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23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
24 **FOR THE COUNTY OF ALAMEDA**

25 PEDRO GOMEZ, as an individual, and on behalf  
26 of all others similarly situated,

27 Plaintiff,

28 vs.

DRYCO CONSTRUCTION, INC., a Corporation,  
and DOES 1 through 100, inclusive,

Defendants.

Case No. HG19037580

*Assigned for All Purposes to Hon. Winifred Y. Smith  
Department 21*

CLASS ACTION

**SETTLEMENT AGREEMENT AND  
RELEASE**

Complaint Filed: October 1, 2019

SETTLEMENT AGREEMENT AND RELEASE

4839-8055-5970v1  
NON-BC127631002

**ENDORSED  
FILED  
ALAMEDA COUNTY  
AUG 03 2020**

CLERK OF THE SUPERIOR COURT  
By Ellen Romero  
Deputy

Filed By Fax

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1 Plaintiff Pedro Gomez (“Class Representative”), individually, and on behalf of all members of  
2 the Settlement Class (as defined herein), and Defendant DRYCO Construction, Inc. (“Defendant”),  
3 hereby enter into this Settlement and Release Agreement (“Settlement” or “Settlement Agreement”) as  
4 follows:

5 **I. DEFINITIONS**

6 As used in this Settlement, the following terms shall have the following meanings:

7 1. “Action” refers to the lawsuit entitled *Pedro Gomez v. Dryco Construction, Inc.*, filed in  
8 the Superior Court of the State of California for the County of Alameda on October 1, 2019, Case No.  
9 HG19037580.

10 2. “Class Representative” refers to Plaintiff Pedro Gomez.

11 3. “Class Counsel” refers to Diversity Law Group, P.C., Law Offices of Choi & Associates,  
12 P.C., Hyun Legal, APC, and Polaris Law Group, P.C.

13 4. “Class Period” refers to the period from October 1, 2018 to March 17, 2020.

14 5. “Defense Counsel” refers to Berliner Cohen, LLP.

15 6. “Effective Date” of the Settlement shall mean the date upon which all three of the  
16 following have occurred: (i) final approval of the Settlement is granted by the Superior Court of  
17 California for the County of Alameda, or other court assuming jurisdiction of this matter, (ii) Defendant  
18 has funded the entirety of the Gross Fund Value as specified in Paragraph VIII.A.2., and (iii) the Court’s  
19 Judgment approving the Settlement becomes Final. Final shall mean: (i) if there are no objections filed,  
20 the date the court grants final approval; or (ii) if an objection is filed and not withdrawn before the court  
21 grants final approval, the expiration date of the time for filing or noticing any appeal of the Judgment.

22 7. “Participating Settlement Class Members” refers to all Settlement Class Members who do  
23 not timely opt out of the Settlement.

24 8. “Gross Fund Value” means the settlement amount that Defendant is obligated to pay per  
25 this Agreement, i.e., One Hundred and Forty-Eight Thousand Dollars (\$148,000), none of which shall  
26 revert back to Defendant under any circumstances.

27 9. “Parties” collectively refers to the Class Representative and Defendant.

28 10. “Released Parties” refers to Defendant, and all of its former or present parents,

1 subsidiaries, affiliates, business units, successors, predecessors, assigns, officers, directors, members,  
2 employees, insurers, directors, executors, and shareholders.

3 11. "Settlement Class" and "Settlement Class Members" refer to all of past and present non-  
4 exempt California who worked for DRYCO Construction, Inc. and were paid overtime wages at any  
5 time during the Class Period. Defendant represents that there is a total of 304 Settlement Class  
6 Members that were issued approximately 5,920 wage statements that included overtime wages during  
7 the Class Period. If the number of wage statements that included overtime wages during the Class  
8 Period is more than 6,068 wage statements (i.e., greater than a 2.5% increase from 5,920), then the Gross  
9 Fund Value will increase proportionately. An example of the formula for the escalator clause is as  
10 follows:

11 If there are 6,216 wage statements (which is a 5% increase from 5,920):

- 12 • Gross Fund Value of One Thousand Forty-Eight Thousand Dollars (\$148,000.00) divided  
13 by 6,068 wage statements, which equals \$24.39 per wage statement, and then multiplied  
14 by total actual number of wage statements, which will equate to the new Gross  
15 Settlement Fund.

## 16 **II. RECITALS**

17 A. On or about October 1, 2019, Plaintiff Pedro Gomez filed a class action complaint in  
18 Alameda County Superior Court, naming DRYCO Construction, Inc. as the defendant. The class action  
19 complaint alleged failure to provide accurate itemized wage statements.

20 B. On or about September 30, 2019, Class Representative submitted a letter to the Labor  
21 Workforce Development Agency pursuant to the Labor Code Private Attorneys General Act ("PAGA")  
22 alleging failure to provide accurate itemized wage statements.

23 C. On or about December 3, 2019, Pedro Gomez filed a first amended class action complaint  
24 ("Complaint") including a cause of action pursuant to the Private Attorneys' General Act of 2004 based  
25 on the alleged failure to provide accurate itemized wage statements.

26 D. Based on their investigation and evaluation of this case, Class Counsel has concluded that  
27 the settlement described in this Settlement Agreement is fair, reasonable, and adequate and is in the best  
28

1 interest of the Class in light of all known facts and circumstances, defenses asserted by Defendant,  
2 adverse findings regarding liability, an award of penalties, and numerous potential appellate issues.

3 E. Neither this Settlement Agreement, nor any document referred to or contemplated herein,  
4 nor any action taken to carry out the terms of this Settlement, is, may be construed as, or may be used as,  
5 an admission, concession, or indication by or against Defendant of evidence of any unlawful conduct,  
6 fault, wrongdoing or liability whatsoever.

7 F. The Parties now desire to fully, finally, and forever settle, compromise, and discharge the  
8 claims released in this Settlement.

9 **NOW, THEREFORE**, in consideration of the mutual covenants, promises, and conditions set  
10 forth, the parties agree as follows:

11 **III. NON-ADMISSION OF LIABILITY**

12 A. By entering into this Settlement, Defendant, on behalf of itself and all Released Parties,  
13 denies any liability for any of the claims in the Action as well as any potential or unknown claims based  
14 on wage and hour violations under state or federal law.

15 B. Defendant specifically denies that it or any of the Released Parties has engaged in any  
16 unlawful or wrongful conduct against the Class Representative or the Class.

17 C. Defendant further contends that, for purposes other than settlement, the Action is not  
18 appropriate for class action treatment.

19 **IV. STIPULATION TO CLASS AND CONDITIONAL CERTIFICATION SOLELY FOR**  
20 **PURPOSES OF THE SETTLEMENT**

21 A. This Agreement is contingent upon approval of class certification under California Code  
22 of Civil Procedure Section 382 by the Court of the Class for settlement purposes only. Defendant does  
23 not waive, and instead expressly reserves, its right to challenge the propriety of class certification,  
24 collective action certification, or representative treatment for any other purpose should the Court not  
25 approve the Settlement.

26 B. The Parties stipulate to class and conditional certification for purposes of the Settlement  
27 only. If the Court does not grant Preliminary and Final Approval of the Settlement, the Parties need not  
28 stipulate to class and conditional certification, and the Parties will resume litigation as if no settlement

1 had been reached.

2 C. Evidence of this limited stipulation for settlement purposes only will not be deemed  
3 admissible for any other purpose in this or any other proceeding.

4 D. Defendant's position is that, for any purpose other than settling this Action, this matter is  
5 not appropriate for class or collective action treatment and that evidence of this limited stipulation for  
6 settlement purposes only will not be deemed admissible for any purpose in this or any other proceeding.  
7 Defendant's position is that if this matter were to be litigated, class and conditional certification would  
8 be inappropriate, *inter alia*, because individual issues predominate as to each of the claims alleged in the  
9 Action.

10 **V. TERMS OF SETTLEMENT**

11 A. Gross Fund Value

12 1. Defendant shall pay a settlement payment in a total amount not to exceed  
13 \$148,000.00 (the "Gross Fund Value"). The Gross Fund Value shall include all payments made to  
14 Participating Settlement Class Members for penalties; attorneys' fees and costs; costs of settlement  
15 administration; and the Class Representative Payment to Plaintiff; and the PAGA Payment.

16 2. The Gross Fund Value as defined is based on acceptance of Defendant's  
17 representations that from October 1, 2018 to March 17, 2020, the Settlement Class Members received a  
18 total of approximately 5,920 wage statements that included overtime wages.

19 B. PAGA Payment

20 1. Class Counsel shall request that the Court approve a PAGA Payment of an  
21 amount not to exceed \$16,000 to cover any and all claims for civil penalties based on the alleged  
22 violations in the Action and the alleged violations included in Class Representative's letter to the  
23 LWDA. The PAGA Payment will be deducted from the Gross Fund Value.

24 2. Seventy-five percent (75%) (\$12,000.00) of the PAGA Payment shall be payable  
25 to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Settlement  
26 pursuant to PAGA, and twenty-five percent (25%) of the PAGA Payment (\$4,000.00) will be allocated  
27 to the Net Fund Value (as defined below) for distribution to the Settlement Class. Defendant will not  
28 oppose this request. This payment to the LWDA shall be paid out of the Gross Fund Value.

1           3.       If the Court approves only a lesser amount than that requested by Class Counsel  
2 for the PAGA Payment, the other terms of the Settlement shall apply.

3           C.       Class Counsel Payment of Attorneys' Fees and Costs

4           1.       Class Counsel shall request that the Court approve an award of attorneys' fees in  
5 an amount not to exceed 1/3 of the Gross Fund Value, or currently \$49,333.33 and costs in an amount  
6 not to exceed \$10,000, subject to Court approval. Defendant will not oppose this request. Attorneys'  
7 fees and costs shall be paid out of the Gross Fund Value.

8           2.       The Court's approval of fees and costs requested by Class Counsel is not a  
9 material term of the Settlement. If the Court does not approve or approves only a lesser amount than  
10 that requested by Class Counsel for attorneys' fees or costs, the other terms of the Settlement shall still  
11 apply.

12           D.       Class Representative Payment To Class Representative and Release of Claims

13           1.       Subject to Court approval, Defendant will not oppose the Class Representative's  
14 request a payment of up to \$10,000.00. Class Representative Payment will be for a service payment in  
15 an amount not to exceed \$5,000.00 for serving as a class representative and \$5,000 for a complete  
16 release of his individual claims, including a waiver of Civil Code § 1542. In addition to any payment he  
17 may otherwise be entitled to receive as a Participating Settlement Class Member ("Class Representative  
18 Payment"). The Class Representative Payment shall be allocated as 1099 income, which shall not be  
19 subject to payroll taxes and withholdings and will be reported on an IRS 1099 Form.

20           2.       Class Representative will be responsible for correctly characterizing this  
21 compensation for tax purposes and for paying any taxes owing on said amount.

22           E.       Settlement Administration Fees And Costs

23           1.       The Parties have selected Phoenix Settlement Administrators, to be the third-party  
24 Settlement Administrator to disseminate the Notice of Class Action Settlement ("Class Notice" a draft of  
25 which is attached hereto as "Exhibit A"), and to do, among others things set forth in this Agreement, the  
26 formatting and printing of the Class Notice and other documents to be mailed to the Settlement Class,  
27 handling the Class Data, updating Settlement Class Members' mailing addresses before the initial  
28 mailing of the Class Notice, calculating estimated Individual Settlement Payments, declarations

1 regarding mailing, and as may be required by the Court, providing weekly status reports, resolving  
2 disputed claims, issuing Individual Settlement Payment checks, tax reporting, voiding uncashed checks,  
3 handling uncashed checks, etc. The administration of the Settlement is estimated to be \$8,000.00.

4 F. Net Fund Value

5 After deducting the portion of the PAGA Payment paid to the LWDA, the Court-approved sums  
6 for the Class Representative Payment, Class Counsel’s attorneys’ fees and costs, and Settlement  
7 Administrator’s fees and expenses, the remaining balance (“Net Fund Value”) will be distributed to  
8 Participating Settlement Class Members on a proportionate basis as described below.

9 **VI. CLAIMS RELEASED BY THIS SETTLEMENT**

10 A. Claims Released By the Class and the Class Representative

11 1. Upon the final approval by the Court of this Settlement, and except as to the right  
12 to enforce the terms and conditions of this Settlement Agreement, all Participating Settlement Class  
13 Members fully release Defendant and all Released Parties, from any and all claims, debts, liabilities,  
14 demands, penalties, costs, expenses, attorney’s fees, damages, actions or causes of action for alleged  
15 violations of Labor Code sections 226 and 226.3, and the Private Attorneys General Act, Labor Code  
16 section 2698 et seq., based on the facts alleged in the Complaint that accrued during the Class Period  
17 (“Released Claims”).

18 2. Upon the final approval by the Court of this Settlement, and except as to the right  
19 to enforce the terms and conditions this Settlement Agreement, all Class Members who have not  
20 submitted a valid Request for Exclusion Form fully release Released Parties from the Released Claims.

21 3. The Parties stipulate that beyond the Gross Fund Value, Defendant shall not owe  
22 any further monies to the Participating Settlement Class or to the State of California based upon the  
23 claims made in the Action.

24 B. Additional Claims Released By Class Representative Only

25 In addition to the Released Claims, upon the final approval by the Court of this Settlement, the  
26 Class Representative will generally release any and all claims, known and unknown, against the  
27 Released Parties. Class Representative’s general release of all claims includes any and all claims arising  
28 from the employment relationship with the Released Parties, or the termination thereof, including,

1 without limitation, to claims for infliction of emotional distress; defamation; wrongful discharge;  
2 retaliation; violation of any federal, state, or other governmental statute, regulation, or ordinance,  
3 including, without limitation violation of Title VII of the Civil Rights Act of 1964, the Americans with  
4 Disabilities Act, the Family and Medical Leave Act, the California Fair Employment and Housing Act,  
5 the California Family Rights Act, the California Labor Code or any Industrial Welfare Commission  
6 Wage Order, and the Employee Retirement Income Security Act.. For the purpose of implementing a  
7 full and complete release and discharge of the Released Parties (subject to the sole exception describe  
8 above), Class Representative expressly acknowledges that the release in this Paragraph is intended to  
9 include in its effect, without limitation, all claims he did not know or suspect at the time of execution  
10 hereof, regardless of whether the knowledge of such claims, or the facts upon which they might be  
11 based, would materially have affected the settlement of this matter, and that the consideration given  
12 under this Settlement is also for the release of those claims and contemplates the extinguishment of any  
13 such claims. In furtherance of this Settlement, Class Representative expressly waives all rights provided  
14 by California Civil Code section 1542, or other similar statutes that Class Representative may have  
15 against any of the Released Parties. Section 1542 states:

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

## 21 **VII. NOTICE TO SETTLEMENT CLASS MEMBERS**

22 A. Defendant shall provide the Settlement Administrator within ten (10) business days of  
23 preliminary approval with a list containing the names, employee identification numbers, last known  
24 addresses, social security numbers, and number of wage statements containing payment of overtime  
25 wages issued to each Settlement Class Member during the Class Period (“Settlement Class Data”). This  
26 information is being provided confidentially to the Settlement Administrator only, and the Settlement  
27 Administrator shall treat the information as private and confidential and take all necessary precautions to  
28 maintain the confidentiality of contact information of the Settlement Class. The Settlement  
Administrator shall not share the Settlement Class Data with any other Party or counsel for any of the

1 Parties. This information is to be used only to carry out the Settlement Administrator's duties as  
2 specified in this Settlement.

3 B. The Settlement Administrator will send a Class Notice to each Settlement Class Member  
4 by First Class U.S. Mail within ten (10) calendar days of receipt of the Settlement Class Data.

5 C. No claim form is required to receive a proportionate share of the Net Fund Value. The  
6 Administrator will calculate and mail an Individual Settlement Payment to each Participating Settlement  
7 Class Member.

8 D. To provide the best notice practicable, any Class Notice returned to the Settlement  
9 Administrator as non-deliverable with an updated mailing address affixed shall be sent by First Class  
10 U.S. Mail to the forwarding address affixed thereto. If a Class Notice is returned as undeliverable  
11 without a forwarding address affixed thereto, the Settlement Administrator shall attempt to locate a  
12 current mailing address for the Settlement Class Member by skip tracing and will mail the Class Notice  
13 to the updated address identified. If no current address can be located, the Class Notice for that  
14 individual will be deemed undeliverable.

15 E. On the remailing of Class Notices by the Settlement Administrator to an updated mailing  
16 address found through skip-tracing, provided by Class Counsel or as provided by the Settlement Class  
17 Member (on the submission of a Change of Address form), the Settlement Administrator shall keep a  
18 record of the postmark mailing dates for such re-mailed Class Notices, and record all undelivered Class  
19 Notices.

## 20 **VIII. COMPUTATION AND DISTRIBUTION OF NET FUND VALUE AND CLASS**

### 21 **COUNSEL PAYMENT**

#### 22 **A. Deposit of Gross Fund Value**

23 1. The Settlement Administrator shall establish a Qualified Settlement Fund  
24 pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement.  
25 The Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID  
26 Number based on information that will be confidentially furnished by Defendant.

27 2. Assuming the Court has provided preliminary approval of the Settlement,  
28 Defendant will fund 50% of the Gross Fund Value with the Settlement Administrator within seven (7)

1 calendar days the Court grants final approval. Defendant will then fund the balance of the Gross Fund  
2 Value within fifty-two (52) days the Court grants final approval.

3 B. Formula For Calculating Individual Settlement Payments

4 The portion of the Net Fund Value available to pay Individual Settlement Payments to  
5 Participating Settlement Class Member shall be determined as follows:

6 1. The payment to each Participating Settlement Class Member will be based on the  
7 number of wage statements containing payment of overtime wages each Participating Settlement Class  
8 Member actually received during the Class Period. Defendant's employment records shall be assumed  
9 correct for purposes of calculating the number of wage statements containing overtime wages that each  
10 Participating Settlement Class Member received from Defendant and any payments under the Settlement  
11 absent evidence to the contrary.

12 2. The sum of the number of wage statements containing payment of overtime  
13 wages during the Class Period by Participating Settlement Class Members will be referred to as "Total  
14 Wage Statements."

15 3. Defendant's payroll records with respect to number of wage statements containing  
16 payment of overtime wages each Settlement Class Member received during the Class Period shall be  
17 determinative for purposes of calculating the Total Wage Statements and each Participating Settlement  
18 Class Member's share of the Net Fund Value absent proof to the contrary.

19 4. The amount to be paid per wage statement received by a Participating Settlement  
20 Class Member will be calculated by dividing the value of the Net Fund Value by the Total Wage  
21 Statements.

22 C. Distribution of Net Fund Value to Participating Settlement Class Members

23 1. The settlement administrator shall distribute the Individual Settlement Payment  
24 checks within twenty (20) business days after the Effective Date.

25 2. If any Individual Settlement Payment check remains uncashed after one hundred  
26 eighty (180) days of issuance from the date the check is issued, such check(s) will be voided by the  
27 Settlement Administrator. Thereafter, the funds represented by any uncashed or undeliverable checks  
28 shall be distributed to Legal Aid at Work pursuant California Civil Procedure Code section 384.

1           3.       The Settlement Administrator shall furnish its own Employer Identification  
2 Number and calculate all Individual Settlement Payment checks based on information that will be  
3 confidentially furnished by Defendant. The Settlement Administrator will prepare all necessary tax  
4 reporting and documentation with respect to payments made pursuant to this Agreement. The Settlement  
5 Administrator will provide the requisite IRS Forms 1099 to Participating Settlement Class Members  
6 together with the Individual Settlement Payment. The tax documents shall reflect payment for the year  
7 in which payment is made pursuant to this Settlement.

8           4.       In light of the theories and claims asserted by Class Representative, one hundred  
9 percent (100%) of each Individual Settlement Payment shall be allocated to penalties and will be  
10 reported on an IRS Forms 1099.

11           5.       None of the payments made pursuant to this Settlement will be considered for  
12 purposes of determining eligibility for, vesting or participation in, calculation of, or contributions to any  
13 welfare or benefit plans, including, without limitation, all plans, subject to ERISA. The Parties agree  
14 that these payments do not represent any modification of any employee's previously-credited hours of  
15 service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit  
16 plan, or other program or policy. These payments also will not be considered wages, compensation, or  
17 annual earnings for benefits in any year for purposes of determining eligibility for, or benefit accrual  
18 within, any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

19           D.       Class Counsel Payment

20           The Class Counsel Payment shall be distributed within ten (10) calendar days of the complete  
21 funding of the Gross Fund Value.

22           E.       Settlement Administration Payment

23           Within ten (10) calendar days of the complete funding of the Gross Fund Value, the Settlement  
24 Administrator shall deduct the Court-approved sum for payment of its fee for administering the  
25 Settlement pursuant to its terms.  
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27  
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1 **IX. OBJECTIONS AND OPTING OUT OF THE SETTLEMENT**

2 A. Objections To The Settlement

3 1. Participating Settlement Class Members desiring to object to the Settlement may  
4 submit written objections to the Settlement using the procedures set forth in the Notice of Class Action  
5 Settlement (“Class Notice”) postmarked no later than 60 calendar days after the Class Notice of  
6 Settlement is mailed. To be considered valid, a written objection must: (1) state the class member’s  
7 name, including all names used during the Class Period, address, phone number and last four digits of  
8 the class member’s social security number; (2) state all factual and legal reasons for the objection; and  
9 (3) be signed by the class member and/or the class member’s representative.

10 2. Participating Settlement Class Members may also appear at the Final Fairness  
11 Hearing to present any objections without serving a written objection.

12 3. If a Participating Settlement Class Member wishes to object and/or appear at the  
13 final approval hearing through an attorney, the attorney must file and serve a notice of appearance on the  
14 same date the written objection is mailed to the Settlement Administrator, or if no written objection is  
15 submitted, at least five (5) business days before the final approval hearing.

16 B. Requests To Be Excluded From The Settlement

17 1. Settlement Class Members who wish to exclude themselves from the Settlement  
18 (“opt-out”) may use the procedure set forth in the Class Notice. A request to opt-out of the Settlement  
19 will be deemed to be timely if postmarked on or before 60 days of the initial mailing of the Class Notice.  
20 To be considered valid, the request to opt-out must: (1) state the class member’s name, including all  
21 names used during the Class Period, address, phone number and last four digits of the class member’s  
22 social security number; (2) an affirmative statement that the class member wishes to be excluded from  
23 the settlement; and (3) be signed by the class member and/or the class member’s representative.

24 2. Class Members who timely submit a request for exclusion from the Settlement  
25 may not also submit an objection to the Settlement as the Settlement no longer affects them.

1 **X. SCHEDULE FOR SEEKING COURT APPROVAL AND FAIRNESS HEARING**

2 The following procedures for obtaining the Court's approval shall be implemented with respect  
3 to the Settlement, notifying the Settlement Class, and processing all benefits provided under this  
4 Settlement:

5 A. Request For Court Approval

6 Class Counsel will prepare and file a motion for preliminary approval.

7 B. Duties of the Parties Following Final Court Approval

8 Following final approval of the Settlement, Class Counsel will submit a [proposed] Final Order  
9 and Judgment that is mutually agreeable to the Parties approving the Settlement, adjudicating the terms  
10 thereof to be fair, reasonable and adequate, directing consummation of all terms and provisions in this  
11 Settlement and without affecting the finality of the Order Granting Final Approval and Judgment,  
12 allowing the Court to retain jurisdiction of all matters relating to the interpretation, administration,  
13 implementation, effectuation and enforcement of the Final Approval Order and the Settlement  
14 Agreement.

15 **XI. MISCELLANEOUS PROVISIONS**

16 A. Tax Treatment And Tax Indemnification

17 Defendant, Class Counsel, and Defense Counsel are not giving any tax advice in connection with  
18 the Settlement or any payments to be made pursuant to this Settlement. Participating Class Members  
19 will be responsible for correctly characterizing the Individual Settlement Payments for tax purposes and  
20 paying taxes due, if any.

21 B. Mutual Full Cooperation

22 1. Class Representative, Defendant, Class Counsel, and Defense Counsel agree to  
23 fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to,  
24 execution of such documents and to take such other action as may reasonably be necessary to implement  
25 the terms herein. The Parties agree to use their best efforts and any other efforts that may become  
26 necessary by Order of the Court, or otherwise, to effectuate the terms of this Settlement.

1 C. Parties' Authority

2 The signatories hereto represent that they are fully authorized to enter into this Settlement and  
3 are fully authorized to bind the Class Representative, Settlement Class, and Defendant to all terms stated  
4 herein.

5 D. Binding Nature of the Settlement

6 1. This Settlement shall be binding upon, and inure to the benefit of, the successors  
7 or assigns of the Released Parties. Class Representative represents, covenants, and warrants that he has  
8 not directly or indirectly, assigned, transferred, encumbered, any of the Released Claims.

9 2. This Settlement shall be admissible and subject to disclosure in any proceeding to  
10 enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply  
11 under federal or state law. Notwithstanding the foregoing, this Settlement may not be admitted into  
12 evidence or used in any proceeding except an action, motion or proceeding to approve, interpret or  
13 enforce the terms of this Settlement.

14 3. Material amendments to this Settlement may be made only by a written  
15 instrument signed by the Parties' Counsel. No rights under this Settlement may be waived except in  
16 writing.

17 E. Joint Drafting of Settlement Documents

18 1. Class Counsel and Defense Counsel have arrived at this Settlement as a result of a  
19 series of informed and arm's-length negotiations, taking into account all relevant factors, present and  
20 potential.

21 2. This Settlement has been drafted jointly by Class Counsel and Defense Counsel  
22 and, therefore, in any construction or interpretation of this Settlement, the same shall not be construed  
23 against any of the Parties.

24 3. The Class Representative and Class Counsel agree that none of the documents  
25 provided to them by Defendant shall be used for any purpose other than the prosecution and Settlement  
26 of this Action.

F. Execution of the Settlement

This Settlement may be executed in one or more counterparts and by facsimile and/or DocuSign signatures. All executed copies of this Settlement, photocopies and PDF copies thereof shall have the same force and effect and shall be as legally binding and enforceable as the original.

G. Continuing Jurisdiction

The Court shall retain jurisdiction over the implementation of this Settlement as well as any and all matters arising out of, or related to, the implementation and enforcement of this Settlement pursuant to California Code of Civil Procedure § 664.6. The prevailing party to any such enforcement action shall be entitled to its reasonable attorneys' fees and costs incurred in connection with the enforcement action. The Court shall not have jurisdiction to modify the terms of the Settlement without the consent of all of the Parties.

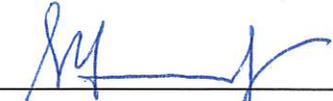
Dated: July 31, 2020

**CLASS REPRESENTATIVE, on behalf of himself and the Class**

DocuSigned by:  
  
C7AD886F3C3B445... Pedro Gomez

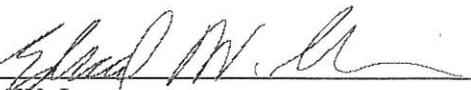
Dated: July 31 2020

**DRYCO CONSTRUCTION, INC.**

  
By: Saeed Younis  
Its: President.

Dated: July 31 2020

**CLASS COUNSEL**

By:   
Larry W. Lee  
William L. Marder  
Edward W. Choi  
Dennis Hyun  
Attorneys for Plaintiff Pedro Gomez

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Dated: July 31, 2020

**BERLINER COHEN LLP**

By:  \_\_\_\_\_

Christine H. Long  
Ghazaleh Modarresi  
Attorneys for Defendant Dryco Construction, Inc.

# EXHIBIT A

GOMEZ v. DRYCO CONSTRUCTION, INC.  
SETTLEMENT ADMINISTRATOR  
[INSERT SETTLEMENT ADMINISTRATOR]

IMPORTANT LEGAL MATERIALS

\*Barcode39\* - <<SequenceNo>>

<<Name1>>

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<<City>> <<State>> <<Zip10>>

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ALAMEDA**

**GOMEZ v. DRYCO CONSTRUCTION, INC.**

**Case No. HG19037580**

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED  
SETTLEMENT**

**YOU ARE ESTIMATED TO RECEIVE APPROXIMATELY \$<<EstimatedAward>>  
THROUGH THIS CLASS ACTION SETTLEMENT.**

**To:** All past and present non-exempt California union employees who worked for ~~Dryco~~-**DRYCO** Construction, **Inc.** and received any wage statements containing payment of overtime wages at any time from October 1, 2018 to March 17, 2020.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.  
YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED  
SETTLEMENT.

**TO RECEIVE YOUR SHARE, YOU DO NOT NEED TO DO ANYTHING.**

This Notice is Court Approved. This is not a solicitation from an attorney.

**1. WHY DID I GET THIS NOTICE?**

You received this Notice because a proposed settlement (the “Settlement”) has been reached in the class action and representative lawsuit entitled *GOMEZ v. DRYCO CONSTRUCTION, INC.*, Case No. HG19037580 (hereinafter referred to as the “Action”).

The Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement, see Section 15, below.

**2. WHAT IS THE ACTION ABOUT?**

On October 1, 2019, Plaintiff Pedro Gomez (“Plaintiff” or “Gomez”) filed his class action Complaint in the Superior Court of California, County of Alameda, against Defendant ~~Dryco~~DRYCO Construction, Inc. (“Defendant” or “~~Dryco~~DRYCO Construction”). The class action complaint alleged failure to provide accurate itemized wage statements in violation of the Labor Code. On or about December 3, 2019, Plaintiff filed a first amended class action complaint including a cause of action pursuant to the Private Attorneys General Act of 2004 based on the alleged failure to provide accurate itemized wage statements (“Operative Complaint” or “Action”).

DRYCO ~~Dryco~~ Construction denies the allegations in the Action, denies the allegations are appropriate for class treatment, and is prepared to continue to defend the action vigorously. No court has made any ruling on the merits in the Action.

**3. WHAT IS A CLASS ACTION?**

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Gomez brought his case as a class action.

In the Action, the Plaintiff seeks to represent you on a class and representative basis. DRYCO ~~Dryco~~ Construction is the Defendant. A class action allows the Court to resolve the claims of all the class members at the same time. A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file ~~his or her~~their own lawsuit on the same claims that were decided in the class action. A class action allows one court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves from the class.

**4. WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

All past and present non-exempt California employees who worked for ~~Dryco~~DRYCO

Construction and received any wage statements containing payment of overtime wages at any time from October 1, 2018 to March 17, 2020 (the “Class Period”).

Based on ~~Dryco~~-DRYCO Construction’s records, you received <<# of wage statement>> wage statements containing payment of overtime wages between October 1, 2018 to March 17, 2020.

## 5. WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

There was a hearing on **[INSERT PRELIMINARY APPROVAL DATE]** in the Superior Court of the State of California for the County of Alameda, at which time the court preliminarily approved the Settlement. The Settlement will resolve the Class Members’ claims for failure to pay all alleged failure to provide accurate itemized wage statements and for Private Attorneys General Act claims predicated on failure to provide accurate itemized wage statements.

The Settlement represents a compromise of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by DRYCO ~~Dryco~~-Construction that the claims in the Actions have merit or that DRYCO ~~Dryco~~-Construction has any liability to the Plaintiff or the Class Members on those claims. No court has made any ruling on the merits of the Action.

The parties have agreed to settle the case for a maximum total payment of \$148,000.00 (“Gross Fund Value”). Under the terms of the settlement, the following payments have been agreed to: (1) attorneys’ fees not to exceed \$49,333.33 (33 1/3%) of the total settlement amount; (2) all reasonable litigation costs incurred of up to \$10,000.00; (3) service payment to the Named Plaintiff for services in the Action and for executing a general release, in an amount not to exceed \$10,000.00; (4) Settlement Administration Costs are currently estimated to \$8,000; and (5) \$16,000.00 for PAGA penalties, 75% of which, or \$12,000.00, shall be paid to the California Labor Workforce Development Agency (the “LWDA Payment”). The amount of money remaining after these payments is the Net Fund Value that that will be distributed to individuals who are Participating Settlement Class Members. This amount is known as the “Individual Settlement Payments.”

The Net Fund Value (calculated after deduction of attorneys’ fees, costs, class representative service payment, LWDA payment, and claims administration costs) shall be paid to all Settlement Class Members who do not opt out of the settlement. The amount allocated to each Participating Settlement Class Member will be based on each individual’s number of wage statements containing payment of overtime wages received during the Class Period.

## 6. HOW DOES THE SETTLEMENT AFFECT MY RIGHTS?

If the Settlement is approved, the Court will enter a Final Order and Judgment in the Action.

**You will release the following claims, and will be barred from prosecuting any and all such claims against DRYCO ~~Dryco~~-Construction, as follows:**

“Any and all claims, debts, liabilities, demands, penalties, costs, expenses, attorney’s fees, damages, actions or causes of action for alleged violations of Labor Code sections 226 and 226.3, and the Private Attorneys General Act, Labor Code section 2698 et seq., based on the facts alleged in the Complaint that accrued during the Class Period (“Released Claims”).”

The precise definitions of the capitalized terms above can be found in the Class Action Settlement and Release, which can be viewed at the Courthouse (Superior Court of the State of California for the County of Alameda, 1225 Fallon St., Oakland, CA 94612) during normal business hours.

## **7. WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT?**

You do not need to do anything to participate in the settlement. You will receive a monetary award from this Settlement in approximately **\*\*\***, if the Settlement is approved and no appeals are filed. Class Counsel have been appointed and approved by the Court and Class Counsel will represent you.

**NOTE:** It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment. If you fail to keep your address current, you may not receive your settlement payment.

## **8. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?**

You can object to any of the terms of the Settlement before the Final Approval Hearing. Failure to take the steps below will be deemed a waiver of your objections. If the Court rejects your objection, you will still be bound by the terms of the Settlement, but you will also receive a monetary award.

To object in writing, you must include (1) state the class member’s name, including all names used during the Class Period, address, phone number and last four digits of the class member’s social security number; (2) state all factual and legal reasons for the objection; and (3) be signed by the class member and/or the class member’s representative. You must mail your written objection to the Settlement Administrator by **[INSERT OBJECTION DEADLINE]**. If your written objection is not postmarked by this date, it will be considered late.

- Settlement Administrator:

GOMEZ v. DRYCO CONSTRUCTION, INC.  
SETTLEMENT ADMINISTRATOR  
[INSERT SETTLEMENT ADMINISTRATOR]  
Toll-free number: [TBD]

Even if you didn’t submit a written objection, you may also object by appearing at the Final Approval Hearing personally or through your own counsel. If you hire your own counsel, you are responsible for paying him/her at your own expense and your own counsel must file and serve a notice of appearance on the same date the written objection is mailed to the Settlement

Administrator, or if no written objection is submitted, at least five (5) business days before the final approval hearing.

**IF YOU DO NOT MAKE YOUR OBJECTION AS DESCRIBED ABOVE, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS.**

**9. WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?**

You have the right to request exclusion from the settlement. To do so, you must submit a written request for exclusion to the Settlement Administrator at the following address:

GOMEZ v. DRYCO CONSTRUCTION, INC.  
SETTLEMENT ADMINISTRATOR

To be valid, a written request for exclusion must state that you wish to be excluded, and must: (1) state the your name, including all names used during the Class Period, address, phone number and last four digits of the your social security number; (2) an affirmative statement that the you wish to be excluded from the settlement; and (3) be signed by the you and/or your representative; and (4) be postmarked on or before the [INSERT RESPONSE DEADLINE] to the Settlement Administrator at the address listed above.

Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the Settlement, including the Released Claims described in this Notice. Class Counsel will not represent your interests if you request to be excluded.

**10. WILL THE NAMED PLAINTIFF BE COMPENSATED FOR BRINGING THIS LAWSUIT?**

Plaintiff will request a class representative payment of up to \$10,000.00 for his services as the Class Representative, for his efforts in bringing the Action and for providing a complete release of his claims. The Court will make the final decision as to the amount to be paid to the Plaintiff. Plaintiff's Application for his enhancement can be viewed at the Courthouse after [INSERT DATE], during normal business hours (as well as Class Counsel's Application for Attorneys' Fees and Costs as discussed below). Plaintiff's Application will be available for review by no later than [INSERT DATE].

**11. DO I HAVE A LAWYER IN THIS CASE?**

Yes. The Court has ordered that the interests of Named Plaintiff and the Class Members are represented by counsel for Named Plaintiff as follows:

Larry W. Lee  
Nick Rosenthal  
**DIVERSITY LAW GROUP, P.C.**  
515 South Figueroa Street, Suite 1250  
Los Angeles, California 90071  
Telephone: (213) 488-6555

Edward W. Choi, Esq.  
**LAW OFFICES OF CHOI &  
ASSOCIATES**  
515 S. Figueroa St., Suite 1250  
Los Angeles, CA 90071  
Telephone: (213) 381-1515

Facsimile: (213) 488-6554  
Email: [lwlee@diversitylaw.com](mailto:lwlee@diversitylaw.com)

Facsimile: (213) 465-4885  
Email: [edward.choi@choiandassociates.com](mailto:edward.choi@choiandassociates.com)

WILLIAM L. MARDER, ESQ. (CBN 170131)  
Polaris Law Group LLP  
501 San Benito Street, Suite 200  
Hollister, CA 95023  
Tel: (831) 531-4214  
Fax: (831) 634-0333

Dennis S. Hyun (SBN 224240)  
HYUN LEGAL, APC  
515 S. Figueroa St., Suite 1250  
Los Angeles, California 90071  
Telephone: (213) 488-6555  
Facsimile: (213) 488-6554  
Email: [dhyun@hyunlegal.com](mailto:dhyun@hyunlegal.com)

(Collectively, “Class Counsel”). Class Members will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense. If you have questions about the case or the settlement, you should ask Class Counsel.

## **12. HOW WILL THE LAWYERS BE PAID?**

Class Counsel will be requesting from the Court an amount not to exceed 33 1/3% of the total settlement amount (in other words, up to \$ 49,333.33) for their attorneys’ fees and litigation costs up to \$10,000.00. A copy of Class Counsel’s application for attorneys’ fees and costs can be viewed at the Courthouse after [INSERT DATE], during normal business hours. Class Counsel’s Application will be available for review by no later than [INSERT DATE]. The actual amount awarded to Class Counsel will be determined by the Court.

## **13. WHAT IS THE FINAL APPROVAL HEARING?**

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class; to consider the award of attorneys’ fees and expenses to Class Counsel; and to consider the request for a service award to Named Plaintiff.

## **14. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?**

The Court will hold the Final Approval Hearing on [INSERT DATE and TIME] a.m., in Department 21 of the Superior Court of the State of California for the County of Alameda, 1221 Oak Street Oakland, CA 94612 (“Final Approval Hearing”).

The Final Approval Hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing. However, you have the right to attend the Final Approval Hearing on your own, or you can choose to be represented by your own counsel at your own expense. If you plan to attend the Final Approval Hearing, you may contact Class Counsel to confirm the date and time. If the Settlement is not approved by the Court or does not become final for some reason, the Action will proceed as though no settlement was reached.

**15. MAY I SPEAK AT THE FINAL APPROVAL HEARING?**

At the hearing, the Court will be available to hear any objections and arguments concerning the Settlement. You may attend, but you do not have to attend. You may speak at the Final Approval Hearing. If you have requested exclusion from the Settlement, however, you may not speak at the Final Approval Hearing.

**16. HOW DO I GET MORE INFORMATION?**

To see a copy of the Class Action Settlement and Release (which defines the capitalized terms used in this Notice and provides a brief summary of what has happened in the Action), the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, the operative Complaint filed in the *Gomez* lawsuit, and other filed documents related to Gomez's lawsuit and this Settlement, you may view all such files at the Clerk's office at the Superior Court of the State of California for the County of Alameda, 1221 Oak Street Oakland, CA 94612 or by visiting the Court's Domain Web at <http://www.alameda.courts.ca.gov/Pages.aspx/DomainWeb>.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the address and telephone number listed below, toll free. Please refer to the Dryco Construction Class Action Settlement.

GOMEZ v. DRYCO CONSTRUCTION, INC.  
PHOENIX SETTLEMENT ADMINISTRATORS  
[INSERT INFO]

You may also contact the attorneys for the Class, whose names and contact information is listed above or visit the Settlement Administrator's website at [INSERT URL].

**17. WHAT IF MY INFORMATION CHANGES?**

If, after you receive this Notice, you change your postal address or telephone number, it is your responsibility to inform the Settlement Administrator of your updated information.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE**