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Attorneys for Plaintiff LUKE SWOBODA

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

LUKE SWOBODA, individually and on behalf  
of other persons similarly situated,

Plaintiff,

vs.

BRAND ENERGY SERVICES, LLC, a  
Delaware limited liability corporation;  
BRAND ENERGY SERVICES OF  
CALIFORNIA, INC., a Delaware corporation;  
and DOES 1-50,

Defendants.

Case No.: BC708547

[Assigned to Hon. Amy Hogue for all  
purposes, Dept. 7]

**CLASS ACTION**  
**SUPPLEMENTAL DECLARATION OF**  
**DENNIS F. MOSS IN SUPPORT OF**  
**UNOPPOSED MOTION**  
**FOR PRELIMINARY APPROVAL OF**  
**CLASS ACTION SETTLEMENT**

Date: December 22, 2020  
Time: 11:00 a.m.  
Department: 7

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I, Dennis F. Moss, declare as follows:

1. I am an attorney licensed to practice law in the State of California. As part of Moss Bollinger, LLP I, along with Ira Spiro am counsel for Plaintiff Luke Swoboda ("Swoboda") in *Luke Swoboda v. Brand Energy Services, LLC et al.* Los Angeles Superior Court Case No. BC708547. ("Action") This Supplemental Declaration, based on my personal knowledge, is submitted in response to the Court's July 31, 2020 Preliminary Approval Checklist entries and in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. This response to the Court's Checklist entries includes modification of the Settlement and Class Notice. The modified proposed settlement is memorialized in the "AMENDED STIPULATION AND AGREEMENT FOR CLASS ACTION SETTLEMENT" hereinafter referred to as "Settlement Agreement," a true and correct copy of which is attached hereto as Exhibit "1" and incorporated herein by this reference. The modifications to the Class Notice appear in Exhibit A to Exhibit 1. Redlined copies of both the Amended Settlement and the modified Notice have also been submitted to the Court.

2. Checklist Entry 1 (Checklist Page 3): The court has requested information regarding any fee splitting agreement and whether the client has given written approval. There is a fee splitting agreement which provides for payment of 75% of the fees to Moss Bollinger, LLP and 25% of the fees to Spiro Law Corporation. Plaintiff agreed to the fee split in writing on April 10, 2018.

3. Checklist Entry 2 (Checklist Page 3): The Court has asked “Will the class and release periods extend beyond the preliminary approval? If yes, please explain. The answer is no. Per the original Settlement Agreement and the Amended Settlement Agreement, the Class Period does not extend beyond Preliminary Approval, ending on December 31, 2018. (See Exhibit 1 Paragraph I. I., Pg. 4.) As originally agreed, the Release Period extended to Final Approval. The Agreement has been modified to cut off the Release Period at Preliminary Approval. (See Exhibit 1 Paragraph I. U.Pg. 6.)

4. Checklist Entry 3 (Checklist Page 3): The Parties, in the Amended Settlement, have eliminated the Civil Code section 1542 waiver as to the putative class members. (See Exhibit 1 Paragraph I. U.Pg. 6.)

5. Checklist Entry 4 (Checklist Page 3): The Parties, in the Amended Settlement, have provided that the Release period shall not be effective until the Settlement is funded. (See Exhibit 1 Paragraph I. U.Pg. 6.)

6. Checklist Entry 5 (Checklist Page 5): The Court has asked about Phoenix Class Action Administrators (“Phoenix”). The Declaration of Jodey Lawrence, filed herewith, addresses the Court’s inquiries regarding Phoenix.

7. Checklist Entry 6 (Checklist Page 5): The proposed Notice to the Class (Exhibit A to Exhibit 1) has been modified at Pg. 7 to address the Court’s concern regarding social distance procedures by addition of the following language:

The Final Approval Hearing will be on DATE. You are welcome to attend and be heard by the Court. Due to the COVID-19 pandemic, hearings are currently being conducted remotely with the assistance of a third-party service provider, LACourtConnect. Class members who wish to appear at the final fairness hearing should arrange a telephonic appearance through LACourtConnect at <https://www.lacourt.org/lacc/>, at least three days before the hearing if possible. The Court may change the date/time of the hearing, so you should consult the Court’s website ADDRESS as the date approaches, if you want to appear. It is unnecessary to file an objection with the Court to be heard on matters unrelated to an objection. If you exclude yourself from the Settlement, you may not be heard at the Final Approval Hearing.

Notice of the Final Judgment will be posted on the Administrator’s website [address]

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call Class Counsel at Moss Bollinger, LLP, DENNIS MOSS, 15300 Ventura Boulevard, Suite 207, Sherman Oaks, California 91403, (310) 982-2984, or the Claims Administrator at the telephone number listed below, toll free.

8. Checklist Entry 7 (Checklist Page 5): There will not be a Settlement website.

1           9.       Checklist Entry 8 (Checklist Page 5): Notice of Final Judgment will be given to the  
2 Class via posting on the Administrator's website.

3           10.      Checklist Entry 9 (Checklist Page 5): The Parties have ensured that the Terms of  
4 the modified Notice (Ex. A to Ex. 1) are consistent with the terms of the Amended Settlement .

5           11.      Checklist Entry 10 (Checklist Page 6): The Objection Procedure has been changed  
6 to be the same as the Opt out procedure with the only requirement being that objections be mailed  
7 to the administrator and not filed with the Court. See (See Exhibit 1 Paragraph V.C.4. .Pg. 13.)

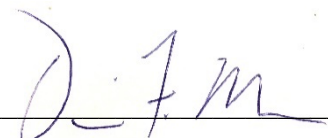
8           12.      Checklist Entry 11 (Checklist Page 6): The time that settlement checks shall remain  
9 valid has been extended to 180 days. (See Exhibit 1 Paragraph II.B.7 Pg. 9 and V.L.2. Pg. 18)

10          13.      Checklist Entry 12 (Checklist Page 6): The Parties have modified Exhibit 1  
11 Paragraph II.B.7 Pg. 9 to provide the following: " After one-hundred eighty (180) calendar days  
12 from the date of mailing, the checks shall become null and void, and any monies remaining in the  
13 distribution account shall be distributed to the Controller of the State of California to be held  
14 pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of  
15 those Settlement Class members who did not cash their checks until such time that they claim their  
16 property. The Settling Parties agree that this disposition results in no "unpaid residue" under  
17 California Civil Procedure Code § 384, as the entire Settlement Payment will be paid out to  
18 Settlement Class members, whether or not they all cash their Settlement Checks. Therefore,  
19 Defendant will not be required to pay any interest on said amount.

20          14.      Checklist Entry 13 (Checklist Page 6): The reference to Dismissal has been deleted  
21 from IX. A.5 of the Settlement. See Exhibit 1 Paragraph IX. A.5 Pg. 21.

22           I declare under penalty of the perjury the foregoing is true and correct this 5<sup>th</sup> day of  
23 November, 2020 at Sherman Oaks, California.

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Dennis F. Moss

# EXHIBIT 1

ATKINSON, ANDELSON, LOYA, RUUD & ROMO  
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Attorneys for Defendant INDUSTRIAL SPECIALISTS OF  
CALIFORNIA, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - SPRING STREET

LUKE SWOBODA, individually and on  
behalf of other persons similarly situated,

Plaintiff,

BRAND ENERGY SERVICES, LLC, a  
Delaware limited liability corporation;  
BRAND ENERGY SERVICES OF  
CALIFORNIA, INC., a Delaware  
corporation; and DOES 1-50,

Defendants.

Case No. BC708547

**AMENDED STIPULATION AND  
AGREEMENT FOR CLASS ACTION  
SETTLEMENT**

*Hon. Amy Hogue, Dept. 7*

Complaint filed: June 8, 2018

**RECITALS**

A. This Stipulation and Agreement for Class Action Settlement (the "Settlement Agreement") is made for the sole purpose of attempting to consummate settlement in this case on a class-wide basis and is made in compromise of disputed claims. Because this is a putative class action, this Settlement Agreement must receive preliminary and final approval by the Court.

B. Plaintiff Luke Swoboda, individually and on behalf of all other similarly situated current and former employees of Industrial Specialists of California, Inc. ("Defendant"), filed a class action complaint entitled "*Luke Swoboda, on behalf of himself and all others similarly situated v. Brand Energy Services, LLC, a California Corporation., and DOES 1-100, inclusive*," Los Angeles County Superior Court Case No. BC708547 (the "Class Action").

C. The Class Representative is Luke Swoboda the Class Representative and Defendant are collectively referred to herein as the "Parties."

D. The Parties enter into this Settlement Agreement on a conditional basis. In the event the Court does not enter an Order Granting Final Approval, or in the event that such Order Granting Final Approval does not become final for any reason, or in the event that the Effective Settlement Date, as defined herein, does not occur, this Settlement Agreement will be deemed null and void *ab initio*, and will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose whatsoever.

E. Defendant denies all of the Class Representative's claims as to liability and damages as well as the class action allegations, and does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural and factual grounds should this Settlement Agreement not become final. This Settlement Agreement reflects a compromise reached to end litigation.

F. Class Counsel have conducted a thorough investigation into the facts of the Lawsuit, including formal and informal exchange of extensive information and review of comprehensive

files and records. This investigation has included review of relevant documents, including policies and records of Class Members regarding their entitlement to compensation for attending training classes and unpaid work time, and representative sampling of Class Member time records and payroll records and the deposition of the Class Representative. Class Counsel are knowledgeable about and have done extensive research with respect to the applicable law and potential defenses to the claims in the Lawsuit. Class Counsel have diligently pursued an investigation of the Class Members' claims against Defendant. Based on the documents and information provided by Defendant, and their own independent investigation and evaluation, Class Counsel are of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues. Defendant and Defendant's counsel agree that the settlement is fair, reasonable and adequate.

G. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement fully and finally dispose of the Class Action:

## **STIPULATION AND AGREEMENT**

### **I. DEFINITIONS.**

A. The terms "**Agreement**," "**Settlement Agreement**" and "**Settlement**" mean this Stipulation and Agreement for Class Action Settlement, which the Parties acknowledge sets forth all material terms and conditions of the Settlement between them, and which is subject to Court approval.

B. "**Claims Administrator**" means Phoenix Class Action Administrators.

C. "**Claims Administrator Costs**" means the costs of the Claims Administrator not to exceed \$10,000.

D. "**Class Action**" means the Class Action lawsuit herein, generally known as *Luke Swoboda, on behalf of himself and all others similarly situated v.*

1 *Brand Energy Services, LLC, a California Corporation, et al.* assigned Los Angeles  
2 County Superior Court Case No. BC708547.

3 **E. "Class Counsel"** means Dennis Moss, Esq. of Moss Bollinger LLP and  
4 Ira Spiro, Esq.. Defendant stipulates to the appointment of Class Counsel for  
5 settlement purposes only.

6 **F. "Class List"** means the list of names, last known residential addresses,  
7 and social security numbers of Class Members for whom Defendant possesses such  
8 information. The Class List will indicate, for each Class Member, the number of  
9 weeks worked in a Class Position during the Class Period.

10 **G. "Class Members"** means all hourly employees employed by  
11 Defendant ISCI at the oil and gas facilities known as the Exxon/Mobil refinery in  
12 Torrance, California and the Chevron refinery in El Segundo, California at any time  
13 since January 28, 2015.

14 **H. "Class Period"** means January 28, 2015, through December 31, 2018.

15 **I. "Class Position"** means all hourly employees employed by Defendant  
16 ISCI at the oil and gas facilities known as the Exxon/Mobil refinery in Torrance,  
17 California and the Chevron refinery in El Segundo, California at any time during  
18 the period January 28, 2015 through December 31, 2018.

19 **J. "Class Representative" and "Named Plaintiff"** means Luke Swoboda.

20 **K. "Common Fund"** means Four Hundred and Twenty Six Thousand  
21 Dollars and Zero Cents (\$426,000.00), which amount will be all-inclusive, including  
22 Individual Settlement Payments to all Participating Class Members, any  
23 Enhancement to the Named Plaintiff, Claims Administrator Costs, attorneys' fees  
24 and costs to Class Counsel related to the Class Action as awarded by the Court. The  
25 employer's portion of FICA, FUTA and/or employer-paid legal standard tax  
26 withholdings based on each Individual Settlement Payment shall be paid separate  
27 and apart from the Common Fund by Defendant. This Settlement is a non-  
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1           reversionary settlement. This Settlement is not a claims-made settlement.

2           **L. "Court"** means the Superior Court of the State of California for the  
3           County of Los Angeles, Complex Division.

4           **M. "Effective Settlement Date"** means the following: (a) if no one objects  
5           to the Settlement, then the Effective Settlement Date shall be the first day after  
6           service of notice of entry of the Judgment by either Party; or (b) if someone objects  
7           to the Settlement, then all of Defendant's obligations under this Agreement shall be  
8           stayed until the time for seeking an appeal, review or writ from the Judgment has  
9           passed, which date shall then be the Effective Settlement Date, except that if an  
10          appeal, review or writ from the Judgment is sought, the Effective Settlement Date  
11          shall be the day after the Judgment is affirmed or the appeal, review or writ is  
12          dismissed or denied, and the Judgment is no longer subject to further judicial review.

13          **N. "Enhancement"** means the portion of the Common Fund paid to the  
14          Named Plaintiff for his service in connection with being Class Representative and  
15          Named Plaintiff.

16          **O. "Final Fairness Hearing"** means a hearing set by the Court, pursuant  
17          to class action procedures and requirements, for the purpose of determining the  
18          fairness, adequacy and reasonableness of this Settlement.

19          **P. "Individual Settlement Payment"** means the gross amount to be paid  
20          to each Class Member who does not timely opt out of this Settlement.

21          **Q. "Net Common Fund"** means the portion of the Common Fund  
22          allocated for payment of Individual Settlement Payments to Class Members.

23          **R. "Notice of Class Action" and "Class Notice"** means a notice entitled  
24          "Notice of Class Action Settlement," in the form substantially similar to that attached  
25          hereto as Exhibit "A".

26          **S. "Participating Class Member"** means any Class Member who does  
27          not timely opt out of the Settlement, as provided in Section VI.E below.  
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T. **"Preliminary Approval Date"** means the date on which the Court executes, files and enters the Order Granting Preliminary Approval.

U. **"Released Claims"** means all claims and allegations of liability made in the Case, including all claims for minimum wage, waiting time penalties, recordkeeping penalties, violation of Labor Code sections 201, 202, 203, 218, 218.5, 1174, 1194, 1194.2, Labor Code section 2698 *et seq*, Industrial Wage Commission Wage Order 16-2001, and Business and Professions Code section 17200 as it relates to the underlying Labor Code claims referenced above, interest, fees, and costs from January 28, 2015 through the date the Court grants preliminary approval, whether known or unknown, suspected or unsuspected, including any damages, restitution, interest waiting time penalties, punitive damages, attorneys' fees, costs, or any other form of relief whatsoever. The Release of claims shall not be effective until such time as the Defendant funds the Settlement payments provided for herein.

V. **"Released Parties"** means Industrial Specialists Company, Inc. and its parents, subsidiaries and affiliates, assigns, officers, directors, agents, employees, shareholders, insurance companies, attorneys or representatives.

## II. SETTLEMENT AMOUNTS.

The following settlement amount summary is intended solely for the convenience of the Court:

### Settlement Fund Allocation

Common Fund (or Total Settlement Amount)	\$426,000.00
Net Common Fund (or payments to the Class) (estimated)	\$257,000.00
Enhancement to the Named Plaintiff, as	

awarded by the Court	\$7,500.00
Attorneys' Fees as awarded by the Court	An amount not to exceed \$142,000.00
Litigation Costs as awarded	\$9,500.00
Administrative Costs (estimated)	\$10,000.00

Upon the occurrence of the Effective Date, and after all conditions precedent have occurred as set forth in this Agreement, the Claims Administrator will make or cause to be made all disbursements required by the Settlement Agreement in accordance with the terms set forth herein.

A. **The Common Fund.**

The Common Fund is Four Hundred and Twenty Six Thousand Dollars and Zero Cents (\$426,000.00), which amount will be all-inclusive, including Individual Settlement Payments to all Participating Class Members, any Enhancement to the Named Plaintiff, Claims Administrator Costs, and attorneys' fees and costs to Class Counsel related to the Class Action as awarded by the Court. The employer's portion of FICA, FUTA and/or employer-paid legal standard tax withholdings based on each Individual Settlement Payment will be paid separate and apart from the Common Fund by Defendant.

B. **Net Common Fund (Amounts Paid To Class Members).**

1. The Net Common Fund will be approximately Two Hundred Fifty Seven Thousand Dollars and Zero Cents (\$257,000.00).
2. Individual Settlement Payments will be paid from the Net Common Fund to Participating Class Members as follows: (a) eighty percent (80%) of the Net Common Fund is attributable to Labor Code § 203 claims and shall be paid in equal amounts to each Participating Class Member; (b) the remaining twenty percent (20%) of the Net Common Fund shall be paid to each Participating

Class Member based on the number of weeks the Participating Class Member worked in a Class Position during the Class Period divided by the total weeks all Participating Class Members worked in a Class Position during the Class Period.

3. The Individual Settlement Payment for each Participating Class Member reflects negotiated amounts for payments for unpaid wages; waiting time and other statutory penalties and liquidated damages; and all other claims as described more fully above as Released Claims.
4. The individual settlement payments will be allocated as follows: one-tenth to wages, 80% to penalties, and one-tenth to interest. The portion of each individual award allocated to penalties and interest shall be reported on a Form 1099. The remaining portion of each individual award shall be reported on a Form W-2 subject to tax withholding. Defendant shall be responsible for paying the employer portion of the taxable wage payments.
5. The Claims Administrator will be responsible to pay all required employee shares of payroll taxes and withhold employee payroll income taxes from the Net Common Fund at the time of distribution to Participating Class Members.
6. Individual Settlement Payments will not count as earnings or compensation for purposes of any benefit plans (e.g., 401(k) plan; retirement plan; etc.) sponsored by Defendant.
7. The Individual Settlement Payment checks will be void after 180 days from the date of issuance. After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class members who did not cash their checks until such time that they claim their

property. The Settling Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the entire Settlement Payment will be paid out to Settlement Class members, whether or not they all cash their Settlement Checks. Therefore, Defendant will not be required to pay any interest on said amount.

8. The settlement is a cash settlement, with any unclaimed portion of the amount of the Settlement Fund allocated to pay Class Members to escheat to the State of California pursuant to California Code of Civil Procedure section 1513.

9. After the Effective Settlement Date, and in accordance with the schedule and procedures set forth in Section VI.L below, Defendant will pay to the Claims Administrator the Common Fund and the additional amount allocated to pay the employer portion of the taxable wages.

C. **Class Representative Enhancement.**

1. Class Counsel will submit an application to the Court for an award of an individual Enhancement to Luke Swoboda in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00.)

2. Such application will be set for hearing concurrently with the Parties' Joint Motion for Final Approval. The Enhancement is to compensate the Named Plaintiff for his service and risk in connection with being Class Representative and Named Plaintiff.

3. Defendant and its counsel will not object to a request for approval of such Enhancement, provided the requested Enhancement does not exceed \$7,500.00 total. Any portion of the Enhancement not approved by the Court will be included in the Net Common Fund and distributed to Participating Class Members.

4. The Enhancement is in addition to the Individual Settlement Payment allocated to the Class Representative under this Settlement. The Class Representative agrees that he will not opt out of or object to the Settlement.

5. Any Enhancement awarded by the Court will not be treated as wages. The

Class Representative will receive an individual Form 1099 relating to such payment. The Class Representative will be solely liable for and pay any and all taxes, costs, interest, assessments, penalties, or damages by reason of payment of his individual Enhancement.

**D. Class Counsel's Attorneys' Fees And Costs.**

1. Class Counsel will submit an application to the Court for an award of attorneys' fees and costs in an amount not to exceed One Hundred Forty Two Thousand Dollars and Zero Cents (\$142,000.00) for attorneys' fees plus reasonable costs up to Ninety Five Hundred Dollars (\$9,500.00) as proven. Such application will be set for hearing concurrently with the Parties' Joint Motion for Final Approval.

2. Defendant and its counsel will not object to Class Counsel's application for an award of attorneys' fees and costs, provided the requested amount does not exceed \$142,000.00 for attorneys' fees plus reasonable costs up to \$9,500.00 as proven. Any attorneys' fees or costs amount not approved by the Court will be included in the Net Common Fund and distributed to Participating Class Members.

3. As a condition of this Settlement Agreement, Class Counsel agree to pursue their attorneys' fees and costs only in the amount and manner reflected herein.

**E. Costs Of Settlement Administration.**

The Claims Administrator Costs shall not exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) and will be paid from the Common Fund.

**III. RELEASES BY PARTICIPATING CLASS MEMBERS.**

**A. Terms Of Release.**

In exchange for the consideration recited in this Settlement Agreement, all Participating Class Members, on behalf of themselves and on behalf of their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, do hereby and forever release, waive, acquit and discharge the Released Parties from the Released Claims.

**B. Claims By Participating Class Members Based On Stipulation And Agreement.**

In addition to the terms of the Release outlined above, no Participating Class Member

will have any claim against any of the Released Parties, Defendant's attorneys of record, the Named Plaintiff, any other Class Member, or Class Counsel based on errors in administrating claims or performing the mailing and skip-tracing requirements of the Claims Administrator under this Agreement.

**IV. CLASS CERTIFICATION.**

The Parties stipulate and agree to the certification of the Class Action solely for purposes of this Settlement. Should, for whatever reason, the Settlement not become final, the fact that the Parties stipulate and agree to the certification as part of the Settlement will have no bearing on, and will not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in this action, and will have no bearing on, and will not be admissible in connection with, the issue of whether a class should be certified in any other lawsuit. Defendant expressly reserves its rights to oppose class certification, and Plaintiff and all Class Members reserve their rights to move for class certification, should this Settlement not become final.

**V. SETTLEMENT APPROVAL, CLAIMS, AND PAYMENT PROCEDURES.**

**A. Request For Preliminary And Final Approval.**

The Parties will cooperate fully in requesting preliminary and final approval of this Settlement Agreement by the Court, including determination by the Court that this Settlement is fair, reasonable, and adequate. The Parties will also cooperate fully in promptly requesting that, as provided for in this Settlement Agreement, the Court approve the proposed forms of notices, orders, and other documents necessary to implement this Settlement.

**B. Class List To Be Provided By Defendant To The Claims Administrator.**

1. Defendant will provide a Class List to the Claims Administrator within ten (10) business days after entry and service of an Order Granting Preliminary Approval regarding this Settlement, which will identify each Class Member, his or her social security

number and last known home address. The Class List will also contain the number of weeks worked credited to each Class Member for purposes of the Individual Settlement Payment.

**C. Notice Of Class Action.**

2. Within seven (7) days after the Claims Administrator receives the Class List from Defendant, the Claims Administrator will first update all addresses using the National Change of Address System (NCOA) and then mail to all Class Members, via first-class United States Mail, The Notice of Class Action Settlement Agreement, that is attached as Exhibit "A" hereto. The Notice shall contain each class member's estimated individual settlement payment as calculated by the Settlement Administrator. The envelope that the Notice Packet is mailed in will clearly state that it concerns a class action and the recipient could be entitled to a cash payment. The Notice Packet shall be sent in both English and Spanish versions. The Claims Administrator will translate the documents from English to Spanish.

3. In the event of returned or non-deliverable Notice Packet, the settlement administrator will make reasonable efforts to locate Class Members and re-send the Notice Packets. In the event of returned or non-deliverable Notice Packets, the settlement administrator will make reasonable efforts to locate Class Members through skip-tracing services offered by publicly available databases, and will re-send the Notice Packet to the best available address after performing the skip-tracing. It will be conclusively presumed that a Class Member's Notice Packet was received if the Notice Packet has not been returned within forty-five (45) days of the original mailing of the Notice Packet to the Class Member.

4. In order to object to the settlement, a Class Member must not have excluded himself or herself from this settlement, and must mail his or her objection and on the Administrator no later than forty-five (45) calendar days after the mailing of the Notice Packet.

5. In the event the procedures set forth herein are followed and the intended recipient of a Notice Packet still does not receive the Notice Packet, the intended

recipient will be a Participating Class Member and will be bound by all terms of the Settlement and the Order Granting Final Approval entered by the Court. The Individual Settlement Payment will be mailed to that Class Member's last known address. If returned, then the Claims Administrator will conduct an in-depth search to locate a better address and re-mail.

**B. Dispute Resolution Regarding Weeks Of Employment.**

1. Each Class Member will receive a Notice of Estimated Individual Settlement Payment in the Notice of Class Settlement, which will specify the weeks worked by that Class Member in a Class Position that he or she is being credited with for purposes of this Settlement. Class Members will be entitled to dispute the number of weeks worked reported on the Notice of Estimated Individual Settlement Payment in the Notice of Class Settlement by sending written notice of their dispute to the Claims Administrator. To be considered, such written dispute shall be: (1) signed by the Class Member; (2) timely; and (3) accompanied by evidence of the actual weeks worked during the Class Period in a Class Position.

2. Class Members will have no more than forty-five (45) days after the date when the Notice Packet was deposited by the Claims Administrator in the United States Mail to post-mark or deliver to the Claims Administrator a dispute concerning their weeks worked in a Class Position during the Class Period with evidence to support his or her dispute. Within seven (7) days of receiving a dispute concerning a Class Member's weeks worked, the Claims Administrator shall review all documents received from the Class Member in support of the Class Member's dispute, and within seven (7) days of receiving those documents the Claims Administrator shall inform Class Counsel and Defendant's counsel of its decision as to whether they accept or reject the dispute. Class Counsel and Defendant's counsel stipulate to timely and effectively cooperate to resolve any disagreements regarding disputed weeks worked or the Claims Administrator's inquiries. In the event Class Counsel and Defendant's counsel are not able to reach agreement regarding

a dispute, the Claims Administrator's decision shall be final. Within seven (7) days of the Claims Administrator's decision, the Claims Administrator will provide a written explanation entitled "Notice Regarding Disputed Weeks Worked" to the Class Member who disputed his or her weeks worked which have been credited to him or her under the Settlement. The Notice Regarding Disputed Weeks Worked (in both English and Spanish) will inform the Class Member of any change to his or her weeks worked. The Class Member shall have ten days (10) days after the date the Notice Regarding Disputed Weeks Worked is postmarked to send to the Claims Administrator a Request for Exclusion from the Settlement (pursuant to the steps set forth in Section VI.E). If, within that ten (10) day time period, the Class Member does not send to the Claims Administrator a valid Request for Exclusion, the Class Member shall be deemed a Participating Class Member and will be paid in accordance with the Class Member's weeks worked as noted on the Notice Regarding Disputed Weeks Worked.

3. Upon resolution by Defendant's counsel and Class Counsel of all disputes regarding weeks worked by the Class, the Claims Administrator will prepare and circulate to all counsel an updated Class List. Any changes to a Class Member's weeks worked will be reflected in the total weeks worked for the entire Class on the updated Class List. For example, if Class Member A disputes his weeks worked and provides satisfactory evidence that his weeks worked should be increased by two weeks, the total weeks worked for the entire Class will also be increased by two weeks for purposes of calculating Individual Settlement Payments.

E. **Requests For Exclusion ("Opt Out").**

The Notice of Class Action will notify all Class Members of their right to opt out of the Settlement.

1. Any Class Member who wishes to be excluded (opt out) from the Settlement, must submit a Request for Exclusion to the Claims Administrator on or before the Objection/Exclusion Deadline Date (postmarked 45 days after the mailing of the Notice).

To be valid, the Request for Exclusion must: (a) include a written statement requesting exclusion from the Settlement; (b) reference the name, address, and telephone number of the person requesting exclusion; (c) be signed by the person requesting exclusion; (d) include the last 4 digits of their social security number; and (e) be postmarked no later than the Objection/Exclusion Deadline. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. The Objection/Exclusion Deadline Date shall be forty-five (45) days after the date the Notice Packet is first mailed (or re-mailed) by the Claims Administrator to the Class Member.

2. Any Class Member who mails a valid and timely Request for Exclusion will, upon receipt thereof by the Claims Administrator, no longer be a Participating Class Member, and will receive no benefit from this Settlement, and none of his or her claims, causes of action or rights will be released by virtue of this Settlement Agreement. Any Individual Settlement Payment that would have been paid to a Class Member but for that Class Member opting out of the Settlement will be included in the Net Common Fund and distributed to the Participating Class Members.

3. Failure to timely submit the required Request for Exclusion will result in a Class Member being conclusively deemed a Participating Class Member fully bound by the terms of the Settlement.

**F. Objections To This Settlement.**

The Notice of Class Action will provide that Class Members who wish to object to the Settlement must mail to the Administrator and postmarked no later than forty-five (45) days after the date the Notice Packet was first mailed (or remailed) to that Class Member, a written statement objecting to the Settlement. The Administrator must, within five days of receipt, provide Class Counsel and Defendant's Counsel with copies of objections received. Class Counsel shall file Objections received with the Court on or before the date of filing of the Motion for Final approval. Class members who timely Object may be heard at the Final

Fairness Hearing individually or through counsel. At the Final Fairness Hearing, the Court may, at its discretion hear the Objection of any class member who did not timely file an Objection. Any Class Member who fails to object in the manner specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

G. **Verification Of Dissemination Of Notice Of Class Action.**

The Claims Administrator will verify, in writing, that the Notice Packets have been disseminated in accordance with the Court's Order Granting Preliminary Approval, and will provide such verification to Class Counsel and Defendant's counsel no later than twenty (20) days prior to the date of the Final Fairness Hearing.

H. **Reporting.**

The Claims Administrator will provide written notice to Class Counsel and Defendant's counsel of all disputes concerning weeks worked, Requests for Exclusion, and Objections to Settlement it receives, within five (5) days of receiving such items.

I. **No Encouraging Class Members Not To Participate.**

No Party will directly or indirectly, through any person or entity, encourage any Class Member not to participate in this Settlement.

J. **Final Fairness Hearing.**

On the date to be set by the Court if Preliminary Approval is granted, a Final Fairness Hearing will be held before the Court in order to: (1) review this Settlement Agreement and determine whether the Court should give it final approval; and (2) consider any timely objections to the Settlement and all responses by the Parties to such objections. At the Final Fairness Hearing, the Parties will ask the Court to approve the Settlement Agreement and enter Judgment. Notice of the final judgment will be posted on the Administrator's website .

K. **Listing Of Individual Settlement Amounts.**

Within ten (10) days after the Effective Settlement Date, the Claims Administrator

will provide to Class Counsel and Defendant's counsel a Proceeds List showing the Individual Settlement Payment for each Participating Class Member who will receive settlement proceeds ("Proceeds List"). The Proceeds List will include a calculation of all employer payroll and tax required payments.

**L. Dates And Methods Of Payment Of The Net Common Fund.**

1. Within twenty (20) days after the Effective Settlement Date, Defendant will pay to the Claims Administrator the Common Fund (the "Funding Date"). Ten (10) days after the Funding Date will be known as the "Payment Date." If any appeal or action or proceeding to challenge the Settlement is pending as of the Funding Date or Payment Date, the Funding Date and/or Payment Date shall be extended to twenty (20) days and ten (10) days, respectively, after final resolution of any appeals, actions or proceedings to challenge the Settlement.

2. On the Payment Date, the Claims Administrator will prepare and mail settlement checks for each Participating Class Member in the amount of his or her Individual Settlement Payment. The checks will indicate on their face that they are void if not negotiated within one hundred and eighty (180) days of their issuance. In the event a settlement check is returned to the Claims Administrator with a forwarding address, the settlement check will be forwarded to the forwarding address. In the event a settlement check is returned to the Claims Administrator without a forwarding address or is otherwise undeliverable, the Claims Administrator will conduct an in depth search and re-mail the returned check. If the standard or "in-depth" search does not provide a better address, or the settlement check is ultimately returned without a forwarding address, neither Defendant, Class Counsel or the Claims Administrator shall be required to take further action to achieve delivery of the check to the Class Member. If within that ninety (90) day period the Participating Class Member contacts the Claims Administrator, or if Class Counsel does so on his or her behalf, the settlement check will be reissued and mailed to the address the Participating Class Member (or Class Counsel) provides. Any such reissued settlement

checks will indicate on their face that they are void if not negotiated within one hundred and eighty (180) days of their issuance.

3. Any uncashed portion of the Net Common Fund allocated to pay Participating Class Members shall escheat to the State of California pursuant to Code of Civil Procedure section 1513.

4. Any interest on funds deposited by Defendant with the Claims Administrator shall be paid to Defendant upon the closing of the Claims Administrator's bank account regarding this Settlement.

M. **Dates And Methods Of Payments Of Enhancement And Attorneys' Fees And Costs.**

1. On the Funding Date, Defendant will pay to the Claims Administrator the Enhancement awarded by the Court, which amount is included in the Common Fund. On the Payment Date, the Claims Administrator will pay from the Common Fund the Enhancement as awarded by the Court to Class Representative Luke Swoboda. The payment will be made by sending to Class Counsel a check payable to "Luke Swoboda" in the amount of the Court-approved Enhancement.

2. On the Funding Date, Defendant will pay to the Claims Administrator the attorneys' fees and costs awarded by the Court. On the Payment Date, the Claims Administrator will pay from the Common Fund to Class Counsel their Court-approved attorneys' fees and costs, which amounts are included in the Common Fund. The payment will be made by sending to Class Counsel a check for the Court-approved attorneys' fees and costs, payable to "Moss Bollinger, LLP" unless specified otherwise by Class Counsel. Such payment is conditional upon Class Counsel providing the Claims Administrator with a completed Form W-9.

N. **Dates And Methods Of Payments Of Employer Portion of Taxes**

On the Funding Date, Defendant will pay to the Claims Administrator separate and apart from the Common Fund the employer portion of taxes owed by Defendant

O. **Deadlines.**

If any deadline specified in this Agreement falls on a Saturday, Sunday, or State Court holiday, the deadline will be automatically extended to the next regular business day. Unless specified otherwise, all references to "days" shall mean calendar days.

VI. **ENFORCEMENT, JUDGMENT AND CONTINUING JURISDICTION OF THE COURT.**

Pursuant to California Rules of Court, Rules 3.769, 3.770 and 3.771, this Settlement Agreement, will be enforceable by the Court. Even after the Order of Final Judgment and notwithstanding it, this Court will have and retain continuing jurisdiction over the Class Action and over all Parties and Class Members, to the fullest extent necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement and all matters provided for in it, and to interpret it.

VII. **MUTUAL FULL COOPERATION.**

The Parties will fully cooperate with each other to accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such documents and taking such other action as may be reasonably necessary or convenient to implement it.

VIII. **NO ADMISSIONS.**

Nothing in this Settlement Agreement will constitute or be considered an admission by or on behalf of Defendant, or any Released Party, of any wrongdoing or liability or of the accuracy of any allegation made in connection with this Class Action.

IX. **WITHDRAWAL, NULLIFICATION, INVALIDATION.**

A. **Effective Date Of Defendant's Obligations Under This Agreement.**

Defendant's payment obligations under this Settlement Agreement will become final and effective only upon occurrence of all of the following events:

1. Execution and filing by the Court of an Order Granting Preliminary Approval;
2. Certification of the Class for settlement purposes only;

3. The Court conducting a Final Fairness Hearing;
4. Execution and filing by the Court of the Order Granting Final Approval;
5. Entry of a Final Judgment; and
6. Occurrence of the Effective Settlement Date.

In the event that any of the conditions specified in this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain approval of the Court for any reason, all matters covered by this Agreement will be null and void. In such event, neither this Agreement nor any negotiations leading to this Settlement will be used or construed by or against any Party as a determination, admission, or concession of any issue of law or fact in the litigation; and the Parties hereto do not waive, and instead expressly reserve, their respective rights regarding the prosecution and defense of the litigation, including all available defenses and affirmative defenses, and challenging any claim that the Class Action could be certified as a class action, as if this Settlement Agreement never existed.

**B. Withdrawal.**

1. If prior to the Final Fairness Hearing, the Claims Administrator has received timely requests to opt out, as outlined herein, from greater than ten percent (10%) of the total number of Class Members, Defendant will have the sole and absolute discretion if it so chooses to withdraw from this Settlement, if Defendant does so in a writing served on Class Counsel no later than fourteen (14) days after the Objection/Exclusion Deadline Date, but will be responsible for the payment of the Claims Administrator's expense.

2. Defendant will provide notice of any such withdrawal in writing to Class Counsel prior to the date set for the Final Fairness Hearing. In the event Defendant elects to so withdraw, it will not be responsible for paying any settlement amounts, Enhancements, or attorneys' fees. Defendant, however, will pay any Claims Administrator Costs incurred as of the withdrawal date.

1                   C.     **Nullification.**

2 If: (1) the Court should for any reason fail to enter the Order of Final Judgment; or (2) the  
3 Court's Order of Final Judgment is reversed or modified as to any material term, or declared  
4 or rendered void as to any material term, then: (a) this Settlement Agreement will be  
5 considered null and void; and (b) neither this Settlement Agreement nor any of the related  
6 negotiations or proceedings will be of any force or effect.

7                   D.     **Invalidation.**

8 Invalidation of any material term of this Settlement Agreement will invalidate this  
9 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining  
10 provisions will remain in full force and effect.

11                   E.     **Appeal From Order Of Final Judgment.**

12 In the event of a timely appeal from the Order of Final Judgment, the Order of Final  
13 Judgment will be stayed and the Individual Settlement Payments and any other payments  
14 required hereunder by Defendant will not be paid pending the completion and final  
15 resolution of the appeal, and any payment thereafter will: (1) occur only if the Order of  
16 Final Judgment is upheld after all appeals; and (2) be in a manner that is provided for in this  
17 Settlement Agreement and in the Order of Final Judgment.

18  
19 V.     **GENERAL PROVISIONS.**

20                   A.     **Entire Agreement.**

21 This Settlement Agreement constitutes the entire integrated agreement between the  
22 Parties relating to the Class Action, and no oral representations, warranties or inducements  
23 have been made to any party concerning this Settlement Agreement other than the  
24 representations, warranties and covenants contained and memorialized in this Settlement  
25 Agreement.

26                   B.     **Authorization To Act.**

27 Class Counsel warrants and represents that they are authorized by the Class  
28

Representative, and counsel of record for Defendant warrant that they are authorized by Defendant, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement, including this Settlement Agreement.

**C. Modification Only In Writing.**

This Settlement Agreement may be amended or modified only by a written instrument signed by Counsel for the Parties or all Parties or their successors in interest, stating that it is amending or modifying this Settlement Agreement.

**D. Binding On Successors.**

This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this Agreement, as well as their respective attorneys, past, present, and future predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or affiliated entities.

**E. No Prior Assignments.**

The Participating Class Members will be deemed by operation of the Order Granting Final Approval to covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, cause of action or rights herein released and discharged.

**F. Governing Law.**

All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to conflicts of laws principles.

**G. Counterparts.**

This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

Counsel for the Parties will exchange among themselves signed counterparts.

H. **Headings For Convenience Only.**

The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

I. **Construction Of This Agreement.**

The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of arms-length negotiations between the Parties and that this Settlement Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party, or his or its counsel participated in the drafting of this Agreement. This Settlement Agreement constitutes the entire agreement between the Parties hereto. Except as expressly provided herein, this Settlement Agreement has not been executed in reliance upon any other oral or written representations or terms and no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Settlement Agreement. In entering this Settlement Agreement, the Parties hereto explicitly recognize California Civil Code section 1625 and California Code of Civil Procedure section 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. The Named Plaintiff and Defendant participated in the negotiation and drafting of this Settlement Agreement and had available to them the advice and assistance of independent counsel. As such, no Participating Class Member or Defendant may claim that any ambiguity in this Settlement Agreement should be construed against the other.

J. **Corporate Signatories.**

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

**K. Representation By Counsel.**

All of the Parties hereto acknowledge that they have been represented by counsel throughout all negotiations which preceded the execution of this Settlement Agreement and that this Agreement has been executed with the consent and advice of counsel.

**L. Attorneys' Fees And Costs.**

Except as otherwise provided herein, the Parties hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Class Action and will not seek reimbursement thereof from any Party to this Settlement Agreement.

IT IS SO AGREED:

Dated: November 2, 2020

MOSS BOLLINGER LLP

By: 

DENNIS MOSS  
Attorneys for Plaintiff  
LUKE SWOBODA, on behalf of himself  
and all others similarly situated

Dated: November 2, 2020

ATKINSON, ANDELSON, LOYA, RUUD  
& ROMO

By: 

RONALD W. NOVOTNY  
Attorneys for Defendant  
INDUSTRIAL SPECIALISTS OF  
CALIFORNIA, INC.

# **EXHIBIT A to EXHIBIT 1**

# NOTICE OF CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

LUKE SWOBODA, individually and on behalf  
of other persons similarly situated,

Plaintiff,

vs.

BRAND ENERGY SERVICES, LLC, a  
Delaware limited liability corporation; BRAND  
ENERGY SERVICES OF CALIFORNIA, INC.,  
a Delaware corporation; and DOES 1-50,

Defendants.

CASE NO. BC708547

ASSIGNED FOR ALL PURPOSES TO  
JUDGE AMY HOGUE  
DEPT. 7

NOTICE OF CLASS ACTION SETTLEMENT

**If You Worked For Industrial Specialists of California, Inc. ("ISCI"), as an hourly employee at the oil and gas facilities known as the Exxon/Mobil Refinery in Torrance, California or the Chevron Refinery in El Segundo, California in the time between January 28, 2015 and December 31, 2018**

## You May Be Entitled to Participate in a Class Action Settlement.

The Los Angeles County Superior Court approved this notice. This is not an advertisement.  
You are not being sued. Your legal rights are affected whether you act or not.

### PLEASE READ THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT ARE:	
<b>Do Nothing</b>	<p>If you do nothing and the Court orders final approval of the Settlement and such approval is confirmed by the Court, the amount of your <i>approximate</i> individual settlement payment is:</p> <p>\$ _____ [Class Administrator to insert approximate payment for settlement class member] based on your status as an employee of ISCI whose employment by ISCI ended and your <span style="background-color: yellow;">    </span> weeks of employment during the class period of January 28, 2015, through December 31, 2018. You will also give up your rights to file your own lawsuit for claims released by this Settlement.</p>
<b>Object To The Settlement Dispute Your Workweek</b>	<p>If you want to object to the settlement, you must write to the Administrator and explain why you think the settlement should not be approved. (See Section 19 below.). If you want to dispute the number of workweeks during the Settlement Period that</p>

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<b>Calculation</b>	<b>ISCI claims you were employed (See Section 11 below).</b>
<b>Exclude Yourself</b>	<b>If you exclude yourself (or "opt-out") from this lawsuit, you will not receive any share of the money from the settlement. (See Section 20 below.)</b>
<b>Participate In a Hearing</b>	<b>Ask to speak in Court about the fairness of the Settlement at the final approval hearing.</b>

**YOUR RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE  
THEM ARE EXPLAINED IN THIS NOTICE**

**A. BASIC INFORMATION**

**1. Why did I get this notice?**

ISCI records show that you worked for that Company as an hourly employee at the oil and gas facilities known as the Exxon/Mobil refinery in Torrance, California or the Chevron refinery in El Segundo, California between January 28, 2015 and the Present. You are receiving this notice because you may be a member of a class on whose behalf a class action lawsuit has been brought. The lawsuit is known as *Swoboda v. Brand Energy Services, Inc.*, assigned Los Angeles County Superior Court Case No. BC708547 (the "Class Action"). This notice explains the nature of the Class Action, the proposed settlement, and your legal rights to participate in, object to, or opt out of the settlement.

**2. What is a class action?**

In a class action lawsuit, one or more people called a "Class Representative" (in this case, Luke Swoboda) act as Plaintiff and sue on behalf of other people who could possibly have similar claims. The people together are a "Class" or "Class Members." One court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class.

**B. THE CLAIMS IN THE CLASS ACTION**

**3. Who is in the Class?**

The Court has conditionally certified a settlement class comprised of: all hourly employees employed by Defendant ISCI at the oil and gas facilities known as the Exxon/Mobil Refinery in Torrance, California and the Chevron Refinery in El Segundo, California at any time between January 28, 2015 and the December 31, 2018. ("Class" or "Class Members").

**4. What is the Class Action about?**

The Class Action alleges that the Class was not paid for all time worked and for all training time in accordance with the California Labor Code and Wage Orders; and for waiting time penalties up to 30 days after termination

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of employment with ISCI. The lawsuit also alleges that these actions by ISCI constituted unfair business practices under California law. Although the title of the Case does not reference ISCI, ISCI was added as a Defendant after the lawsuit was filed.

#### **5. What is ISCI's response to the Class Action?**

ISCI denies all allegations raised in the Class Action and asserts that it did not violate the law and has no liability for any of the Class Members' claims.

#### **6. Has the Court decided who is right?**

No. The Court has not decided whether ISCI or the Plaintiff is correct. By establishing the Class and issuing this notice, the Court is not suggesting that the Plaintiff will win or lose this case.

### **C. SUMMARY OF THE SETTLEMENT**

#### **7. Why is there a settlement?**

Both sides have conducted detailed investigations and an analysis of the facts and applicable law. Plaintiff believes that the claims asserted in the lawsuit have merit; ISCI strongly disputes that. This case involves many unresolved factual and legal issues, and the outcome is uncertain. Substantial amounts of time, energy, and other resources have been devoted by both parties in litigating this case and, unless there is a settlement, that situation will continue. By agreeing to a settlement, the parties avoid the costs, risks, and uncertainty of trial and possible appeal, and the Class Members will receive a financial payment.

#### **8. What does the settlement provide?**

Without admitting any wrongdoing, ISCI has agreed to pay \$426,000 (the "Net Non-Reversionary Settlement Fund Amount") to resolve the Class Action, which sum includes the following:

- payments to the Participating Class Members in the estimated amount of \$257,000 (the "Net Non-Reversionary Settlement Fund");
- fees of the Claims Administrator to administer the Settlement, not to exceed \$10,000;
- payment to the Class Representative, Luke Swoboda, not to exceed \$7,500; and
- Plaintiff's counsel's attorneys' fees and costs, not to exceed \$142,000 which is 1/3 of \$426,000, and reasonable costs attorneys incurred not to exceed \$9,500, as determined by the Court.

Any amount not awarded by the Court in attorneys' fees, costs, Class Representative Enhancement, or Claims Administration costs will be added to the Net Non-Reversionary Settlement Fund.

Any uncashed portion of the Net Non-Reversionary Settlement Fund allocated to pay Class Members will be deposited with the State Controller to be held in the name of the Class Member who did not cash his or her Individual Settlement Payment.

#### **9. Who is a Participating Class Member?**

A Class Member who does not request to be excluded from the settlement is a "Participating Class Member" and will receive a portion of the Net Non-Reversionary Settlement Fund. **This means that if you take no action, you will be a Participating Class Member and will be mailed a settlement payment.**

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#### **10. How will the Class be paid?**

Each Participating Class Member will receive a pro-rata share ("Individual Settlement Payment") of the Net Non-Reversionary Settlement Fund based on the number of weeks worked during the period January 28, 2015 through December 31, 2018 credited to that Participating Class Member as a percentage of the total number of weeks worked credited to all Participating Class Members. An eligible week is any calendar week during the relevant period that you worked any hours for ISCI. Any Individual Settlement Payment that would have been paid to a Class Member but for that Class Member opting out of the Settlement will be redistributed and paid out to the other Class Members.

#### **11. How much is my Individual Settlement Payment? How do I dispute the work week total attributed to me?**

**Your anticipated approximate Individual Settlement Payment is listed above.** The exact amount of the Individual Settlement Payment could vary, up or down, depending upon (1) whether any Class Members dispute the number of weeks credited to them; and (2) whether any additions or deletions are made to the number of Class Members. Each class member will receive two components of payments. The first component based on a claim for waiting time penalties on account of alleged failure to pay all wages owed when ISCI employment ended is a fixed sum of approximately \$1,272 payable to each class member irrespective of their length of service during the class period. This payment accounts for approximately 80% of the Net Non-Reversionary Settlement Fund. The remaining 20% will be divided between class members based on their weeks of employment during the class period relative to the weeks of employment of the other class members. Your Individual Settlement Payment will be allocated as follows: 10% to wages, 80% to penalties, and 10% to interest. The portion of each individual award allocated to penalties and interest shall be reported on a Form 1099. The remaining portion of each individual award shall be reported on a Form W-2 subject to tax withholding. Defendant shall be responsible for paying the employer portion of the taxable wages. The Individual settlement Payments earned in the year it is paid will not form the basis for any benefit or monetary entitlement under any employer-sponsored benefit plans.

You are entitled to dispute the number of weeks worked reported on page 1 of this Notice by sending written notice of your dispute to the Claims Administrator. To be valid, such written dispute must be: (1) signed by the Class Member; (2) accompanied by evidence of the actual weeks worked during the Class Period in a Class Position; and (3) **be postmarked no later than [REDACTED], 2020 (45 days after this Notice was originally sent to you), and received by the Claims Administrator.** Any dispute that it is postmarked later than [REDACTED], 2020, will be late and invalid and will result in the Class Member being bound by the work weeks stated in this Notice. The Settlement Administrator will investigate all disputes, and make a binding determination.

#### **12. How will Class Member weeks worked be calculated?**

A Class Member will be given credit only for periods of employment that the Class Member actively worked for ISCI between January 28, 2015 and December 31, 2018 as an hourly employee at the oil and gas facilities known as the Exxon/Mobil refinery in Torrance, California or the Chevron refinery in El Segundo, California. The weeks you worked during the Class Period in a Class Position will be based on calendar weeks during the relevant period that you worked any hours for ISCI.

#### **13. How much will the Class Representative be paid?**

Subject to Court approval, Class Representative Luke Swoboda will be paid \$7,500 for his service as the Class Representative.

**14. How will the attorneys for the Class be paid?**

The attorneys for the Class Representative and the Class Members will be paid from the \$426,000 Non-Reversionary Settlement Fund. The attorneys will ask for their fees from the Non-Reversionary Settlement Fund not to exceed \$142,000 as well as reasonable litigation costs not to exceed \$9,500. The actual amounts awarded will be determined by the Court.

**15. If I exclude myself, can I get money from this settlement?**

No. If you exclude yourself, you are not eligible to receive any money from this settlement. If you ask to be excluded, you will not be bound by the Settlement or have any right to object, appeal or comment thereon.

**16. Final Approval of the Settlement**

The Court will hold a final approval hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

If the Court grants final approval of the Settlement, all Class Members who do not exclude themselves will be bound by the terms of the Settlement and receive their share of the settlement. They will also be bound by the release of claims described in section 18 below.

**17. When Would I Get My Payment?**

The Court will hold the Final Approval Hearing on [REDACTED], 2021 in Department 7 of the Superior Court of California, County of Los Angeles, 312 North Spring Street, Los Angeles, CA 90012, to decide whether to approve the settlement. If the Court approves the settlement, your settlement share will be mailed to you within approximately 10 days from the date the Court grants final approval, unless there are objections or appeals. It is always uncertain when these issues can be resolved, and resolving them can take time.

**D. YOUR RIGHTS AND OPTIONS**

**18. OPTION #1: DO NOTHING AND BE MAILED A PAYMENT.**

**BY TAKING NO FURTHER ACTION, YOU WILL AUTOMATICALLY BE CONSIDERED A PARTICIPATING CLASS MEMBER AND WILL BE MAILED A SETTLEMENT PAYMENT BY THE CLAIMS ADMINISTRATOR TO YOUR LAST KNOWN HOME ADDRESS.**

All Participating Class Members will be deemed to have, and will have, waived and released any and all claims under California Labor Code sections 201-203, 218.5, 226, 1194, 1194.2 and Labor Code section 2698 *et seq.*, Business and Professions Code section 17200 *et seq.*, as they relate to the labor code claims referenced above. The release does not apply to any claims for workers' compensation, unemployment insurance, employment discrimination or to any other claims Class Members may have against ISCI which are unrelated to the Action and the Released Claims.

**To ensure receipt of your Individual Settlement Payment, you must notify the Claims Administrator of any changes to your mailing address by calling the 1-800 number below.**

**19. OPTION #2: REMAIN A CLASS MEMBER AND OBJECT TO THE SETTLEMENT AND/OR DISPUTE THE WORK WEEKS ATTRIBUTED TO YOU.**

If you wish to remain a Class Member, but you object to the proposed settlement (or any of its terms) and want

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the Court to consider your objection at the Final Fairness Hearing, you must follow the procedure set forth in this subsection. (If you choose to object through an attorney, no attorneys' fees will be paid by ISCI for your counsel's appearance at the Final Fairness Hearing.) A Class Member who wishes to object to the settlement must, no later than [REDACTED], **2020 (45 days after this Notice was originally mailed** must have postmarked and must mail to the Administrator a written statement objecting to the settlement. Any Class Member who does not timely submit his or her written objections within the time provided above, who wants to object may or may not, at the Judge's discretion be heard by the court at the final approval hearing.

If you want to dispute the workweeks attributed to you, but not object to the settlement overall, follow the directions in Section 11 above.

The address where any objections or disputes must be mailed is set forth below.

[ADMIN address]

**20. OPTION #3: EXCLUDE YOURSELF FROM THE CLASS.**

If you exclude yourself from the Class -- which is sometimes called "opting out" of the Class -- you will not get any money or benefits from the settlement. You will not be permitted to object to the settlement, but you will retain the right to bring your own individual lawsuit against ISCI for the statutory violations alleged in the Complaint. You may request exclusion by submitting a written Request for Exclusion to the Claims Administrator. To be valid, the Request for Exclusion must: (i) include a written statement requesting exclusion from the settlement; (ii) reference the name, address, and telephone number of the person requesting exclusion; (iii) be signed by the person requesting exclusion; (iv) include the last 4 digits of your social security number and (v) **be postmarked no later than \_\_\_\_\_, 20\_\_ (45 days after this Notice was sent to you), and received by the Claims Administrator.** Any Request for Exclusion that it is postmarked later than \_\_\_\_\_, 20\_\_, will be late and invalid and will result in the Class Member being bound to the terms of the settlement.

**21. Will my decision whether to participate in the settlement affect my employment with ISCI?**

No. ISCI is prohibited by law from retaliating against any employee for participating in this Settlement.

**22. What will happen at the Final Fairness Hearing?**

A Final Fairness Hearing will be held on \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ in Department 7 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012. The Court will determine: (i) whether the lawsuit should be finally certified as a class action solely and exclusively for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Class Members; (iii) the amount of the attorneys' fees and costs award to Class Counsel; and (iv) the amount that should be awarded to Plaintiff for class representative services. At the Final Fairness Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so.

The Final Approval Hearing will be on DATE. You are welcome to attend and be heard by the Court. Due to the COVID-19 pandemic, hearings are currently being conducted remotely with the assistance of a third-party service provider, LACourtConnect. Class members who wish to appear at the final fairness hearing should arrange a telephonic appearance through LACourtConnect at <https://www.lacourt.org/lacc/>, at least three days before the hearing if possible. The Court may change the date/time of the hearing, so you should consult the Court's website ADDRESS as the date approaches, if you want to appear. It is unnecessary to file an objection with the Court to be heard on matters unrelated to an objection. If you exclude yourself from the Settlement, you may not be heard at the Final Approval Hearing.

Notice of the Final Judgment will be posted on the Administrator's website [address]

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call Class Counsel at Moss Bollinger, LLP, DENNIS MOSS, 15300 Ventura Boulevard, Suite 207, Sherman Oaks,

Notice of Class Action Settlement  
Questions? Visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

California 91403, (310) 982-2984, or the Claims Administrator at the telephone number listed below, toll free.

Notice of Class Action Settlement  
Questions? Visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

**23. Should I get my own lawyer in this case?**

The Court has approved the law firm of Moss Bollinger LLP, as Class Counsel. Class Counsel represents you and all Class Members in the Class Action. You also have the right to hire an attorney (at your own cost) to represent you, or to enter an appearance and represent yourself.

Attorneys for Plaintiff & the Class Members are:

**MOSS BOLINGER LLP**

Dennis F. Moss, Esq.

Ari E. Moss, Esq.

Jeremy F. Bolinger, Esq.

15300 Ventura Blvd., Ste 207

Sherman Oaks, California 91403

Phone: (310) 982-2984

Fax: (310) 861-0389

**E. GETTING MORE INFORMATION**

**1. Who is the claims administrator?**

The Claims Administrator is Phoenix Class Action Settlement Administration. The Claims Administrator can be contacted at:

Swoboda v. Industrial Specialists of California, Inc. Class Action Settlement

c/o [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**2. How can I get more information?**

If you need more information or have questions, you may:

- Contact Plaintiff's Counsel (see contact information listed above).
- Speak with an attorney of your choosing at your own expense
- Call the Claims Administrator at, (800) \_\_\_\_\_.

PLEASE DO NOT CONTACT THE COURT, INDUSTRIAL SPECIALISTS OF CALIFORNIA, INC. OR ANY OF ITS MANAGERS, OR ATTORNEYS ABOUT THIS NOTICE

Notice of Class Action Settlement  
Questions? Visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com)