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8 Attorneys for Plaintiff Otina Sengvong  
9 (Additional attorneys for Parties stated on the  
10 following page)

11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 OTINA SENGVONG, on behalf of  
14 himself, and all others similarly  
15 situated,

16 Plaintiff,

17 v.

18 PROBUILD COMPANY LLC, a  
19 Delaware limited liability company dba  
20 DIXIELINE LUMBER & HOME  
21 CENTERS, DIXIELINE TRUSS  
22 YARD, DIXIELINE CLASSIC  
23 COLLECTIONS, DIXIELINE HOME  
24 CENTERS; BUILDERS  
25 FIRSTSOURCE-DALLAS, LLC, a  
26 Delaware limited liability company;  
27 BUILDERS FIRSTSOURCE, INC., a  
28 Delaware corporation; AND DOES 1  
through 50, inclusive,

Defendants.

Case No. 3:19-cv-02231-MMA (JLB)

**STIPULATION OF CLASS  
SETTLEMENT AND RELEASE  
BETWEEN PLAINTIFF AND  
DEFENDANTS**

Judge: Michael M. Anello

Action Filed: October 15, 2019

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**ADDITIONAL ATTORNEY FOR PLAINTIFF**

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Attorneys for Plaintiff,  
OTINA SENGVONG, and all others similarly situated

**ATTORNEYS FOR DEFENDANTS**

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*Attorneys for Defendants*  
PROBUILD COMPANY, LLC DBA DIXIELINE  
LUMBER & HOME CENTERS; BUILDERS  
FIRSTSOURCE-DALLAS, LLC; and BUILDERS  
FIRSTSOURCE, INC.

1 This Joint Stipulation and Settlement Agreement (herein after “Stipulation,”  
2 “Settlement,” or “Settlement Agreement”) is entered by and between Plaintiff Otina  
3 Sengvong (“Sengvong” or “Plaintiff”) on the one hand, and Defendants ProBuild  
4 Company, LLC, a Delaware limited liability complaint dba Dixieline Lumber &  
5 Home Centers, Dixieline Truss Yard, Dixieline Classic Collections, Dixieline Home  
6 Collections, and Dixieline Home Centers, Builders FirstSource-Dallas, LLC, a  
7 Delaware limited liability company, and Builders FirstSource, Inc., a Delaware  
8 corporation (collectively “Defendants”), on the other hand, subject to the terms and  
9 conditions hereof and subject to approval of the Court. Sengvong and Defendants  
10 are referenced collectively herein as “the Parties.”

11 This Agreement is intended by the Parties to fully, finally, and forever resolve,  
12 discharge and settle the Action (as defined below) and the Released Claims (as  
13 defined below), upon and subject to the terms and conditions hereof, as follows:

14 **I. BACKGROUND AND RECITALS**

15 **Case Background**

16 1. On October 15, 2019, Sengvong filed a class action lawsuit in the  
17 Superior Court of San Diego County, Case No. 37-2019-00054729-CU-OE-CTL  
18 (the “Action”), alleging *inter alia*: 1) Failure to provide meal periods (Lab. Code §§  
19 226.7, 512, and 1198); 2) Failure to provide rest breaks (Lab. Code §§ 226.7 and  
20 1198); 3) Failure to pay all wages earned for all hours worked (Lab. Code §§ 510,  
21 and 1194); 4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); 5) Wage  
22 Statement Penalties (Lab. Code § 226); 6) Waiting Time Penalties (Lab. Code §§  
23 201 - 203); 7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and 8)  
24 Civil penalties under the Labor Code Private Attorneys General Act of 2004  
25 (“PAGA,” Lab. Code §§ 2698, et seq.). On November 25, 2019, Defendants removed  
26 the Action to United States District Court for the Southern District of California,  
27 Case No. 3:19-cv-02231-MMA (JLB).  
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1           2.     The Parties have engaged in discovery, including discovery related to  
2 putative class size and potential exposure, and discovery produced in connection  
3 with the Parties' mediation efforts. Class Counsel has thoroughly investigated the  
4 facts relating to the claims alleged and analyzed the applicable legal principles to the  
5 claims asserted against Defendants.

6     **II.    THE SETTLEMENT**

7           3.     On September 3, 2020, the Parties participated in a mediation before  
8 Marc Feder. This full-day mediation session resulted in the present Settlement  
9 Agreement between the Parties.

10          4.     Based upon Class Counsel's discovery, investigation, and legal  
11 evaluation, and taking into account the sharply contested legal and factual issues  
12 involved and assessment of the uncertainties of complex litigation and the relative  
13 benefits conferred upon the Settlement Class pursuant to this Settlement Agreement,  
14 Class Counsel has concluded that a settlement with Defendants, on the terms set  
15 forth in this Settlement Agreement, is fair, reasonable, adequate and in the best  
16 interests of Sengvong and the Settlement Class.

17          5.     Defendants denied, and continue to deny: (a) all of the allegations made  
18 by Sengvong or any Settlement Class Member in the Action, in their entirety; (b)  
19 that they violated any applicable laws; (c) that they are liable or owe damages,  
20 penalties or other compensation or remedies to anyone with respect to the alleged  
21 facts or claims asserted or that could have asserted in the Action in their entirety; or  
22 (d) that class certification or representative treatment of the Action or any alleged  
23 claim is proper. Defendants emphasize that the Court has not made any findings of  
24 liability as to Defendants and the Court has not determined that class certification is  
25 warranted in this Action. Defendants have asserted defenses to the claims alleged in  
26 the Action and expressly deny each of the claims asserted against them and any and  
27 all liability arising out of the conduct alleged. Defendants contend, specifically, that  
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1 they have complied at all times with the California Labor Code, and the California  
2 Business and Professions Code, and that they paid Sengvong and Settlement Class  
3 Members all owed wages, provided meal and rest periods, reimbursed for expenses,  
4 issued complete and proper itemized wage statements, timely paid all wages both  
5 during and at the conclusion of employment, and met all other obligations owed to  
6 them under applicable federal and state law. In addition, Defendants deny that, if the  
7 case were to proceed, any class could be certified.

8         6. Defendants have concluded that further defense of this Action would  
9 be protracted and expensive. Substantial amounts of Defendants' time, energy and  
10 resources have been expended, and unless this settlement is made, will continue to  
11 be expended in defense of the claims asserted in this Action. Defendants have,  
12 therefore, agreed to settle in the manner and upon the terms set forth in this  
13 Settlement Agreement to put to rest the claims as set forth in the Action. The Parties  
14 specifically agree that the agreement of Defendants to settle this matter is not, and  
15 shall not be construed as, an admission of any wrongdoing whatsoever by  
16 Defendants against Sengvong and/or the other Settlement Class Members.

17         NOW THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the  
18 undersigned, that this Action shall be settled, subject to the approval of the Court,  
19 pursuant to the following terms and conditions:

20         **III. DEFINITIONS**

21         7. As used in this Settlement Agreement, the following terms shall have  
22 the following meanings:

23                 a. "Action" means the civil action titled *Sengvong v. ProBuild*  
24 *Company, LLC, et al.*, once pending in the Superior Court of San Diego County,  
25 Case No. 37-2019-00054729-CU-OE-CTL, and now pending in the United States  
26 District Court for the Southern District of California, Case No. 3:19-cv-02231-MMA  
27 (JLB).  
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1                   b.     “Claims Administrator” means Phoenix Class Action  
2 Administration Solution (“Phoenix”), the entity that Class Counsel and Counsel for  
3 Defendants selected to administer this Settlement and to act as the third-party  
4 administrator to process the Settlement under the terms of this Settlement  
5 Agreement.

6                   c.     “Claims Administration Costs” means the fees and costs  
7 incurred or charged by the Claims Administrator in connection with the execution  
8 of its duties under this Settlement Agreement including, but not limited to: (i) fees  
9 and costs associated with preparing, issuing, and/or monitoring reports, filings and  
10 notices (including the cost of printing and mailing all notices and other documents  
11 to the Settlement Class) required to be prepared in the course of administering the  
12 Settlement; (ii) computing the amount of the Settlement Awards, and any other  
13 payments to be made under this Settlement Agreement; (iii) handling inquiries about  
14 the calculation of individual Settlement Awards; (iv) establishing and operating a  
15 Settlement payment center address, and phone number to receive inquiries about the  
16 Settlement; and (v) preparing and issuing any tax forms required under the law  
17 and/or pursuant to this Settlement Agreement and preparing and submitting any  
18 filings required by any governmental taxing authority or other governmental agency.

19                   d.     “Class Counsel” means David G. Spivak of the Spivak Law  
20 Firm and Walter Haines of United Employees Law Group.

21                   e.     “Class List” means the list to be provided to the Claims  
22 Administrator, which consists of the first and last names, last-known addresses,  
23 telephone numbers, number of workweeks employed during the Settlement Class  
24 Period, number of pay periods employed during the PAGA Period, and full social  
25 security numbers of the Settlement Class Members.

26                   f.     “Class Notice” means the Notice of Proposed Class Action  
27 Settlement to be sent to the Settlement Class Members after the Court preliminarily  
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1 approves the terms contained in this Settlement Agreement, informing them of the  
2 material terms of the agreement, why they are receiving the Class Notice, and what  
3 their options are with respect to the Settlement. The proposed Class Notice is  
4 attached as Exhibit A to this Settlement Agreement.

5 g. “Class Released Claims” means all claims under California  
6 law that were asserted against Defendants in the operative Complaint or that could  
7 have been asserted based on the factual allegations alleged in the operative  
8 Complaint, including those for alleged: (1) alleged failure to pay minimum, straight  
9 time, overtime, or double time wages, and failure to pay other wages of any kind  
10 during employment under the California Labor Code, the FLSA or common law; (2)  
11 failure to authorize and permit rest periods or pay rest period premiums; (3) failure  
12 to provide meal periods or pay meal period premiums; (4) failure to provide accurate  
13 and itemized wage statements; (5) failure to pay final wages due at separation; (6);  
14 failure to reimburse or indemnify all necessary business expenses; (6) claims  
15 brought under Business & Professions Code section 17200, et seq., including, but  
16 not limited to all claims for unfair, unlawful and harmful conduct to class members,  
17 the general public, and Defendants' competitors and claims of unlawfully gaining an  
18 unfair advantage over other businesses; (7) claims under PAGA for civil penalties  
19 due to any Labor Code violations by Defendants arising out of or related to events  
20 alleged in the Complaint, including, but not limited to, Labor Code sections 201,  
21 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, et seq.,  
22 1194, 1197, 1198, 2802 and any applicable Wage Order; (8) claims of any nature,  
23 related to or arising out of or related to Labor Code sections 201, 202, 203, 204, 210,  
24 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, et seq., 1194, 1197, 1198,  
25 2802 and any applicable Wage Order; (9) penalties of any nature; (10) interest; (11)  
26 attorneys' fees and costs; and (12) any other claims arising out of or related to the  
27 Complaint filed in the Action.  
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1 h. "PAGA Released Claims" means all claims under PAGA  
2 that were asserted against Defendants in the operative Complaint or that could have  
3 been asserted due to any alleged Labor Code violations by Defendants during the  
4 PAGA Period arising out of or related to events alleged in the Complaint, including,  
5 but not limited to claims for alleged violations of Labor Code sections 201, 202, 203,  
6 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, et seq., 1194,  
7 1197, 1198, 2802 and any applicable Wage Order.

8 i. Plaintiff and Settlement Class Members shall be  
9 permanently barred and enjoined from the institution or prosecution of any and all  
10 Released Claims against the Released Parties, except as to such rights or claims as  
11 may be created by the Settlement.

12 j. "Complaint" or "Operative Complaint" means the original  
13 complaint filed on October 15, 2019 in this Action, with case number 37-2019-  
14 00054729-CU-OE-CTL and removed to federal court as case number 3:19-cv-  
15 02231-MMA (JLB).

16 k. "Counsel for Defendant" means Matthew B. Golper, Esq.,  
17 Peter J. Woo, Esq., and Victor T. Xu, Esq. of Goldberg Segalla LLP, 777 Figueroa  
18 Street, Suite 2000, Los Angeles, California 90017, Telephone: (213) 415-7200,  
19 Facsimile: (213) 415-7299.

20 l. "Court" means the United States District Court of the  
21 Southern District of California in which the Action is currently pending, the  
22 Honorable Michael M. Anello presiding, and located at the Edward J. Schwartz  
23 United States Courthouse, 221 West Broadway, Courtroom 3D (3rd Floor), San  
24 Diego, California 92101. Court shall also mean any other Court with proper  
25 jurisdiction of this Action.

26 m. "Defendants" means ProBuild Company, LLC, a Delaware  
27 limited liability complaint dba Dixieline Lumber & Home Centers, Dixieline Truss  
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1 Yard, Dixieline Classic Collections, Dixieline Home Collections, and Dixieline  
2 Home Centers, Builders FirstSource-Dallas, LLC, a Delaware limited liability  
3 company, and Builders FirstSource, Inc., a Delaware corporation collectively.

4 “Defendant” means any one of the Defendants individually.

5 n. “Effective Date” means ten (10) calendar days after either  
6 (a) if no objections are timely filed, the Final Approval Date; (b) if objections are  
7 filed but no appeal is filed, the expiration date of the time for filing notice of any  
8 appeal from Final Approval Date; or (c) if an appeal is filed, the latest of (i) the date  
9 of final affirmance of an appeal of that Final Approval Order, (ii) the expiration of  
10 the time for a petition for review or writ of certiorari with respect to the Final  
11 Approval Order and, if review or certiorari is granted, the date of final affirmance of  
12 the Final Approval Order following review pursuant to that grant; or (iii) the date of  
13 final dismissal of any appeal from the Final Approval Order or the final dismissal of  
14 any proceeding on review or certiorari with respect to the Final Approval Order that  
15 has the effect of confirming the Final Approval Order.

16 o. “Final Approval Date” means the date of entry of the Order  
17 granting final approval of this Settlement Agreement.

18 p. “Final Approval Order” means the Order granting final  
19 approval of this Settlement.

20 q. “Final Judgment” or “Judgment” means the judgment  
21 entered into by the Court pursuant to the terms set forth in this Settlement Agreement  
22 finally and fully giving effect to the terms contained in this Agreement.

23 r. “Gross Settlement Amount” means the total amount of One  
24 Million Four Hundred Thousand Dollars (\$1,400,000) to be paid by Defendants  
25 pursuant to the terms of this Settlement Agreement in full satisfaction of all claims  
26 arising from this Action, and which includes all individual settlement amounts to the  
27 Settlement Class Members, Representative Plaintiff’s Incentive Award, Class  
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1 Counsel Fees, Class Counsel’s Costs, Claims Administrator’s Costs, and the portion  
2 for the PAGA Payment payable to the LWDA. The Gross Settlement Amount is the  
3 maximum amount Defendants will be obliged to pay under this Agreement other  
4 than any employer payroll taxes required by law. Defendants will separately pay any  
5 employer payroll taxes required by law, including, but not limited to, the employer  
6 FICA, FUTA, and SDI contributions.

7 s. “Incentive Award” means the payment to Representative  
8 Plaintiff Sengvong for his service to the Settlement Class and his execution of the  
9 Personal Release contained herein, which is in addition to whatever payment he is  
10 otherwise entitled to as a Settlement Class Member..

11 t. “Net Settlement Amount” (“NSA”) means the portion of  
12 the Gross Settlement Amount after deducting Class Counsel Fees, Class Counsel  
13 Costs, Incentive Award to Representative Plaintiff, Claims Administrator Costs, and  
14 the LWDA portion for the PAGA Payment. Defendants will separately pay any  
15 employer-side payroll taxes required by law, including, but not limited to, the  
16 employer FICA, FUTA, and SDI contributions. The NSA will be distributed to  
17 Settlement Class Members.

18 u. “Notice Packet” means a pre-paid self-addressed return  
19 envelope that will include the Class Notice (Exhibit A hereto) to all Settlement Class  
20 Members via first-class mail, postage prepaid, using the most current mailing  
21 address information available contained in the Class List.

22 v. “Opt-Out Period” means the 60 calendar-day period after  
23 the mailing of the Notice Packets to the Settlement Class Members during which the  
24 Settlement Class Members can timely opt out of the Settlement Class.

25 w. "PAGA Group" consists of all persons employed by  
26 Defendants in California as non-exempt employees at any time during the PAGA  
27 Period.  
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1 x. "PAGA Payment" means the portion of the Gross  
2 Settlement Amount the Parties have agreed to allocate to settle the claims for civil  
3 penalties under the California Private Attorneys' General Act ("PAGA").

4 y. "PAGA LWDA Payment" means the portion of the PAGA  
5 Payment that will be distributed to the LWDA.

6 z. "PAGA Class Payment" means the portion of the PAGA  
7 Payment that will be distributed to Settlement Class Members employed during the  
8 PAGA Period.

9 aa. "PAGA Period" means from August 6, 2018 through  
10 October 3, 2020.

11 bb. "Parties" means Sengvong and Defendants.

12 cc. "Personal Release" means Plaintiff's release of all claims  
13 of any kind or nature whatsoever against the Released Parties, that arose on or before  
14 the Effective Date. Plaintiff shall also execute a waiver of the provisions, rights and  
15 benefits of California Civil Code section 1542, which states: "A general release does  
16 not extend to claims that the creditor or releasing party does not know or suspect to  
17 exist in his or her favor at the time of executing the release, and that, if known by  
18 him or her, would have materially affected his or her settlement with the debtor or  
19 released party."

20 dd. "Preliminary Approval Motion" means the motion that  
21 will be filed by Plaintiff to obtain the Court's preliminary approval of this Settlement  
22 and proposed Class Notice to be mailed out to the Settlement Class Members.

23 ee. "Preliminary Approval Order" means the order  
24 preliminarily approving the settlement terms contained in this Agreement.

25 ff. "Qualified Settlement Fund Account" means the account  
26 into which the Claims Administrator will transfer the Gross Settlement Amount  
27 pursuant to Internal Revenue Code Section 1.468B-1.  
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1                   gg. “Released Parties” means (i) Defendants; and (ii) their  
2 former and present employees, directors, shareholders, officers, owners, attorneys,  
3 agents, insurers, successors, assigns, parents, subsidiaries, affiliates, or legal  
4 representatives and any individual or entity which could be jointly liable with  
5 Defendants and all persons or entities acting by, through, under, or in concert with  
6 any of them.

7                   hh. “Representative Plaintiff” or “Sengvong” means Otina  
8 Sengvong.

9                   ii. “Settlement Agreement” or “Agreement” means this  
10 agreement and all exhibits attached to it.

11                  jj. “Settlement Award” means the gross payment to any  
12 Settlement Class Member pursuant to the terms of this Settlement Agreement.

13                  kk. “Settlement Class” consists of all persons employed by  
14 Defendants in California as non-exempt employees at any time during the Settlement  
15 Class Period. Defendants represent that the Settlement Class includes approximately  
16 1,764 Class Members. If the actual class size is ten percent (10%) or greater than the  
17 1,764 Class Members as represented by Defendants, the Gross Settlement Amount  
18 will increase on a pro-rata basis equal to the increase in class size (e.g., if the actual  
19 class size were 10% greater than 1,764 Class Members, the Gross Settlement  
20 Amount will increase by 10%).

21                  ll. “Settlement Class Period” means from October 15, 2015  
22 through October 3, 2020.

23                  mm. “Settlement Fairness Hearing” or “Final Approval  
24 Hearing” means the hearing to be requested by the Parties and conducted by the  
25 Court, following appropriate notice to the Settlement Class and an opportunity for  
26 Settlement Class Members to exclude themselves from the Settlement Class and the  
27 proposed settlement, at which time the Parties will request the Court to approve the  
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1 fairness, reasonableness and adequacy of the terms and conditions of the proposed  
2 settlement and this Settlement Agreement and to enter a Final Approval Order and  
3 Final Judgment.

4 **IV. SETTLEMENT FUND AND SETTLEMENT AWARD**

5 **CALCULATION**

6 8. Gross Settlement Amount.

7 a. Defendants shall pay the Gross Settlement Amount of One  
8 Million Four Hundred Thousand Dollars (\$1,400,000) to fully and completely settle  
9 this Action.

10 b. Deposit. Thirty (30) calendar days after the Effective Date,  
11 Defendants shall deliver to the Claims Administrator the Gross Settlement Amount.  
12 Immediately upon receipt by the Claims Administrator, the Gross Settlement  
13 Amount shall be transferred into a Qualified Settlement Fund Account. No Party  
14 shall have any further obligation or liability for any payment under this Settlement  
15 Agreement to Sengvong or to the Settlement Class Members.

16 c. Disbursement by Claims Administrator. All disbursements  
17 shall be made from the Qualified Settlement Fund Account. The Claims  
18 Administrator shall be the only entity authorized to make withdrawals or payments  
19 from the Qualified Settlement Fund Account. All payments to Settlement Class  
20 Members shall be made in a single distribution by the Claims Administrator (except  
21 for checks that are returned, which are addressed further below).

22 d. Interest. Any interest on the funds deposited by Defendants  
23 will inure pro rata once paid out to the party to whom the underlying funds are  
24 ultimately paid out.

25 e. Payroll Taxes. The Gross Settlement Amount will not  
26 cover Defendants' share of employer-side payroll taxes, including FICA, FUTA,  
27 SDI, UE, on the Settlement Awards paid to Settlement Class Members to the extent  
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1 required by law. Defendants will pay such taxes in addition to the Gross Settlement  
2 Amount.

3 9. Incentive Award, Class Counsel Fees and Costs, Costs of  
4 Administration, and PAGA Payment. Subject to Court approval and for purposes of  
5 effectuating this Settlement Agreement, the following amounts shall be paid by the  
6 Claims Administrator from the Gross Settlement Amount:

7 a. Incentive Award. Subject to Court approval and in  
8 exchange for Sengvong's release of all claims in the Personal Release, Sengvong's  
9 covenant not to sue (as described below), and in addition to his individual Settlement  
10 Award as a member of the Settlement Class, fifteen thousand dollars (\$15,000) will  
11 be set aside from the Gross Settlement Amount for Sengvong's efforts in bringing  
12 and prosecuting this matter. The Qualified Settlement Fund Account shall issue an  
13 IRS Form 1099 for this payment. The Claims Administrator shall pay the Incentive  
14 Award approved by the Court from the Gross Settlement Amount within ten (10)  
15 calendar days of deposit of the Gross Settlement Amount. Any amounts not  
16 approved by the Court as an Incentive Award up to the amounts set forth in this  
17 paragraph shall be added back to the NSA to be distributed to the Settlement Class  
18 Members.

19 i. Plaintiff's Covenant Not to Sue. Sengvong  
20 covenants and agrees not to ever assert a claim released by the Personal Release, or  
21 to commence, join in, or voluntarily assist in a lawsuit or adversary proceeding  
22 against the Released Parties, or any of them, arising out of or regarding the claims  
23 released by Personal Release set forth above.

24 b. Class Counsel Fees and Costs. Class Counsel shall make a  
25 motion for reasonable attorneys' fees and costs incurred by Class Counsel. The  
26 reasonable attorneys' fees requested by Class Counsel shall not exceed one third  
27 (33.33%) of the Gross Settlement Amount, or Four Hundred Sixty Six Thousand Six  
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1 Hundred Sixty Six Dollars (\$466,666). These amounts will compensate Class  
2 Counsel for work already performed in this case and all of the work remaining to be  
3 performed in this case, including but not limited to documenting the Settlement  
4 Agreement, securing Court approval of the Settlement Agreement, making sure that  
5 the Settlement Agreement is fairly administered and implemented, obtaining final  
6 judgment of the action, and addressing any appeals or further proceedings that may  
7 occur. Class Counsel's Costs/Expenses reimbursement request shall not exceed  
8 Fifteen Thousand Dollars (\$15,000).

9 i. Defendants and their attorneys agree not to oppose any  
10 application or motion by Class Counsel for attorneys' fees and costs up to those  
11 amounts set forth herein, so long as any such application or motion is consistent with  
12 the provisions of this Settlement Agreement, and Class Counsel agrees not to  
13 petition the Court for any additional payments for fees, costs, or interest.

14 ii. The Claims Administrator shall pay the attorneys' fees and  
15 costs approved by the Court, as set forth above from the Gross Settlement Amount  
16 within ten (10) calendar days of deposit of the Gross Settlement Amount pursuant  
17 to paragraph 9(b) above. Any amounts not approved by the Court in attorneys' fees  
18 and costs up to the amounts set forth in paragraph 9(b) above shall be added back to  
19 the NSA to be distributed to the Settlement Class Members

20 iii. The attorneys' fees and costs approved by the Court shall  
21 constitute full satisfaction of Defendants' obligations to pay amounts to any person,  
22 attorney, or law firm for attorneys' fees, expenses, or costs in this Action incurred  
23 on behalf of Sengvong and/or the Settlement Class, and shall relieve Defendants  
24 from any other claims or liability to any other attorney or law firm for any attorneys'  
25 fees, expenses, and/or costs to which any of them may claim to be entitled on behalf  
26 of Sengvong and/or the Settlement Class. Sengvong further agrees that any  
27 allocation of fees between or among Class Counsel and any other attorney  
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1 representing a Plaintiff and/or the Settlement Class shall be the sole responsibility  
2 of Class Counsel, and Sengvong agrees to hold harmless Defendants from any claim  
3 or liability by any other party claiming or seeking to claim any attorneys' fees or  
4 costs.

5           iv.     An IRS Form 1099 shall be provided to Class Counsel for  
6 the payments made to Class Counsel. Class Counsel shall be solely and legally  
7 responsible to pay any and all applicable taxes on the payment made to Class  
8 Counsel. Defendants make no representations or warranties regarding the tax  
9 consequences or obligations resulting from any payments made to Class Counsel.  
10 Class Counsel agrees to hold harmless Defendants, the Claims Administrator, and  
11 the Qualified Settlement Fund Account from any claim or liability for taxes,  
12 penalties, or interest for which Class Counsel is responsible as a result of the  
13 payment or any allocation of the payment made to Class Counsel.

14           c.     Claims Administration Costs. Neither the Settlement Class  
15 Members nor Class Counsel shall have any responsibility or liability with respect to  
16 any administration costs incurred in connection with the administration of, and the  
17 distribution from, the NSA. All fees, costs, and expenses by the Claims  
18 Administrator pertaining to this Settlement Agreement shall be paid from the Gross  
19 Settlement Amount as set forth in this Settlement Agreement in an amount not to  
20 exceed fifteen thousand dollars (\$15,000). Any amounts not approved by the Court  
21 in Claims Administration Costs pertaining to this Settlement Agreement up to the  
22 amount set forth in this paragraph shall be added back to the NSA to be distributed  
23 to the Settlement Class Members. The Parties agree to cooperate in the settlement  
24 administration process and to make all reasonable efforts to control and minimize  
25 the costs and expenses incurred in the administration of the Settlement Agreement.  
26 The Claims Administrator shall pay itself the Claims Administration Costs approved  
27 by the Court within ten (10) calendar days of the deposit of the Gross Settlement  
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1 Amount.

2 d. PAGA Payment. The total PAGA Payment shall be forty thousand  
3 dollars (\$40,000). Seventy-five percent (75%) of that total, in the amount of thirty  
4 thousand dollars (\$30,000), shall be paid to the State of California Labor &  
5 Workforce Development Agency (“LWDA”). The remaining twenty-five percent  
6 (25%), in the amount of ten thousand dollars (\$10,000), shall be added back to the  
7 NSA to be distributed to qualifying Settlement Class Members employed during the  
8 PAGA Period as the PAGA Class Payment. The PAGA LWDA Payment to the  
9 LWDA shall be made within ten (10) calendar days after the deposit of the Gross  
10 Settlement Agreement.

11 i. Court's Modification of PAGA Payment Not Material. The  
12 Court's reduction or increase of the PAGA Payment is not a material term of the  
13 settlement or this agreement. The Court's increase or reduction of the PAGA  
14 Payment shall not give either party any basis to abrogate the Settlement or this  
15 Agreement. However, the Court's approval of a PAGA Payment is a material term  
16 of the Settlement or this Agreement. If the Court does not approve a PAGA Payment  
17 set forth in this Agreement, then the PAGA Payment shall be made in the amount  
18 required by the Court. If the Court requires the PAGA Payment to be higher than as  
19 stated in this Agreement, the additional funds for the PAGA Payment shall be taken  
20 from the Net Settlement Amount. Thus, the Gross Settlement Amount shall not be  
21 increased if the Court requires a larger PAGA Payment.

22 e. Settlement Awards to Eligible Class Members. Solely for  
23 purposes of effectuating this Settlement Agreement and in exchange for the release  
24 of the Class Released Claims and PAGA Released Claims by the Settlement Class  
25 Members, Settlement Class Members shall be paid a Settlement Award from the  
26 NSA in the amount(s) calculated as follows:  
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1                   i.       Each Settlement Class Member who does not timely opt-  
2 out will be paid a pro rata share of the NSA based on the number of weeks he or she  
3 worked for Defendants during the Settlement Class Period, divided by the total  
4 number of work weeks worked by all Settlement Class Members during the  
5 Settlement Class Period. The amount in this section is subject to change depending  
6 on the final tally of the Settlement Class Members who do not timely opt-out of the  
7 Settlement Agreement.

8                   ii.       Each Settlement Class Member employed during the  
9 PAGA Period will be paid a pro rata share of the PAGA Class Payment (\$10,000)  
10 proportionate to the number of pay periods he or she worked during the PAGA  
11 Period. Settlement Class Members employed during the PAGA Period may not-opt  
12 out of the settlement or the release of the PAGA Released Claims.

13                   f.       The Claims Administrator shall be responsible for determining  
14 eligibility for, and the amount of, the Settlement Awards to be paid. Settlement  
15 Awards shall be paid to Settlement Class Members no later than ten (10) calendar  
16 days after the deposit of the Gross Settlement Amount.

17                   g.       The Settlement Awards shall be treated by all Parties as one third  
18 non-wage penalties, to be reported to the Settlement Class Member on an IRS Form  
19 1099, one third interest, to be reported to the Settlement Class Member on an IRS  
20 Form 1099, and shall not be subject to withholdings, and one third wages, subject to  
21 withholdings, to be reported to the Settlement Class Member on an IRS Form W-2.  
22 Settlement Class Members shall be solely and legally responsible to pay any and all  
23 applicable taxes on the payment made to them. Defendants make no representations  
24 or warranties regarding the tax consequences or obligations resulting from any  
25 payments made to Settlement Class Members.

26                   h.       All eligibility and Settlement Award determinations shall be  
27 based on personnel and payroll data that Defendants will make available as needed  
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1 to the Claims Administrator. Settlement Class Members shall have an opportunity  
2 to dispute the personnel and payroll information reflected on the Class Notice as  
3 reflected in Exhibit A. The Claims Administrator shall have the sole authority to  
4 resolve any such disputes, and may consult with Class Counsel and Defendants'  
5 counsel in doing so. Any Settlement Awards that are undeliverable to Settlement  
6 Class Members pursuant to paragraph 18(f) shall be distributed to the *cy pres* fund  
7 pursuant to subsection (d) of this paragraph.

8 i. All checks for Settlement Awards shall remain valid and  
9 negotiable for one hundred eighty (180) days from the date of their issuance. The  
10 Claims Administrator will include with the checks a letter stating that the check must  
11 be cashed or deposited within 180 days. The funds represented by Settlement Award  
12 checks returned as undeliverable and those Settlement Award checks remaining un-  
13 cashed for more than 180 days after issuance shall be retained by the Claims  
14 Administrator. Any amounts from settlement checks that remain uncashed and  
15 otherwise unclaimed shall be disbursed to the California State Controller's  
16 Unclaimed Property Fund.

17 j. The aggregate amount of the Settlement Awards to Settlement  
18 Class Members shall not under any circumstances exceed the NSA.

19 10. Taxes.

20 a. Withholding and Reporting Requirements. The Claims  
21 Administrator shall be responsible for ensuring that all taxes associated with this  
22 Settlement Agreement are timely paid to the appropriate tax authorities. The Claims  
23 Administrator's responsibilities include the following: (i) filing all federal, state, and  
24 local tax deductions, (ii) to timely and proper filing of all required federal, state and  
25 local forms (e.g., IRS Form 1099's, W-2's, etc.) with the appropriate taxing  
26 authorities, and (iii) completion of any other steps necessary for compliance with  
27 any tax obligations of the Settlement under federal, state, and/or local law, as  
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1 applicable. To verify the Claims Administrator’s compliance with the foregoing  
2 withholding and reporting requirements, as soon as administratively practicable, the  
3 Claims Administrator shall furnish Class Counsel and Counsel for Defendants with  
4 copies of all forms detailing the payment of taxes (including all 1099 forms and  
5 returns) sufficient to prove that such payments were properly remitted. The Claims  
6 Administrator shall provide a final accounting declaration adequate to demonstrate  
7 full compliance with all duties set forth in this Settlement Agreement, including, but  
8 not limited to, tax withholding, payment, and reporting obligations.

9           b.     Determination and Payment of Taxes. The Claims Administrator  
10 shall determine the amount of any withholding or taxes to be withheld from each  
11 Settlement Class Member’s settlement payment and issue IRS Form W-2’s to the  
12 Settlement Class Members. All such withholdings shall be remitted by the Claims  
13 Administrator to the proper governmental taxing authorities. Each Settlement Class  
14 Member shall be responsible for any tax consequences of any funds paid out to each  
15 Settlement Class Member pursuant to this Settlement Agreement.

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

9 11. Completion of and Report on Settlement Administration.

10 Administration of the Settlement Agreement shall be completed on or before the  
11 eleventh business day after the deposit of the Gross Settlement Amount. Upon  
12 completion of administration of the Settlement Agreement, the Claims  
13 Administrator shall provide written certification of such completion and provide  
14 proof of payment at the request of the Court and/or counsel for the Parties. The  
15 Claims Administrator also shall furnish counsel for the Parties with a report showing  
16 the amounts and dates of each payment.

17 12. Date of Distribution. In no event shall there be any distribution from  
18 the Gross Settlement Amount until after the Effective Date.

19 **V. RELEASES**

20 Pursuant to this Settlement, the Representative Plaintiff and Settlement Class  
21 Members who do not timely and validly opt-out of this Settlement, and all persons  
22 purporting to act on their behalf or purporting to assert a claim under or through  
23 them, including, but not limited to their spouses, dependents, attorneys, heirs and  
24 assigns, beneficiaries, devisees, legatees, executors, administrators, trustees,  
25 conservators, guardians, personal representatives, and successors-in-interest,  
26 whether individual, class, collective, representative, legal, equitable, direct or  
27 indirect, or any other type or in any other capacity fully, finally, and forever settle,  
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1 compromise, and discharge the Released Parties of the Class Released Claims and  
2 for the Representative Plaintiff, of the claims in the Personal Release. Upon the final  
3 approval by the Court of this Agreement and by operation of the Agreement's terms,  
4 and except as to such rights or claims as may be created by this Agreement, all  
5 Settlement Class Members who do not timely and validly opt-out of this Settlement  
6 fully release and discharge the Released Parties from all Class Released Claims  
7 during the Settlement Class Period.

8 Settlement Class Members employed during the PAGA Period shall not be  
9 permitted the opportunity to opt-out of the PAGA settlement, including the PAGA  
10 Released Claims, and shall receive a pro rata portion of the PAGA Class Payment  
11 regardless of whether he or she opts-out of the settlement of the Class Released  
12 Claims.

13 **VI. SETTLEMENT APPROVAL & IMPLEMENTATION PROCEDURE**

14 13. Conditional Class Certification for Settlement Purposes Only. For  
15 settlement purposes only, the Parties agree that the Settlement Class may be  
16 certified. For purposes of settling this lawsuit only, the Parties stipulate and agree  
17 that the requisites for establishing class certification with respect to the Settlement  
18 Class Members as defined above have been and are met. The Parties agree that  
19 evidence of this limited stipulation is for settlement purposes only and will not be  
20 deemed admissible for any purpose in this action. It is the position of Defendants  
21 that if this case were to be litigated, class certification would be inappropriate, *inter*  
22 *alia*, because of typicality problems and individualized issues, among other issues,  
23 and that Defendants would prevail on the merits. If the Settlement fails to be  
24 approved or otherwise fails to be consummated for any reason whatsoever,  
25 including, but not limited to, the Final Judgment not becoming final, then  
26 Defendants retain all rights previously available to them, and any provisional  
27 certification of any class, or the adoption of any procedure herein, shall be undone  
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1 and the Parties restored to their pre-Settlement status as if no Settlement had been  
2 reached and no decisions were made pursuant to it.

3 14. Mutual Full Cooperation. The Parties agree to fully cooperate with each  
4 other to accomplish the terms of this Settlement Agreement, including but not  
5 limited to, execution of such documents and to take such other action as may  
6 reasonably be necessary to implement the terms of this Settlement Agreement. The  
7 Parties to this Settlement Agreement shall use their best efforts, including all efforts  
8 contemplated by this Settlement Agreement, and any other efforts that may become  
9 necessary by order of the Court, or otherwise, to effectuate this Settlement  
10 Agreement and the terms set forth herein. As soon as practicable after execution of  
11 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation  
12 of Defendants and their counsel, take all necessary steps to secure the Court's  
13 preliminary and final approval of this Settlement Agreement.

14 15. Procedures. As part of this Settlement Agreement, the Parties agree to  
15 the following procedures for requesting the Court's preliminary approval of the  
16 Settlement Agreement, certifying the Settlement Class, notifying the Settlement  
17 Class, requesting final Court approval of the Settlement Agreement, and processing  
18 the Settlement Awards.

19 16. Preliminary Approval of the Settlement. Sengvong will file with the  
20 Court a motion for preliminary approval of this Settlement and provisional  
21 certification of the Settlement Class within 60 calendar days of signing of this  
22 Agreement. Such submissions will include such motions, pleadings and evidence as  
23 may be required for the Court to determine that this Agreement is fair, adequate, and  
24 reasonable, as required by Fed. R. Civ. P. 23. Such submission will also include a  
25 Class Notice of Settlement for the Court to approve, which will then be mailed to  
26 the Settlement Class Members. At least one week prior to filing the motion,  
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1 Plaintiff's counsel shall provide a draft of the motion to Defendants for review and  
2 comment.

3 17. Class Notice. Subject to the approval of the Court, notice of the  
4 Settlement Agreement shall be provided to the Settlement Class in the form of the  
5 proposed Class Notice attached hereto as Exhibit A. The Parties believe and agree  
6 that the following proposed procedures for notice provide the best practicable notice  
7 to the Settlement Class:

8 a. As directed by the Court, the Claims Administrator shall be  
9 responsible for preparing, printing, and mailing to all Settlement Class Members the  
10 Class Notice attached to this Settlement Agreement.

11 b. No later than 14 calendar days after the date of the entry of the  
12 Preliminary Approval Order, and to the extent not already provided, Defendants  
13 shall provide to the Claims Administrator the Class List.

14 c. Neither Defendants nor the Claims Administrator shall provide  
15 the identification and/or financial information of Settlement Class Members to the  
16 Class Representative, Class Counsel, any other Settlement Class Member, or to any  
17 other person or entity. However, before the Claims Administrator sends the Class  
18 Notice to Settlement Class Members as outlined below, it will advise the Parties of  
19 the total number of Settlement Class Members and the total number of workweeks  
20 on the Class List.

21 d. If Defendants and the Claims Administrator determine, based  
22 upon further review of available data, that a person previously identified as being a  
23 Settlement Class Member should not be so included, or if they identify a person who  
24 should have been included as a Settlement Class Member but was not so included,  
25 Defendants and the Claims Administrator shall promptly delete or add such person  
26 as appropriate and immediately notify Class Counsel prior to such deletions or  
27 additions (and the reasons therefore).  
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1 e. No later than 28 calendar days after the date of entry of the  
2 Preliminary Approval Order, the Claims Administrator shall send a Notice Packet to  
3 all Settlement Class Members via first-class mail, postage prepaid, using the most  
4 current mailing address information available contained in the Class List.

5 f. Any Notice Packets returned to the Claims Administrator as non-  
6 delivered before the expiration of the 60-calendar day period for Settlement Class  
7 Members to mail Exclusion Letters shall be sent to the forwarding addresses affixed  
8 thereto. If no forwarding address is provided for a Notice Packet that is returned as  
9 non-delivered, then such Notice Packet will be re-sent by the Claims Administrator  
10 after the address is updated using the following skip-trace procedures: (1) run this  
11 Class List through the United States Postal Service's National Change of Address  
12 database; and (2) perform address searches using public and proprietary electronic  
13 resources which collect their data from various sources such as utility records,  
14 property tax records, motor vehicle registration records, and credit bureaus.  
15 Undelivered Notice Packets will be re-sent within five (5) calendar days after the  
16 Claims Administrator receives notice that the Notice Packet was undeliverable. The  
17 objection deadline shall not be extended *pro-rata* for members of the Settlement  
18 Class whose original notices are re-mailed pursuant to paragraph 17(f).

19 18. Other than the obligations set forth in this Settlement Agreement,  
20 Sengvong, Class Counsel, Defendants, Defendants' Counsel, and the Claims  
21 Administrator shall have no additional obligation to identify or locate any Settlement  
22 Class Member or have any liability in connection with the provision of information  
23 to the Claims Administrator or otherwise.

24 19. Requests for Exclusion ("Opt Outs"). The Class Notice shall provide  
25 that Settlement Class Members who wish to exclude themselves from the Settlement  
26 of the Class Released Claims information on how to submit a timely and valid  
27 "Exclusion Letter", which is to be postmarked on or before the expiration of the Opt-  
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1 Out Period. The Exclusion Letter is a document prepared by the Settlement Class  
2 member that must: (1) contain the Settlement Class member's name, address,  
3 telephone number, and last four digits of his/her Social Security number; (2) contain  
4 a statement that the Settlement Class member wishes to be excluded from the  
5 Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked  
6 by the expiration of the Opt-Out Period and mailed to the Settlement Administrator  
7 at the address specified in the Class Notice. If the Exclusion Letter does not contain  
8 the information listed in (1)-(3), it will not be deemed valid for exclusion from this  
9 settlement, except an Exclusion Letter not containing a Settlement Class member's  
10 telephone number and/or last four digits of the Social Security number will be  
11 deemed valid. The date of the postmark on the Exclusion Letter shall be the  
12 exclusive means used to determine whether an Exclusion Letter has been timely  
13 submitted. Any Settlement Class member who timely and validly requests to be  
14 excluded from the Settlement Class will not have any right to object, appeal, or  
15 comment thereon. Any objections filed by a Settlement Class member who has  
16 excluded him or herself from the Settlement shall be disregarded by the Court. The  
17 Parties agree not to encourage or discourage any Settlement Class members to  
18 exclude themselves from the Settlement. Any objections filed by a Settlement Class  
19 member who has excluded him or herself from the Settlement shall be disregarded  
20 by the Court. The Parties agree not to encourage or discourage any Settlement Class  
21 members to exclude themselves from the Settlement.

22 20. The Exclusion Letter must be personally signed by the Settlement Class  
23 Member who seeks to opt-out. No opt-out request may be made on behalf of more  
24 than one Settlement Class Member. The Exclusion Letter must be sent by mail to  
25 the Claims Administrator and must be timely postmarked as set forth above, except  
26 that the Claims Administrator may, upon consultation with counsel for all Parties  
27 and good cause shown, extend the due date for mailing the Exclusion Letter. The  
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1 postmark date of the mailing envelope shall be the exclusive means used to  
2 determine whether an Exclusion Letter has been timely submitted and the Claims  
3 Administrator shall have the sole power to determine timeliness or validity of an opt-  
4 out, but may confer with counsel for the Parties in reaching that determination. Any  
5 Settlement Class Member who timely and validly requests exclusion (opts out) of  
6 the Settlement Agreement will not be entitled to his or her pro rata share of the NSA  
7 as set forth above in Section and will not be bound by the Settlement Agreement or  
8 have any right to object, appeal, or comment thereon. Settlement Class Members  
9 employed during the PAGA Period may not opt-out of the PAGA settlement,  
10 including the PAGA Released Claims, and shall receive a pro rata portion of the  
11 PAGA Class Payment regardless of whether the Settlement Class Members opt-out  
12 of the settlement of the Class Released Claims.

13       21. Objections to Settlement. The Class Notice shall provide that those  
14 members of the Settlement Class who wish to object to the Settlement Agreement  
15 should mail a written statement of objection on or before the expiration of the Opt-  
16 Out Period to the Claims Administrator. The postmark date of the mailing shall be  
17 the exclusive means for determining that a Notice of Objection is timely. The Notice  
18 of Objection should include the case name and the basis for the objection. It should  
19 also include the Settlement Class Member's full name, address, telephone number,  
20 last four digits of social security number, and signature. The Settlement  
21 Administrator shall send any objections it receives to Defense Counsel and Class  
22 Counsel within five (5) business days of receipt. Class members who fail to submit  
23 a timely objection in the manner specified shall be deemed to have waived any  
24 objections and shall be foreclosed from making any objections (whether by appeal  
25 or otherwise) to the settlement, unless otherwise ordered by the Court. Regardless  
26 of whether a Class Member has complied with this recommended procedures, he/she  
27 will be permitted to speak to the Court at the Settlement Fairness Hearing.  
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1           22.   No Encouragement of Objections, Opt-Outs, or Appeals. At no time  
2 shall any of the Parties or their counsel seek to solicit or otherwise encourage  
3 members of the Settlement Class to opt-out, or appeal from the Final Approval Order  
4 and Final Judgment.

5           23.   Right to Rescission In Event of Excess Opt-Outs. Notwithstanding any  
6 other provision of this Settlement Agreement, Defendants shall retain the right, in  
7 the exercise of their sole discretion, to nullify the Settlement Agreement within ten  
8 (10) calendar days of receipt of the Opt-Out Report as detailed in paragraph 24(b),  
9 if five percent (5%) or more of Settlement Class Members opt out of the Settlement  
10 Agreement pursuant to paragraph 20 above. All signatories and their counsel agree  
11 to refrain from encouraging opt-outs. The Parties specifically agree not to solicit opt-  
12 outs, directly or indirectly through anyone, through any means. In the event of such  
13 a rescission, no Party may use the fact that any Party agreed to settle this case as  
14 evidence of Defendants' liability in this lawsuit or the lack thereof, or that class  
15 certification is proper for any purpose other than settlement. Defendants, however,  
16 shall remain liable for the cost of administration to the extent such costs have been  
17 incurred prior to Defendants exercising this termination right.

18           24.   Reports by the Claims Administrator.

19           a.    Weekly Reports. Starting on the date that the Claims  
20 Administrator receives the Class List, the Claims Administrator shall provide  
21 weekly reports to counsel for the Parties detailing the progress of the claims process  
22 outlined herein.

23           b.    Opt-Out Report by the Claims Administrator. No later than ten  
24 (10) calendar days after the Opt-Out Period expires, the Claims Administrator shall  
25 provide counsel for the Parties with a declaration setting forth: (a) due diligence and  
26 proof of mailing of the Notice Packets; (b) the total amounts to be paid to the  
27 Settlement Class; and (c) the total number of Settlement Class Members who filed  
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1 timely requests for exclusion or objections to the Settlement Agreement (“Opt-Out  
2 Report”), along with the complete copies of all requests for exclusion and objections  
3 received, including the postmark dates for each request for exclusion or objection.  
4 The Parties can challenge the validity of any opt-out and the Claims Administrator  
5 will be the sole arbiter of validity.

6 25. Motion for Final Approval. Sengvong will file with the Court a motion  
7 for final approval of this Settlement on or before 28 calendar days before the date of  
8 the Settlement Fairness Hearing, which will be set by the Court. At least one week  
9 prior to filing the motion, Plaintiff’s counsel shall provide a draft of the motion to  
10 Defendants for review and comment.

11 26. Settlement Fairness Hearing. After expiration of the deadline for  
12 requesting exclusion from or objecting to the Settlement Agreement, the Court shall  
13 conduct a Settlement Fairness Hearing to determine final approval of the Settlement  
14 Agreement along with the amounts properly payable for (i) attorneys’ fees and costs;  
15 (ii) the payment to Sengvong for his time and effort in bringing and prosecuting this  
16 matter, and (iii) the costs of administration of the Settlement Agreement. Upon final  
17 approval of the Settlement Agreement by the Court at or after the Settlement Fairness  
18 Hearing, the Parties shall present a final order to the Court for its approval and entry.  
19 After entry of the Final Approval Order, the Court shall have continuing jurisdiction  
20 for purposes of addressing (i) settlement administration matters; (ii) such post-Final  
21 Approval Order matters as may be appropriate under Court rules or as set forth in  
22 this Settlement Agreement; and (iii) ruling on the stipulated request for Final  
23 Judgment of entire Action when all aspects of the Settlement Agreement have been  
24 consummated.

25 **VII. FAILURE OF SETTLEMENT; APPELLATE REVIEW**

26 27. Invalid without Court Approval. This Settlement Agreement is subject  
27 to approval by the Court. In the event it is not approved, it shall be deemed null and  
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1 void, of no force and effect, and of no probative value, and the Parties hereto  
2 represent, warrant, and covenant that it will not be used or referred to for any purpose  
3 whatsoever.

4 28. Effect of Revocation or Failure of Settlement. In the event that the  
5 settlement does not become final for any reason, this Settlement Agreement shall be  
6 null and void and any order entered by the Court in furtherance of this Settlement  
7 shall be treated as void *ab initio*. In such a case, the Parties shall return to the status  
8 quo as if the Parties had not entered into this Settlement Agreement. The Claims  
9 Administrator will be paid by Defendants for its costs through the date it is notified  
10 that the Settlement will not proceed.

11 29. Impact of Appellate Review. In the event an appeal is filed from any of  
12 the Court's Orders, or any other appellate review is sought prior to the Effective  
13 Date, administration of the Settlement Agreement shall be stayed pending final  
14 resolution of the appeal or other appellate review, except that the Claims  
15 Administrator will be paid by Defendants for its costs through the date it is notified  
16 that the Settlement Agreement has been stayed by appellate review.

17 **VIII. PARTIES' AUTHORITY**

18 30. The signatories hereto hereby represent that they are fully authorized to  
19 enter into this Settlement Agreement and bind the Parties hereto to the terms and  
20 conditions hereof.

21 31. No Signature Required by Settlement Class Members on Settlement  
22 Agreement. Because the Settlement Class Members are so numerous, it is impossible  
23 or impractical to have each one execute this Settlement Agreement. The Class  
24 Notice, Exhibit A hereto, will advise all Settlement Class Members of the binding  
25 nature of the release and such shall have the same force and effect as if this  
26 Settlement Agreement were executed by each Settlement Class Member.

1           32. Agreement of Plaintiff. Sengvong agrees not to object to or appeal any  
2 of the terms of this Settlement Agreement. Non-compliance by Sengvong with this  
3 paragraph shall be void and of no force or effect. Any such objection shall therefore  
4 be void and of no force or effect.

5 **IX. LIMITATIONS ON USE OF THIS SETTLEMENT**

6           33. No Admission of Liability or Wrongdoing. Defendants deny any and  
7 all claims alleged in the Complaint and denies all wrongdoing and liability  
8 whatsoever. Defendants maintain, among other things, that it has complied at all  
9 times with the California Labor Code, and all applicable California and federal law.  
10 This Settlement Agreement is not a concession or admission, and shall not be used  
11 against Defendants as an admission or indication with respect to any claim of any  
12 fault, concession or omission by Defendants. Whether or not the Settlement  
13 Agreement is finally approved, neither the Settlement Agreement, nor any  
14 document, statement, proceeding or conduct related to this Settlement Agreement,  
15 nor any reports or accounts thereof, shall in any event be: (i) construed, offered or  
16 admitted in evidence as, received as, or deemed to be, evidence for any purpose,  
17 including, but not limited to, evidence of a presumption, concession, indication or  
18 admission by Defendants of any liability, fault, wrongdoing, omission, concession  
19 or damage; or (ii) disclosed or referred to for any purpose, or offered or received in  
20 evidence, in any further proceeding in this lawsuit, or any other civil, criminal or  
21 administrative action or proceeding against Defendants except for purposes of  
22 settling this lawsuit pursuant to this Settlement Agreement and for obtaining  
23 preliminary and final approval thereof. The limitations set forth in this paragraph do  
24 not apply to any use of this Settlement Agreement by the Parties to enforce this  
25 Settlement following final approval by the Court.

26           34. No Impact on Employee Benefit Plan, Policy or Bonus Program.  
27 Defendants contend that the amounts paid under this Settlement Agreement will not  
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1 affect any previously credited hours of service under any employee benefit plan,  
2 policy, or bonus program sponsored by Defendants. To the extent permitted by the  
3 terms of the Plan as such exists at the time of the payment, the amounts paid under  
4 this Settlement Agreement will not form the basis for additional contributions to,  
5 benefits under, or any other monetary entitlement under Defendants' (self-insured  
6 or not) employee benefit plans, policies, or bonus programs. Any payments made  
7 under the terms of this Settlement Agreement shall not be applied retroactively,  
8 currently, or on a going forward basis as salary, earnings, wages, bonuses,  
9 commissions, or any other form of compensation for the purposes of any  
10 Defendants' employee benefit plan, policy, or bonus program. Defendants retain the  
11 right to modify the language of their employee benefit plans, policies, and bonus  
12 programs to effect this intent and to make clear that any amounts paid pursuant to  
13 this Settlement Agreement are not for "hours worked," "hours paid," "hours of  
14 service," or any similar measuring term as defined by applicable plans, policies, and  
15 bonus programs for the purpose of eligibility, vesting, benefit accrual or any other  
16 purpose, and that additional contributions or benefits are not required by this  
17 Settlement Agreement. Neither Defendants nor Sengvong are opining on the terms  
18 of any such plan, each of which speaks for itself.

19 35. Non-Disparagement: Sengvong—including his attorneys, agents,  
20 servants, employees, and representatives—shall refrain from making any  
21 disparaging, derogatory or otherwise negative comments or statements about the  
22 Settlement Agreement or Released Parties to any person or entity, including, but not  
23 limited to, any person affiliated in any way with any actual or potential employee,  
24 contractor, customer, vendor or competitor of Defendants, any member of the  
25 business community with whom Defendants has had or, to Sengvong's knowledge,  
26 has contemplated a business or professional relationship, or any member of the press.  
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1 This provision will not prevent Sengvong or his attorneys from discussing his  
2 allegations in the Action with Class Members.

3 36. No Publicity. Neither the Parties nor their counsel, without the prior  
4 written approval of counsel for the other Party (which approval may be withheld in  
5 a Party's sole discretion), shall issue, authorize, or contribute to the preparation or  
6 dissemination of any press release or any other public statement or advertisement  
7 concerning this Agreement or any of its terms, or sponsor or participate in any press  
8 conference, interview, media appearance, or other public discussion concerning this  
9 Agreement or any of its terms. If the Parties or their counsel are contacted by the  
10 press, media or any industry association, they will respond only that the case has  
11 been amicably resolved to the parties' mutual satisfaction. Any violation of this  
12 provision by Sengvong or Class Counsel shall entitle Defendants to nullify the  
13 Settlement Agreement at any time before final court approval. The Parties agree that,  
14 in the event of a breach of this provision, the non-breaching party shall be entitled  
15 to reasonable attorneys' fees and costs incurred as a result of that breach. The  
16 foregoing does not limit Defendants' right to enforce this provision through an action  
17 for injunctive relief. This provision will not prevent Sengvong or his attorneys from  
18 discussing his allegations in the Action with Class Members.

19 37. Various Proceedings Stayed. The Parties agree to stay all proceedings  
20 in the class action, except such proceedings as may be necessary to implement and  
21 complete the Settlement Agreement, pending the Settlement Fairness Hearing to be  
22 conducted by the Court.

23 38. Use of Defendants' Data and Documents. Sengvong and Class Counsel  
24 agree that none of the documents provided to them by Defendants during the case or  
25 in connection with the mediation or settlement shall be used for any purpose other  
26 than the settlement of this action. Furthermore, should Sengvong or his counsel have  
27 any originals or copies of documents of Defendants, Sengvong and his counsel agree  
28

1 to destroy or return such originals and copies of documents via Class Counsel upon  
2 the Effective Date of the Settlement Agreement.

3 **X. MISCELLANEOUS**

4 39. No Assignment of Rights. Sengvong warrants and represents that he  
5 has not assigned, transferred, or hypothecated, or purported to assign, transfer, or  
6 hypothecate to any person or entity any of the claims in the Personal Release or any  
7 rights, claims, or causes of action arising out of those claims. This warranty and  
8 representation of non-assignment shall survive the execution of this Settlement  
9 Agreement and entry of judgment in the Action. No Settlement Award shall be paid  
10 to any person or entity with respect to whom Sengvong has assigned, transferred, or  
11 hypothecated, or purported to assign, transfer, or hypothecate any of the claims in  
12 the Personal Release or any rights, claims, or causes of action arising out of those  
13 claims. In addition, Sengvong shall defend, hold harmless, and indemnify the  
14 Released Parties, or any of them, from and against any claims, damages, litigation,  
15 causes of action, and expenses, including reasonable attorneys' fees, resulting from  
16 any breach by Sengvong of this warranty and representation, or any breach by  
17 Sengvong of his release of the claims in the Personal Release.

18 40. Construction. The Parties hereto agree that the terms and conditions of  
19 this Settlement Agreement are the result of lengthy, intensive arms-length  
20 negotiations between the Parties, and that this Settlement Agreement shall not be  
21 construed in favor of or against any party by reason of the extent to which any party  
22 or his, her, or its counsel participated in the drafting of this Settlement Agreement.

23 41. Captions and Interpretations. Paragraph titles or captions contained  
24 herein are inserted as a matter of convenience and for reference, and in no way  
25 define, limit, extend, or describe the scope of this Settlement Agreement or any  
26 provision hereof. Each term of this Settlement Agreement is contractual and not  
27 merely a recital.  
28

1           42.    Modification. This Settlement Agreement may not be changed, altered,  
2 or modified, except in writing and signed by the Parties hereto, and approved by the  
3 Court. This Settlement Agreement may not be discharged except by performance in  
4 accordance with its terms or by a writing signed by the Parties hereto.

5           43.    Integration Clause. This Settlement Agreement, along with any exhibits  
6 attached hereto, constitutes the entire agreement between the Parties relating to the  
7 settlement and transaction contemplated hereby, and the final, complete and  
8 exclusive express of the terms and conditions of their agreement. Any and all prior  
9 or contemporaneous agreements, understandings, representations, and statements,  
10 whether oral or written and whether by a party or such party's legal counsel, are  
11 hereby superseded and merged herein. No rights hereunder may be waived except  
12 in writing.

13           44.    Binding on Assigns. This Settlement Agreement shall be binding upon  
14 and inure to the benefit of the Parties hereto and their respective heirs, trustees,  
15 executors, administrators, successors, and assigns.

16           45.    Enforcement. The Parties agree that following entry of the final  
17 judgment, this Settlement Agreement shall be enforceable by the Court and the Court  
18 shall retain exclusive and continuing jurisdiction of this action over all Parties and  
19 Settlement Class Members to interpret and enforce the terms, conditions, and  
20 obligations of the Settlement Agreement. This Settlement Agreement may be  
21 pleaded or asserted by or on behalf of Defendants as a defense and complete bar to  
22 any action or claim that may be brought against or involve Defendants by anyone  
23 acting or purporting to act on behalf of Sengvong and/or the Settlement Class  
24 Members with respect to any matters within the scope of this Settlement Agreement  
25 excepting only the obligations of the Parties under this Settlement Agreement.

26           46.    Counterparts. This Settlement Agreement may be executed in  
27 counterparts, and when each party has signed and delivered at least one such  
28

1 counterpart, each counterpart shall be deemed an original, and, when taken together  
2 with other signed counterparts, shall constitute one Settlement Agreement, which  
3 shall be binding upon and effective as to all Parties. This Settlement Agreement will  
4 become effective on the date when the last person signs and dates it.

5 47. Governing Law. All terms of this Settlement Agreement and the  
6 Exhibits hereto shall be governed by and interpreted according to the laws of the  
7 State of California and the United States of America, where applicable.

8 Dated: December <sup>12 / 17 / 2020</sup> \_\_\_\_, 2020

  
\_\_\_\_\_  
9 Plaintiff Otina Sengvong

10  
11 Dated: December \_\_\_\_, 2020

\_\_\_\_\_  
12 Defendants ProBuild Company, LLC  
13 dba DixieLine Lumber & Home  
14 Centers, DixieLine Truss Yard,  
15 DixieLine Classic Collections,  
16 DixieLine Home Centers; Builders  
17 FirstSource Dallas, LLC; Builders  
18 FirstSource, Inc.

19 Name: Deryl Ward  
20 Title: Vice President and Deputy  
21 General Counsel

1 Approved as to form:

2 Dated: December \_\_\_\_, 2020

GOLDBERG SEGALLA LLP  
MATTHEW GOLPER

4

5

By:  
Matthew B. Golper  
Attorneys for Defendants ProBuild  
Company, LLC dba DixieLine Lumber &  
Home Centers, DixieLine Truss Yard,  
DixieLine Classic Collections, DixieLine  
Home Centers; Builders FirstSource  
Dallas, LLC; Builders FirstSource, Inc.

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Dated: November \_\_\_\_, 2020

THE SPIVAK LAW FIRM  
DAVID G. SPIVAK

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By:  
David Spivak  
Attorneys for Plaintiff  
Otina Sengvong

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Dated: November \_\_\_\_, 2020

UNITED EMPLOYEES LAW GROUP

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By:  
Walter Haines  
Attorneys for Plaintiff  
Otina Sengvong

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# EXHIBIT A

**NOTICE OF SETTLEMENT OF CLASS ACTION**

*Sengyong v. ProBuild Company LLC, et al.*  
United States District Court for the Southern District of California  
Case No. 3:19-cv-02231-MMA (JLB)

**To: All current and former non-exempt, hourly employees working at ProBuild Company LLC, Builders FirstSource Dallas LLC and/or Builders FirstSource, Inc. in California at any time between October 15, 2015 and October 3, 2020.**

This notice relates to a proposed Settlement of a class action and representative action lawsuit in which you may be entitled to receive money. You are not being sued. Your legal rights are affected, whether you act or not.

A federal district court permitted this notice. This is not an advertisement.

ProBuild Company LLC, Builders FirstSource Dallas, LLC and Builders FirstSource, Inc. will not retaliate against you regarding this settlement, whether you do nothing, ask to be excluded, or file an objection.

**Please review this notice carefully.**

**WHAT IS IN THIS NOTICE**

1. *Why Should You Read This Notice?* ..... 1

2. *What Is The Case About?* ..... 1

3. *What Is This Notice About?* ..... 2

4. *Who Are The Parties in This Class Action?* ..... 2

5. *Why Did ProBuild Company LLC Join In This Notice?* ..... 2

6. *What are the Terms of the Settlement?* ..... 2

7. *Who Are The Attorneys Representing The Parties?* ..... 3

8. *How Do I Receive Money From This Settlement?* ..... 3

9. *Excluding Yourself From The Settlement* ..... 4

10. *Objecting To The Settlement* ..... 4

11. *Effect Of The Settlement* ..... 4

12. *How Much Can I Expect To Receive?* ..... 5

13. *How Will The Attorneys for the Class and Sengyong be Paid?* ..... 5

14. *Release* ..... 5

**1. Why Should You Read This Notice?**

This notice outlines a settlement for a class and representative action lawsuit. It informs you of your right to share in certain amounts of the settlement and your ability to “opt out” of, or object to, some of the settlement. There was a hearing on **[INSERT DATE]** in the United States District Court for the Southern District of California, and Judge Michael M. Anello directed that you receive this notice.

You have received this notice because records indicate that you are a Settlement Class Member in this lawsuit. The settlement will resolve all claims described below.

On **[INSERT DATE]**, 2021, at **[INSERT TIME]** .m., the Court will hold a Final Approval Hearing concerning the proposed settlement in Courtroom 3D (3rd Floor) of the, United States District Court for the Southern District of California, 221 West Broadway, San Diego, CA 92101.

1 **2. What Is The Case About?**

2 A putative class action and Private Attorneys' General Act ("PAGA") representative lawsuit entitled *Otina Sengvong*  
3 *v. ProBuild Company, LLC, et al.*, was filed on October 15, 2019 in San Diego County Superior Court, Case No. 37-  
4 2019-00054729-CU-OE-CTL (the "Action"), alleging that ProBuild Company, LLC dba DixieLine Lumber & Home  
5 Centers, DixieLine Truss Yard, DixieLine Classic Collections, DixieLine Home Centers, Builders FirstSource Dallas,  
6 LLC, and Builders FirstSource, Inc. ("Defendants") violated California law by failing to properly pay its California  
7 non-exempt employees for all regular and overtime hours worked, failing to reimburse for expenses, failing to provide  
8 properly itemized wage statements, failing to timely pay employees upon termination, and failing to provide rest  
9 breaks and meal periods.

10 Defendants contend they have complied with all laws, deny the allegations raised in the Action, and assert that they  
11 have no liability for any of the Settlement Class and PAGA Group Members' claims under any law, including any  
12 statute, wage order, regulation, common law, or equitable theory.

13 Plaintiff and Defendants disagree about whether a class can be certified. With the assistance of a professional mediator,  
14 Plaintiff and Defendants agreed to a settlement to be paid on the terms set forth below.

15 **3. What Is This Notice About?**

16 You may be entitled to receive money from a settlement that has been reached in the Action. The Court must finally  
17 approve the terms of the settlement described below as fair and reasonable to the class. The settlement will affect all  
18 members of the class, including you. This notice will explain the terms of the settlement and the amount of money  
19 you may get. This notice is only a summary. A more detailed Stipulation of Class Action and Release of Claims is on  
20 file with the Court, where it is available for your review.

21 **4. Who Are The Parties In This Class Action?**

22 Otina Sengvong is the Plaintiff in this class action lawsuit, acting on behalf of himself and on behalf of certain current  
23 and former non-exempt employees in California. ProBuild Company, LLC dba DixieLine Lumber & Home Centers,  
24 DixieLine Truss Yard, DixieLine Classic Collections, DixieLine Home Centers, Builders FirstSource Dallas, LLC,  
25 and Builders FirstSource, Inc. are the Defendants.

26 The "Settlement Class" is comprised of all persons employed by Defendants in California as non-exempt employees  
27 at any time during the period of October 15, 2015 through October 3, 2020 (the "Settlement Class Period").

28 The "PAGA Group" is comprised of all persons employed by Defendants in California as non-exempt employees at  
any time during the period of August 6, 2018 through October 3, 2020 (the "PAGA Period").

You have been identified as a member of the Settlement Class and/or the PAGA Group.

**5. What Are The Reasons For The Settlement?**

The Parties agreed to enter into this settlement after weighing the risks and benefits of this settlement compared with  
those of continuing the Action. The factors included the uncertainty and delay associated with continued legal  
proceedings, a trial and appeals, and the uncertainty of legal and factual issues that have yet to be determined. The  
Parties balanced these and other substantial risks in determining the proposed Settlement is fair, reasonable, and  
adequate in light of all circumstances and in the best interests of Settlement Class and PAGA Group Members.

If the Action continued, the Court might rule in favor of Defendants and the Settlement Class and PAGA Group  
Members might not receive any recovery or monetary compensation. Defendants agreed to this proposed settlement  
in order to avoid the expense and distraction associated with continued legal proceedings and the chance that the Court  
might rule in favor of Settlement Class and PAGA Group Members.

**6. What Are The Terms of the Settlement?**

Provided the Settlement is finally approved by the Court, Defendants have agreed to pay a "Gross Settlement Amount"  
of One Million Four Hundred Thousand Dollars (\$1,400,000.00) to fully resolve all claims in the Action, including  
payments to Class Members, Class Counsel's attorneys' fees and costs, Claims Administration Costs, payment to the  
California Labor and Workforce Development Agency ("LWDA") for its share of PAGA civil penalties, and the Class

1 Representatives' Incentive Payment. Defendants also agree to pay their employer side payroll taxes in addition to the  
2 Gross Settlement Amount. The Court must approve these payments at the Final Approval Hearing.

3 The following deductions from the Gross Settlement Amount will be requested by the parties:

4 Class Counsel Fees and Costs. Class Counsel have been prosecuting the Action on behalf of Class Members on  
5 a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs  
6 and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which  
7 will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class  
8 Counsel's attorneys' fees or expenses. Class Counsel will ask for up to one-third of the Gross Settlement Amount  
9 in attorneys' fees, which is currently estimated at \$466,666, as reasonable compensation for the work Class  
10 Counsel performed and will continue to perform in this Action through Settlement finalization as well as costs  
11 incurred in connection with the Action which Class Counsel currently estimate will be no greater than \$15,000.

12 Claims Administration Costs. The Court has approved Phoenix Class Action Administration Solutions to act as  
13 the "Claims Administrator," who is sending this Notice to you and will perform many other duties relating to the  
14 Settlement. The Court has approved setting aside up to \$15,000 from the Gross Settlement Amount to pay the  
15 claims administration costs.

16 Class Representative Incentive Payment. Class Counsel will ask the Court to award the Class Representative an  
17 enhancement in the amount of \$15,000 to compensate him for his service and extra work provided on behalf of  
18 the Class Members.

19 PAGA Payment to State of California. The parties have agreed to allocate \$40,000 towards the Settlement of the  
20 PAGA claims in the Action. \$30,000 will be paid to the State of California Labor and Workforce Development  
21 Agency, representing its 75% share of the civil penalties. The remaining \$10,000 will be allocated to Class  
22 Members as described below.

23 Payment of the Settlement: The net sum remaining after deducting these Court-approved payments (called the "Net  
24 Settlement Amount") will be available for distribution to Settlement Class Members, as described in Question 8 below.  
25 All checks for Settlement Awards shall remain valid and negotiable for one hundred eighty (180) days from the date  
26 of their issuance. Any amounts from settlement checks that remain uncashed and otherwise unclaimed shall be  
27 disbursed to the California State Controller's Unclaimed Property Fund.

28 Allocation and Taxes: For tax purposes, each individual Settlement Award shall be treated as follows: one third non-  
wage penalties, to be reported to the Settlement Class Member on an IRS Form 1099, one third interest, to be reported  
to the Settlement Class Member on an IRS Form 1099, and shall not be subject to withholdings, and one third wages,  
subject to withholdings, to be reported to the Settlement Class Member on an IRS Form W-2. Settlement Class  
Members shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them. The  
Claims Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Class  
Members should consult with their tax advisors concerning the tax consequences and treatment of payments they  
receive under the Settlement.

7. *Who Are The Attorneys Representing The Parties?*

Attorneys for Plaintiff & the Class are:

**The Spivak Law Firm**  
David G. Spivak  
Caroline Tahmassian  
16530 Ventura Blvd., Suite 203  
Encino, CA 91436  
Toll Free: (877) 203-9010  
Facsimile: (818) 582-2561  
[david@MyWorkMyWages.com](mailto:david@MyWorkMyWages.com)

**United Employees Law Group**  
Walter Haines  
5500 Bolsa Ave., Suite 201  
Huntington Beach, CA 92649  
Telephone: (888) 474-7242  
Facsimile: (562) 256-1006

Attorneys for Defendants:

**Goldberg Segalla LLP**  
Matthew B. Golper  
Victor T. Xu  
Peter J. Woo  
777 Figueroa Street, Suite 2000  
Los Angeles, CA 90017  
Telephone: (213) 415-7200  
Facsimile: (213) 415-7299

1 **8. How Do I Receive Money From This Settlement?**

2 Do nothing. If you do nothing, you will be entitled to your share of the Settlement based on the number of workweeks  
3 you worked for Defendants during the Settlement Class Period, and the number of pay periods you worked for  
4 Defendants during the PAGA Period, as stated below in Section 12. You also will be bound by the settlement,  
5 including the release of claims stated herein.

6 **9. Excluding Yourself From The Settlement.**

7 If you **do not** wish to be included in the settlement, you must mail to the Claims Administrator a written "Exclusion  
8 Letter" letter or postcard requesting to be excluded from the settlement postmarked no later than **[INSERT DATE]**  
9 with your full name, current address and telephone number, last four digits of your social security number, and your  
10 signature. Please note that you are not able to exclude yourself from the PAGA portion of the Settlement, and you  
11 will still receive a portion of the PAGA Payment if you worked during the PAGA Period regardless of whether you  
12 request to exclude yourself. The Exclusion Letter should state: "I WISH TO BE EXCLUDED FROM THE  
13 SETTLEMENT CLASS IN THE SENGVONG V. PROBUILD COMPANY, LLC ET AL LAWSUIT."

14 If you submit a valid and timely Exclusion Letter to the Claims Administrator, you will receive only the amount you  
15 are entitled to, if any, as a member of the PAGA Group based on the number of pay periods you worked for Defendants  
16 during the PAGA Period.

17 Send the Exclusion Letter directly to the Settlement Administrator at **[INSERT ADMINISTRATOR CONTACT**  
18 **INFO]**. Any person who submits a valid and timely Exclusion Letter shall, upon receipt, no longer be a Settlement  
19 Class member, shall be barred from participating in the Class Released Claims portion of the Settlement, and shall  
20 receive no benefits from the Settlement (aside from a portion of the PAGA Payment if the person was employed by  
21 Defendants during the PAGA Period). Do not submit both an objection and an Exclusion Letter. If you do, the  
22 Exclusion Letter will be deemed invalid, you will be included in the Settlement Class, and you will be bound by the  
23 terms of the Settlement.

24 If you do nothing and do not request exclusion, following entry of judgment and exhaustion of appeals or other post-  
25 judgment proceedings, the judgment entered by the Court will bind you and you will release the claims described  
26 below. You will only receive money from the settlement if you do not request exclusion.

27 **If you are a current employee of Defendants, your decision as to whether or not to be excluded from the  
28 settlement will not affect your employment with Defendants.**

**10. Objecting to the Settlement.**

If you do not submit a valid and timely Exclusion Letter and wish to object to the settlement, you have the right to  
object to the terms of the Settlement. You should mail an objection that includes the case name and states why you  
object to the settlement. Your objection should state your full name, address, telephone number, last four digits of  
your social security number, and your signature. The "Notice of Objection" should be mailed to the Claims  
Administrator at Sengvong Class Action Settlement Claims Administrator, **[INSERT SETTLEMENT**  
**ADMINISTRATOR CONTACT INFO]** and must be postmarked on or before **[INSERT DATE]**, 2021. Class members  
who fail to submit a timely objection in the manner specified in this notice shall be deemed to have waived any  
objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the settlement,  
unless otherwise ordered by the Court. Regardless of whether you comply with this procedure, you may appear at the  
final approval hearing to speak with the Court about the Settlement. .

If you properly object or wish to appear, you may appear and discuss your objections with the Court and the Parties  
at the Final Approval Hearing set for **[INSERT DATE]**, 2021 at **[INSERT TIME]** in Courtroom 3D (3rd Floor) of  
the Edward J. Schwartz United States Courthouse, United States District Court for the Southern District of California,  
221 West Broadway, San Diego, CA 92101. Due to the COVID-19 pandemic, however, hearings before the judge  
overseeing this case are currently being conducted remotely with the assistance of a third-party service provider or a  
comparable mode of communication with the Court by telephone or video. If that remains the case at the time of the  
Final Approval Hearing, Class Members who wish to appear at the Final Approval Hearing should contact Class  
Counsel to arrange a telephonic appearance at least three days before the hearing if possible. Any third-party service  
provider fees for an appearance by an objecting Class Member shall be paid by Class Counsel. In the discretion of  
the Court, any Class Member may orally object at the final approval hearing, at their own expense, without mailing  
a Notice of Objection.

1 If you object to the settlement and the Court approves the settlement against your objection, and you have not returned  
2 a request for exclusion from the Settlement, you will receive a payment from the settlement and be bound by the terms  
of the Settlement in same way as Settlement class members who do not object.

3 **11. Effect Of The Settlement.**

4 If the proposed settlement is approved by the Court, a Judgment will be entered by the Court fully and finally settling  
the Action.

5 As a result of the Settlement and judgment to be entered, Plaintiff and the Settlement Class Members who did not opt  
6 out of the Settlement by filing a timely, valid Request for Exclusion will have released and discharged Defendants  
7 and their former and present employees, directors, shareholders, officers, owners, attorneys, agents, insurers,  
8 successors, assigns, parents, subsidiaries, affiliates, or legal representatives and any individual or entity which could  
9 be jointly liable with Defendants and all persons or entities acting by, through, under, or in concert with any of them  
10 (“Released Parties”) from all claims under California law that were asserted against Defendants in the operative  
11 Complaint or that could have been asserted based on the factual allegations alleged in the operative Complaint,  
12 including those for alleged: (1) alleged failure to pay minimum, straight time, overtime, or double time wages, and  
13 failure to pay other wages of any kind during employment under the California Labor Code, the FLSA or common  
14 law; (2) failure to authorize and permit rest periods or pay rest period premiums; (3) failure to provide meal periods  
15 or pay meal period premiums; (4) failure to provide accurate and itemized wage statements; (5) failure to pay final  
16 wages due at separation; (6); failure to reimburse or indemnify all necessary business expenses; (6) claims brought  
under Business & Professions Code section 17200, et seq., including, but not limited to all claims for unfair, unlawful  
and harmful conduct to class members, the general public, and Defendants' competitors and claims of unlawfully  
gaining an unfair advantage over other businesses; (7) claims under PAGA for civil penalties due to any Labor Code  
violations by Defendants arising out of or related to events alleged in the Complaint, including, but not limited to,  
Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, et seq., 1194,  
1197, 1198, 2802 and any applicable Wage Order; (8) claims of any nature, related to or arising out of or related to  
Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, et seq., 1194,  
1197, 1198, 2802 and any applicable Wage Order; (9) penalties of any nature; (10) interest; (11) attorneys' fees and  
costs; and (12) any other claims arising out of or related to the Complaint filed in the Action (the “Released Claims”).  
Plaintiff and Settlement Class Members shall be permanently barred and enjoined from the institution or prosecution  
of any and all Released Claims against the Released Parties, except as to such rights or claims as may be created by  
the Settlement. If the settlement is approved and you do not request to be excluded, you will receive compensation  
and will be forever barred from asserting the above claims against the Released Parties.

17 Plaintiff and members of the PAGA Group may not opt out of the settlement of the release of claims under PAGA for  
18 civil penalties due to any Labor Code violations by Defendants that were asserted against Defendants in the operative  
19 Complaint or that could have been asserted due to any alleged Labor Code violations by Defendants during the PAGA  
20 Period arising out of or related to events alleged in the Complaint, including, but not limited to, Labor Code sections  
201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, et seq., 1194, 1197, 1198, 2802 and  
any applicable Wage Order and any applicable interest and attorneys' fees and costs. If the settlement is approved, you  
will receive compensation and be forever barred from asserting the above claims against the Released Parties,  
regardless of whether you submitted an Exclusion Letter.

21 **12. How Much Can I Expect To Receive?**

22 Your individual payment under the settlement will be calculated based on two calculations: (1) the number of weeks  
23 you worked for Defendants between October 15, 2015 and October 3, 2020 and (2) the number of pay periods you  
24 worked for Defendants between August 6, 2018 through October 3, 2020.

- 25 • Defendants' records show that you worked [INSERT WEEKS] weeks as a non-exempt employee during the  
26 October 15, 2015 and October 3, 2020 period.
- 27 • Defendants' records indicate that you worked [INSERT PAYPERIODS] pay periods as a non-exempt  
28 employee during the August 5, 2018 through October 3, 2020 period.

Based on the above, your Settlement Share is estimated at \$ [INSERT AMOUNT].

This Notice sets forth the number of work weeks that you worked for Defendants during the Settlement Class Period.  
The Notice also provides an estimate of your Settlement Share. This amount may decrease or increase without further  
notice to you depending on orders by the Court. It is important that you carefully check and confirm the number of

1 (1) workweeks you worked as a non-exempt employee during the period of October 15, 2015 through October 3, 2020  
2 and (2) the number of pay periods you worked for Defendants between August 6, 2018 through October 3, 2020, and  
correct any inaccuracies in this Notice.

3 If you dispute the above information from Defendants' records, you may submit a dispute, along with any supporting  
4 documentation to the Claims Administrator. Any dispute, along with supporting documentation, must be postmarked  
no later than **INSERT DATE**. DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT  
ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

5 **13. How Will The Attorneys For The Class And Plaintiff Be Paid?**

6 The attorneys for Sengvong will be paid from the Gross Settlement Amount. The attorneys have asked for an award  
of up to \$466,666, one third (33 and 1/3%) of the Gross Settlement Amount, in fees and up to \$15,000 in costs, and  
7 will receive that award if their request is approved by the Court. If approved by the Court, Plaintiff Otina Sengvong  
will be paid from the Gross Settlement Amount an Incentive Award of up to \$15,000 for his service, in addition to his  
individual Settlement Award pursuant to section 10 above.

8 **14. Release**

9 Upon final approval by the Court of the settlement, each Settlement Class Member who has not opted out of this  
settlement shall release the Released Parties from the Settled Claims during the Settlement Class Period.

10 If you need more information or have any questions, you may call Class Counsel at the telephone numbers listed  
above, you may call the Claims Administrator at the telephone number listed below, toll free, or visit  
11 [www.SengvongProBuildSettlement.com](http://www.SengvongProBuildSettlement.com). Please refer to the Sengvong Class Action Settlement.

Sengvong Class Action Settlement  
Claims Administrator

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15 Please do not call the Court for information about this settlement.  
16 Please do not contact Defendants' attorneys for information about this settlement

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<b>TITLE</b>	20.12.14 SETTLEMENT AGREEMENT AND EXHIBITS
<b>FILE NAME</b>	20.12.01 SETTLEME... v.10 [Final].PDF
<b>DOCUMENT ID</b>	33b53892ff0e3aff46c649d7662af2bc03e9636e
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