**

**BLACKSTONE LAW, APC**



Dated: February 27, 2024

\_\_\_\_\_  
Jonathan M. Genish  
*Attorneys for* Plaintiff Victor De La Cruz  
and Proposed Class Counsel

**STOEL RIVES LLP**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Bryan L. Hawkins  
Robert A. Sarkisian  
*Attorneys for* Defendant Northwest Pipe Company

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**DEFENDANT NORTHWEST PIPE  
COMPANY**

Dated: 3/12/2024

*MKendrick*

Full Name: Megan Kendrick

Title: Vice President of Human Resources  
On behalf of Defendant Northwest Pipe  
Company

**APPROVED AS TO FORM ONLY:**

**BLACKSTONE LAW, APC**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jonathan M. Genish  
*Attorneys for* Plaintiff Victor De La Cruz  
and Proposed Class Counsel

**STOEL RIVES LLP**

Dated: 3/13/2024

*Robert Sarkisian*

Bryan L. Hawkins  
Robert A. Sarkisian  
*Attorneys for* Defendant Northwest Pipe  
Company

# **EXHIBIT A**

## **NOTICE OF CLASS ACTION SETTLEMENT**

### ***Victor De La Cruz v. Northwest Pipe Company*** **Superior Court of California for the County of San Bernardino, Case No. CIVSB2211140**

#### **PLEASE READ THIS CLASS NOTICE CAREFULLY.**

**You have received this Class Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.**

**You do not need to take any action to receive a settlement payment.**

**This Class Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks and/or PAGA Workweeks that you are credited with, if you so choose.**

**YOU ARE NOTIFIED THAT:** A class and representative action settlement has been reached between Plaintiff Victor De La Cruz ("Plaintiff") and Defendant Northwest Pipe Company ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the case entitled *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court, Case No. CIVSB2211140 ("Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

#### **I. IMPORTANT DEFINITIONS**

"Class" or "Class Member" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period. This shall include both individuals employed pursuant to a collective bargaining agreement and individuals not employed pursuant to a collective bargaining agreement.

"Class Period" means the period from May 25, 2018 through July 17, 2023.

"Class Settlement" means the settlement and resolution of all Released Class Claims.

"PAGA Employees" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period. This shall include both individuals employed pursuant to a collective bargaining agreement and individuals not employed pursuant to a collective bargaining agreement.

"PAGA Period" the period from May 25, 2021 through July 17, 2023.

"PAGA Settlement" means the settlement and resolution of all Released PAGA Claims.

#### **II. BACKGROUND OF THE ACTION**

On May 25, 2022, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code that Plaintiff contends were violated ("PAGA Letter"). Also on May 25, 2022, Plaintiff commenced a putative class action lawsuit by filing a Class Action Complaint for Damages in the San Bernardino County Superior Court, Case No. CIVSB2211140. On February 2, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 *Et Seq.* ("Operative Complaint"), adding a cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, *et seq.* ("PAGA").

Plaintiff contends that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination and associated waiting-time penalties, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse business expenses, and thereby engaged in unfair business practices in violation of the California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys' fees and costs.



Defendant denies all of the allegations in the Action or that it violated any law.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”).

On [Date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Apex Class Action LLC as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Victor De La Cruz as representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Jonathan M. Genish  
Miriam L. Schimmel  
Joana Fang  
Alexandra Rose  
**Blackstone Law, APC**  
8383 Wilshire Boulevard, Suite 745  
Beverly Hills, California 90211  
Tel: (310) 622-4278 / Fax: (855) 786-6356

If you are a Class Member, you need not take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks and/or PAGA Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Employee, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object or seek exclusion from the PAGA Settlement and all PAGA Employees will be bound to the PAGA Settlement if the Court grants final approval of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff, Class Members, or PAGA Employees. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members, the State of California, and PAGA Employees.

### **III. SUMMARY OF THE PROPOSED SETTLEMENT**

#### **A. Settlement Formula**

The total gross settlement amount is Six Hundred and Fifty-One Thousand Dollars (\$651,000.00) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys’ fees, in an amount not to exceed 1/3 of the Gross Settlement Amount (i.e., \$217,000.00), and reimbursement of litigation costs and expenses, in an amount not to exceed Twenty-Five (\$25,000.00) to Class Counsel; (2) Enhancement Payment in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff for his services in the Action; (3) the amount of Forty Thousand Dollars (40,000.00) allocated toward civil penalties under the Private Attorneys General Act (“PAGA Amount”), of which the LWDA will be paid 75% (30,000.00) (“LWDA Payment”) and the remaining 25% (10,000.00) will be distributed to PAGA Employees (“PAGA Employee Amount”); and (4) Settlement Administration Costs in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period (“Workweeks”). The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiplied each Class Member’s individual Workweeks by the Estimated Workweek Value to yield an estimated Individual Settlement Share that each Class Member may be entitled to receive under the Class Settlement

(which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) will be issued their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as twenty percent (20%) as wages, which will be reported on an IRS Form W-2, and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee’s share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Shares resulting in a net payment to the Settlement Class Member (“Individual Settlement Payment”). The employer’s share of taxes and contributions in connection with the wages portion of Individual Settlement Shares (“Employer Taxes”) will be paid by Defendant separately and in addition to the Gross Settlement Amount.

PAGA Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the PAGA Employee Amount (“Individual PAGA Payment”) based on the number of weeks each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period (“PAGA Workweeks”). The Settlement Administrator has divided the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Workweeks of all PAGA Employees to yield the “PAGA Workweek Value,” and multiplied each PAGA Employee’s individual PAGA Workweeks by the PAGA Workweek Value to yield each PAGA Employee’s Individual PAGA Payment.

Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to PAGA Employees at the address that is on file with the Settlement Administrator. **If the address to which this Class Notice was mailed is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

#### **B. Your Workweeks and PAGA Workweeks (if applicable) Based on Defendant’s Records**

According to Defendant’s records:

- **From May 25, 2018 through July 17, 2023 (i.e., the Class Period), you are credited as having worked [REDACTED] Workweeks.**
- **From May 25, 2021 through July 17, 2023 (i.e., the PAGA Period), you are credited as having worked [REDACTED] PAGA Workweeks.**

If you wish to dispute the Workweeks and/or PAGA Workweeks credited to you, you must submit your dispute in writing to the Settlement Administrator (“Workweeks Dispute”). The Workweeks Dispute must: (a) contain the case name and number of the Action (*Victor De La Cruz v. Northwest Pipe Company*, Case No. CIVSB2211140); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) clearly state that you dispute the number of Workweeks and/or PAGA Workweeks credited to you and what you contend is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked **on or before [Response Deadline]**.

#### **C. Your Estimated Individual Settlement Share and Individual PAGA Payment (if applicable)**

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment (if applicable) is based on the number of Workweeks and PAGA Workweeks (if applicable) credited to you.

**Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.**

**Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED] and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.**

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment (if applicable) reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment and Individual PAGA Payment (if applicable) may be higher or lower.

**D. Release of Claims**

Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims. Settlement Class Members further covenant not to sue concerning the Released Class Claims. It is the intent of the Parties that the Final Approval Order and Judgment when entered by the Court shall have full res judicata effect and be final and binding upon Settlement Class Members regarding the Released Class Claims.

Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

“Released Class Claims” means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, under any federal, state, or local law, and shall specifically include claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, and all claims for attorneys’ fees and costs and statutory interest in connection therewith, California Business and Professions Code sections 17200, *et seq.*, and any other claims, including claims for statutory penalties, pertaining to the Class Members.

“Released PAGA Claims” means any and all claims arising from any of the factual allegations in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, including all claims for attorneys’ fees and costs related thereto, for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order 16-2001.

“Released Parties” means Defendant and its current and former officers, directors, management-level employees, members, insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and assigns.

**E. Attorneys’ Fees and Costs to Class Counsel**

Class Counsel will seek attorneys’ fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (i.e., \$217,000.00) and reimbursement of litigation costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) (collectively, “Attorneys’ Fees and Costs”), subject to approval by the Court. The Attorneys’ Fees and Costs granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff, Class Members, and PAGA Employees on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

**F. Enhancement Payment to Plaintiff**

Plaintiff will seek the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) (“Enhancement Payment), in recognition of his services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Individual Settlement Payment and Individual PAGA Payment that he is entitled to under the Settlement.

**G. Settlement Administration Costs to Settlement Administrator**

Payment to the Settlement Administrator is estimated not to exceed Ten Thousand Dollars (\$10,000.00) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and Workweeks Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

**IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?**

**A. Participate in the Settlement**

**If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything.** You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released Class Claims against the Released Parties as described in Section III.D above.

If you are a PAGA Employee, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims against the Released Parties as described in Section III.D above.

As a Class Member and PAGA Employee (if applicable), you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

**B. Request Exclusion from the Class Settlement**

Class Members may request to be excluded from the Class Settlement by submitting a letter (“Request for Exclusion”) to the Settlement Administrator, at the following address:

[Settlement Administrator]  
[Mailing Address]

A Request for Exclusion must: (a) contain the case name and number of the Action (*Victor De La Cruz v. Northwest Pipe Company*, Case No. CIVSB2211140); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security number; (c) clearly state that you do not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address above, postmarked **on or before [Response Deadline]**.

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a timely and valid Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Class Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon. PAGA Employees will be bound to the PAGA Settlement (and the release of Released PAGA Claims described in Section III.D above) and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

**C. Object to the Class Settlement**

You can object to the Class Settlement as long as you have not submitted a Request for Exclusion by submitting a written objection (“Notice of Objection”) to the Settlement Administrator.

A Notice of Objection must: (a) contain the case name and number of the Action (*Victor De La Cruz v. Northwest Pipe*

*Company*, Case No. CIVSB2211140); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B above, postmarked **on or before [Response Deadline]**.

You may also appear at the Final Approval Hearing and present your objection orally, regardless of whether you have submitted a Notice of Objection.

## **V. FINAL APPROVAL HEARING**

The Court will hold a Final Approval Hearing in Department S17 of the San Bernardino County Superior Court, located at 247 West 3rd Street, San Bernardino, California 92415, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The Final Approval Hearing may be continued without further notice to the Class Members and PAGA Employees. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

## **VI. ADDITIONAL INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers, which are on file with the Court.

You may view the Settlement Agreement and other documents filed in the Action by for a fee by visiting the civil clerk's office, located at 247 West Third Street, San Bernardino, California 92415, during business hours, or by online by visiting the following website: <https://cap.sb-court.org/>, clicking "Search" at the top of the screen, clicking "CASE INFORMATION" from the drop down, and typing in the Case Number (CIVSB2211140).

You may also visit the Settlement Administrator's website at **[REDACTED]** for key documents in the Action.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.**

**IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT]**, OR YOU MAY ALSO CONTACT CLASS COUNSEL.**