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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SACRAMENTO**

19
20 TONG XIONG, individually, and on behalf of all
21 others similarly situated,

22 *Plaintiff,*

23 v.

24 REX MOORE GROUP, INC., a California
25 corporation, CONSTRUCTION INNOVATIONS
26 GROUP, LLC, a California corporation, REX
27 MOORE ELECTRICAL CONTRACTORS &
ENGINEERING, INC., a California corporation,
28 REX SIGNATURE SERVICES, LLC, a
California corporation, and DOES 1 through 10,
inclusive,

Case No.: 34-2019-00270480-CU-OE-GDS

*[Assigned for all purposes to Honorable
Gerrit W. Wood, Dept. 31]*

**AMENDED STIPULATION OF
SETTLEMENT**

Complaint filed: December 4, 2019
MSC date: January 19, 2023
Trial date: February 28, 2023

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Defendants.

1 This Stipulation of Settlement is made by and between the Named Plaintiff, TONG
2 XIONG (“Plaintiff”), on his own behalf and on behalf of all members of the Settlement Class,
3 as defined below, on the one hand, and Defendants REX MOORE GROUP, INC.,
4 CONSTRUCTION INNOVATIONS GROUP, LLC, REX MOORE ELECTRICAL
5 CONTRACTORS & ENGINEERING, INC., REX SIGNATURE SERVICES, LLC,
6 (“Defendants”) on the other hand (collectively the “Parties”), in the lawsuit entitled *Tong Xiong*
7 *v. Rex Moore Group, Inc., Construction Innovations Group, LLC, Rex Moore Electrical*
8 *Contractors & Engineering, Inc., Rex Signature Services, LLC*, filed in the Sacramento County
9 Superior Court, Case No. 34-2019-00270480-CU-OE-GDS. This Stipulation of Settlement
10 resolves all claims that were asserted or could have been asserted against Defendant pertaining
11 to the claims in the Litigation.

12 **I. DEFINITIONS**

13 **A. “Administrative Costs”** means all administrative costs of settlement, including cost
14 of notice to the Settlement Class, claims administration, and any fees and costs incurred or charged
15 by the Settlement Administrator in connection with the execution of its duties under this Stipulation
16 of Settlement.

17 **B. “Aggrieved Employees” or “Participating PAGA Members”** means all persons
18 who were employed by Defendants in California and performed work for Defendants in California
19 as a non-exempt employee during the PAGA Claim Period.

20 **C. “Class Counsel” or “Plaintiff’s Counsel”** means WILSHIRE LAW FIRM, PLC and
21 all the lawyers of the firm acting on behalf of Named Plaintiff and the Settlement Class. The term
22 Class Counsel shall be used synonymously with the term Plaintiff’s Counsel.

23 **D. “Class Members” or “Settlement Class”** means all current and former hourly-paid
24 or non-exempt employees who worked for Defendant within the State of California at any time
25 during the Class Claim Period (collectively referred to as the “Class”).

26 **E. “Court”** means the Superior Court of the State of California for Sacramento County.

27 **F. “Defendant”** means REX MOORE GROUP, INC., CONSTRUCTION
28 INNOVATIONS GROUP, LLC, REX MOORE ELECTRICAL CONTRACTORS &

1 ENGINEERING, INC., REX SIGNATURE SERVICES, LLC.

2 **G. “Effective” or “Effective Date”** means the later of: (a) if no timely objections are
3 filed or if all objections are withdrawn, the date upon which the Court enters Final Approval and the
4 Settlement is fully funded; (b) if an objection is filed and not withdrawn, the date for filing an appeal
5 and no such appeal being filed (c) if any timely appeals are filed, the date of the resolution (or
6 withdrawal) of any such appeal in a way that does not alter the terms of the settlement.

7 **H. “Final Approval Order”** means the final formal judgment entered by the Court
8 granting final approval of this Agreement.

9 **I. “Employer Taxes”** means employer-funded taxes and contributions imposed on the
10 wage portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
11 Unemployment Tax Act, and any similar state taxes and contributions required of employers, such
12 as for unemployment insurance.

13 **J. “Litigation”** means the action entitled filed in Sacramento County Superior Court,
14 Case No. 34-2019-00270480-CU-OE-GDS.

15 **K. “Named Plaintiff”** means TONG XIONG.

16 **L. “Net Settlement Amount” or “Net Settlement Fund”** mean the Settlement Amount
17 minus any award of attorneys’ fees and Litigation costs, Administrative Costs, enhancement to the
18 Named Plaintiff, and penalties recoverable pursuant to California’s Private Attorney General Act
19 (“PAGA”) (the “PAGA Settlement”), and as provided in Sections VIII, XIII, XIV, XV, and XVI,
20 respectively.

21 **M. “Net Settlement Payment(s)”** shall include payments made to the Settlement Class
22 as part of the Settlement, including wages, penalties and interest.

23 **N. Settlement.** The term “Settlement” as used herein means this Agreement to resolve
24 the Litigation.

25 **N. “PAGA Claim Period”** as used herein means the period from January 22, 2021
26 through the date of preliminary approval.

27 **O. “Settlement,” “Settlement Agreement,” or “Agreement”** means this Stipulation of
28 Settlement.

1 **P. “Settlement Administrator”** means Phoenix Settlement Administrators, which will
2 be responsible for the administration of the Settlement Amount, as defined below, and all related
3 matters.

4 **Q. Settlement Amount.** The term “Settlement Amount” as used herein means the sum
5 of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00), which shall be paid by
6 Defendants, and from which all Net Settlement Payments, Court-approved attorneys’ fees and
7 Litigation costs pursuant to Section XIII, Administrative Costs pursuant to Section VIII,
8 enhancement to Named Plaintiff pursuant to Section XIV, statutory penalties, interest, and PAGA
9 Settlement pursuant to Section XVI shall be paid, except as provided herein.

10 **R. “Class Claim Period”** means the period from December 4, 2015 through
11 September 14, 2016, and from January 22, 2021 through the date of preliminary approval.

12 **II. BACKGROUND**

13 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and all
14 others similarly situated, that Defendants violated California state wage and hour laws, the California
15 *Business and Professions Code* Section 17200 *et seq.*, and PAGA, as a result of Defendants’
16 California wage and hour policies and practices. Specifically, Plaintiff alleges that Defendants failed
17 to pay its employees at or above the applicable minimum wage rates, failed to provide regular,
18 overtime, and double time pay, failed to provide meal breaks (including first and second meal
19 breaks), failed to authorize and permit legally compliant rest breaks each day based on the hours
20 worked by each employee, and failed to reimburse business expenses including work equipment and
21 use of personal cell phones. Plaintiff further alleged that the aforementioned resulted in the
22 employees receiving inaccurate wage statements, and the underpayment of wages to employees upon
23 termination and/or resignation.

24 Class Counsel conducted informal discovery concerning the claims set forth in the Litigation,
25 such as a sample of class member timekeeping and payroll records, Defendants’ policies and
26 procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of
27 wage statements, and providing all wages at separation, as well as information regarding the number
28 of putative class members and the mix of current versus former employees, the wage rates in effect,

1 and the amount of meal and rest period premium wages paid to class members.

2 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
3 negotiations with Defendants concerning possible settlement of the claims asserted in the Litigation.
4 The Parties participated in one day of mediation before Hon. Ronald M. Sabraw (Ret.), a well-
5 respected wage and hour class action mediator, that did not result in settlement. The Parties
6 informally continued negotiations that resulted in a tentative settlement of the Litigation, subject to
7 the approval of the Court, and finalization of a formal Stipulation of Settlement. The Parties have
8 engaged in extensive negotiations about the terms and conditions of the Settlement at the mediation
9 and subsequent thereto. The Parties have now formalized the Settlement Agreement for submission
10 to the Court for preliminary and Final Approval.

11 **C.** Class Counsel has conducted an investigation of the law and facts relating to the
12 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
13 involved, the defenses asserted by Defendants, the expense and time necessary to pursue the
14 Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation,
15 the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits
16 to be received by the Named Plaintiff and the members of the Settlement Class pursuant to this
17 Agreement, that a settlement with Defendants on the terms and conditions set forth herein is fair,
18 reasonable, adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his own
19 behalf and on behalf of the Settlement Class, has agreed to settle the Litigation with Defendants on
20 the terms set forth herein.

21 **D.** Defendant has concluded that, because of the substantial expense of defending against
22 the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience
23 involved, and the concomitant disruption to its business operations, it is in Defendants' best interests
24 to accept the terms of this Agreement. Defendants deny each of the allegations and claims asserted
25 against them in the Litigation. However, Defendants nevertheless desire to settle the Litigation for
26 the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the
27 purpose of putting to rest the controversies engendered by the Litigation.

1 E. This Agreement is intended to and does effectuate the full, final and complete
2 settlement of all allegations and claims that were asserted, or could have been asserted, in the
3 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II.A.

4 **III. JURISDICTION**

5 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
6 Litigation includes claims that, while Defendants deny them in their entirety, would, if proven,
7 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
8 Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to
9 California *Code of Civil Procedure* Section 664.6 the Court shall retain jurisdiction of this action
10 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with
11 the terms set forth herein.

12 **IV. STIPULATION OF CLASS CERTIFICATION**

13 The Parties stipulate to the certification of this Settlement Class for purposes of Settlement
14 only. This Stipulation is contingent upon the Preliminary and Final approval and certification of the
15 Settlement Class only for purposes of Settlement. Should the Settlement not become final, for
16 whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification
17 as part of the Settlement shall have no bearing on, and shall not be admissible in connection with,
18 the issue of whether a class should be certified in a non-settlement context in the Litigation.
19 Defendants expressly reserve the right to oppose class certification and/or proactively move to deny
20 certification should this Settlement be modified or reversed on appeal or otherwise not become final.

21 **V. MOTION FOR PRELIMINARY APPROVAL**

22 Named Plaintiff will bring a motion before the Court for an order preliminarily approving the
23 Settlement including the Notice of Proposed Class Action Settlement, and Workweek Dispute Form,
24 which are attached hereto as **Exhibits “A”** and **“B,”** respectively, and including certification of the
25 Settlement Class for settlement purposes only.

26 The date that the Court grants Preliminary Approval of this Agreement will be the
27 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval and
28 will provide Defendants’ counsel the opportunity to review it and provide input before it is filed. On

1 the same date on which it is filed with the Court, Class Counsel shall concurrently submit the Motion
2 for Preliminary Approval to the Labor & Workforce Development Agency in compliance with Labor
3 Code § 2698 *et seq.*, the Private Attorneys General Act.

4 **VI. STATEMENT OF NO ADMISSION**

5 **A.** Defendants deny liability to Named Plaintiff and to the Settlement Class upon any
6 claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an
7 admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims
8 made against them in the Litigation.

9 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
10 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
11 during the course of the negotiations leading to this Agreement or the Settlement, is intended by the
12 Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
13 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or
14 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
15 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
16 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or
17 any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported
18 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or
19 executive order, or any obligation or duty at law or in equity, or for any other purpose.

20 Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding before the
21 Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement
22 or any orders or judgments of the Court entered in connection with implementation of the Settlement.

23 **C.** None of the documents produced or created by Named Plaintiff or the Settlement
24 Class in connection with the claims procedures or claims settlement procedures constitute, and they
25 are not intended to constitute, an admission by Defendants of any violation of any federal, state, or
26 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
27 in equity.

28 **D.** The Parties agree that class certification pursuant to California *Code of Civil*

1 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only. Nothing
2 in this Agreement will be construed as an admission or acknowledgement of any kind that any class
3 should be certified or given collective treatment in the Litigation or in any other action or proceeding.
4 Further, neither this Agreement nor the Court’s actions with regard to this Agreement will be
5 admissible in any court or other tribunal regarding the propriety of class certification or collective
6 treatment. In the event that this Agreement is not approved by the Court or any appellate court, is
7 terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived,
8 limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendant will
9 not be deemed to have waived, limited, or affected in any way any of their objections or defenses in
10 the Litigation.

11 **VII. WAIVER, RELEASE AND CONFIDENTIALITY**

12 **A. Release as to All Settlement Class Members.**

13 Upon the Effective Date and all payments are made by Defendants pursuant to this
14 Agreement, Named Plaintiff and all members of the Settlement Class, except those that make a valid
15 and timely request to be excluded from the Settlement Class and Settlement, will release Defendants
16 and all of their subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns
17 (the “Released Parties”) to include all claims, both potential and actual, that were or may have been raised in
18 the First Amended Complaint or that are reasonably related to the allegations in the First Amended Complaint
19 as to all Class Members, including claims under Labor Code section 201, 202, 203, 204, 210, 226, 226.3,
20 226.7, 246, 246.5, 248.5, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2698, 2699, 2699.3,
21 2699.5, California Industrial Welfare Commission Wage Orders, Cal. Code Regs., tit. 8, section 11040, *et*
22 *seq.*, California Business and Professions Code section 17200, *et seq.*, and all class claims, representative
23 claims, aggrieved employee claims, meal or rest periods, meal or rest period premiums, unpaid wages,
24 overtime, minimum wages, and complete payments of wages at separation or termination, failure to provide
25 accurate and itemized wage statements, unfair competition based on the foregoing, unfair business practices
26 based on the foregoing, unlawful business practices based on the foregoing, and fraudulent business practices
27 based on the foregoing, waiting time penalties, interest, fees, costs, and any other claims that may have been
28 raised in the First Amended Complaint or that reasonably relate to the allegations therein during the Class

1 Claim Period as defined above. The “Released Parties” as referenced herein and as released in the Settlement
2 shall collectively mean: (i) Defendants Construction Innovations Group, LLC, Rex Moore Group, Inc., Rex
3 Signature Services, LLC; Rex Moore Electrical Contractors & Engineering, Inc.; (ii) each of Defendants’ past,
4 present and future parents, subsidiaries and affiliates including, without limitation any corporation, limited
5 liability company, partnership, trust, foundation and non-profit entity which controls, is controlled by, or is
6 under common control with Defendants; (iii) the past, present, and future shareholders, directors, officers,
7 agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors,
8 successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable
9 with any of the foregoing.

10 **B. Release as to All Participating PAGA Members.**

11 Upon the Effective Date and all payments are made by Defendants pursuant to this
12 Agreement, Named Plaintiff and all Class Members who performed work at any time during the
13 PAGA Claim Period will release Defendants and the Released Parties of all claims for civil penalties
14 pursuant to PAGA, to include all claims for PAGA penalties, both potential and actual, that were or may have
15 been raised in the First Amended Complaint or that are reasonably related to the allegations in the First
16 Amended Complaint as to all Class Members who performed work during the PAGA Claim Period, including
17 all claims for PAGA penalties for alleged violations of Labor Code section 201, 202, 203, 204, 210, 226,
18 226.3, 226.7, 246, 246.5, 248.5, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2698, 2699,
19 2699.3, 2699.5, California Industrial Welfare Commission Wage Orders, Cal. Code Regs., tit. 8, section
20 11040, *et seq.*, California Business and Professions Code section 17200, *et seq.*, penalties based on the
21 foregoing, waiting time penalties, civil penalties based on the foregoing, interest, fees, costs, and any other
22 claims that may have been raised in the First Amended Complaint or that reasonably relate to the allegations
23 therein during the PAGA Claim Period.

24 **C. General Release by Named Plaintiff Only.**

25 In addition to the releases made in Section VII (A) and (B), Named Plaintiff makes the
26 additional following general release of all claims, known or unknown. Named Plaintiff releases the
27 Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and
28 description whatsoever, known or unknown, asserted or that might have been asserted, whether in

1 tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating
2 to, or in connection with Named Plaintiff's employment with Defendants as well as any and all acts
3 or omissions by or on the part of Defendants. This release shall include, but not be limited to, any
4 and all claims under the Americans With Disabilities Act; Title VII of the Civil Rights Act of 1964;
5 the Civil Rights Act of 1991; the Age Discrimination in Employment Act; the Fair Labor Standards
6 Act; the Equal Pay Act; the Employee Retirement Income Security Act; the Consolidated Omnibus
7 Budget Reconciliation Act; the Family and Medical Leave Act; the California Fair Employment and
8 Housing Act; the California Constitution; the California Labor Code; the California Government
9 Code; the California Civil Code; the California Industrial Welfare Commission Wage Orders, as well
10 as any other claims based on theories of wrongful or constructive discharge, breach of contract or
11 implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent
12 infliction of emotional distress, or damages under any other federal, state or local statutes,
13 ordinances, regulations, rules or laws. This release excludes claims for workers' compensation,
14 unemployment insurance benefits, or other claims that cannot be released as a matter of law. (The
15 release set forth in this Paragraph B shall be referred to hereinafter as the "General Release.")

16 With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the
17 Date of Final Approval, Named Plaintiff shall be deemed to have expressly waived and relinquished,
18 to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
19 California Civil Code, or any other similar provision under federal or state law, which provides:

20 **"SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY**
21 **GENERAL RELEASE.] A GENERAL RELEASE DOES NOT**
22 **EXTEND TO CLAIMS THAT THE CREDITOR OR**
23 **RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
24 **EXIST IN HIS OR HER FAVOR AT THE TIME OF**
25 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY**
HIM OR HER WOULD HAVE MATERIALLY AFFECTED
HIS OR HER SETTLEMENT WITH THE DEBTOR OR
RELEASED PARTY."

26 Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other
27 than or different from the facts now believed to be true, the release of claims contained herein shall
28 be effective as to all unknown claims.

1 **VIII. SETTLEMENT ADMINISTRATOR**

2 Named Plaintiff and Defendants, through their respective counsel, have selected Phoenix
3 Settlement Administrators as the Settlement Administrator to administer the Settlement, which
4 includes but is not limited to distributing and responding to inquiries about the Notice of Proposed
5 Class Action Settlement and Workweek Dispute Form, determining the validity of any disputes and
6 opt-outs, and calculating all amounts to be paid from the Net Settlement Amount, and maintaining a
7 website with information about the Settlement. The Settlement Administrator shall update the
8 website to include any changes of the location or date of the Final Approval hearing and final
9 judgment. Charges and expenses of the Settlement Administrator, estimated to be no more
10 \$15,000.00, will be paid from the Settlement Amount. Any charges and expenses of the Settlement
11 Administrator greater than the allocated \$15,000.00 will come from the Settlement Amount. If the
12 actual Settlement Administrator fees are less than the Parties' estimation, the difference between the
13 actual and estimated Settlement Administrator fees will revert to the participating Settlement Class
14 members. The Parties agree that this Agreement may be provided to the Settlement Administrator
15 to effectuate its implementation of the settlement procedures herein.

16 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

17 **A. Notice.**

18 Named Plaintiff and Defendants, through their respective attorneys, have jointly prepared a
19 Notice of Class Action and Proposed Settlement (the "Notice") and a Workweek Dispute Form,
20 which in substance will be provided to the members of the Settlement Class as follows:

21 As soon as practicable following Preliminary Approval of the Settlement, but no later than
22 fourteen (14) days after the Court's Preliminary Approval order, Defendants will provide to the
23 Settlement Administrator the following information about each Settlement Class member ("Class
24 List"): (1) name; (2) last known home address; (3) number of workweeks as a class member during
25 the Class Claim Period and, if applicable, the PAGA Claim Period or the dates of employment for
26 each Settlement Class member; and (4) Social Security number. Defendants further agree to consult
27 with the Settlement Administrator prior to the production date to ensure that the format will be
28 acceptable to the Settlement Administrator. Plaintiff's Counsel shall also receive a redacted Class

1 List that shall only disclose an identification number attributed to each class member and the number
2 of workweeks each class member worked during the Class Claim Period and the PAGA Claim
3 Period.

4 The Settlement Administrator shall run all the addresses provided through the United States
5 Postal Service NCOA database (which provides updated addresses for any individual who has moved
6 in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain
7 current address information, and shall mail the Notice and Workweek Dispute Form to the members
8 of the Settlement Class via first-class regular U.S. Mail using the most current mailing address
9 information available, within ten (10) calendar days of the receipt of the Class List from Defendant.
10 The Notice shall provide the members of the Settlement Class forty-five (45) days' notice of all
11 applicable dates and deadlines.

12 The Notice will also include information regarding the nature of the Litigation; a summary
13 of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has
14 preliminarily approved the Settlement; the nature and scope of the claims being released; the
15 procedure and time period for objecting to the Settlement, the date and location of the Final Approval
16 hearing; information regarding the opt-out procedure; Defendants' calculation of the number of
17 Eligible Workweeks that each Settlement Class member has worked as an employee in California at
18 any time during the Class Claim Period and PAGA Claim Period, and the estimated potential
19 recovery for the proposed Settlement Class Member. The Notice shall enclose the Workweek
20 Dispute Form for Settlement Class members.

21 For each Settlement Class member, the Workweek Dispute Form will identify the number of
22 Eligible Workweeks that s/he was employed and inform the employee of his or her right to dispute
23 this number by completing and returning the form within forty-five (45) days of the postmark date
24 of the Workweek Dispute Form. A Settlement Class member's receipt of his or her share of the Net
25 Settlement Payments is not conditional on the submission of the Workweek Dispute Form. Absent
26 the receipt of a Workweek Dispute Form the number of workweeks identified in the Workweek
27 Dispute Form shall be deemed accurate. The settlement of any disputes concerning the number of
28 Eligible Workweeks is discussed in Section X, below.

1 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
2 perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator
3 is successful in locating a new address, it will re-mail the Notice to the Settlement Class member.
4 Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-
5 deliverable before the deadline date, shall be sent to the forwarding address affixed thereto. With
6 respect to any Notice that is re-mailed, the Response Deadline for the Class Member whose Notice
7 is re-mailed will be extended an additional fifteen (15) calendar days.

8 No later than twenty-one (21) days before the Final Approval Hearing, the Settlement
9 Administrator shall provide counsel for Defendants and Class Counsel with a declaration attesting
10 to the completion of the Notice process, including the number of attempts to obtain valid mailing
11 addresses for and re-sending of any returned Notices, as well as the number of valid Workweek
12 Dispute Forms, opt-outs and deficiencies that the Settlement Administrator received.

13 **B. Objections.**

14 In order for any Settlement Class member to object to this Settlement, or any term of it, the
15 person making the objection must not submit a request for exclusion (i.e., must not opt out). To
16 object to the Settlement in writing, a Class Member may send the objection to the Settlement
17 Administrator by forty-five (45) days after Notice of the Proposed Class Action Settlement was
18 initially mailed to the Settlement Class members. A Settlement Class member making an objection
19 may appear at the Final Approval Hearing with or without submitting any written objection. The
20 Settlement Class member may appear personally or through an attorney, at his or her own expense,
21 at the Final Approval hearing to present his or her objection directly to the Court. If a Settlement
22 Class member objects to the Settlement, the Settlement Class member will remain a member of the
23 Settlement Class and if the Court approves this Agreement, the Settlement Class member will be
24 bound by the terms of the Settlement and Final Approval Order in the same way and to the same
25 extent as a Settlement Class member who does not object. The date of mailing of the Notice to the
26 objecting Settlement Class member shall be conclusively determined according to the records of the
27 Settlement Administrator. The Court retains final authority with respect to the consideration and
28 admissibility of any Settlement Class member objections. Any Settlement Class member who

1 submits an objection may also participate in the settlement.

2 Named Plaintiff hereby endorses the Settlement as fair, reasonable and adequate and in the
3 best interests of the Settlement Class.

4 **C. Opportunity to be Excluded and Defendant’s Opt-Out Threshold.**

5 In order for any Settlement Class member to validly exclude himself or herself from the
6 Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion (“Request
7 to be Excluded”) must be signed by the Settlement Class member or his or her authorized
8 representative and must be sent to the Settlement Administrator, postmarked by no later than forty
9 five (45) days after the date the Settlement Administrator initially mails the Notice to the Settlement
10 Class members. The Notice shall contain instructions on how to opt out.

11 The date of the initial mailing of the Notice, and the date the signed Request to be Excluded
12 was postmarked, shall be conclusively determined according to the records of the Settlement
13 Administrator. Any Settlement Class member who timely and validly submits a Request to be
14 Excluded from the Settlement Class and the Settlement will not be entitled to any portion of the Net
15 Settlement Payments, will not be bound by the terms and conditions of the Settlement, and will not
16 have any right to object, appeal, or comment thereon, except that Participating PAGA Members’
17 claim for PAGA penalties will still be released.

18 Any member of the Settlement Class who does not timely file and mail a Request to be
19 Excluded from the Settlement Class will be deemed included in the Settlement Class in accordance
20 with this Settlement.

21 In the event that 10% or more of the Class Members exercise their right to exclude themselves
22 and opt out of the Settlement and Settlement Agreement, Defendants retain the exclusive right, but
23 not the obligation, to withdraw from and terminate the Settlement and the Settlement Agreement and
24 return all parties back to their same position before the Settlement was reached and the Settlement
25 Agreement was entered into. In the event that Defendants exercise such rights under this paragraph,
26 the Plaintiff and Defendants shall resume the Litigation through and until there is a final settlement
27 of the Litigation. Defendants must notify Class Counsel and the Court of such a decision to withdraw
28 and terminate the Settlement no later than five (5) days prior to the date of the Final Approval

1 Hearing. In the event of Defendants’ withdrawal, no party may use the fact that the Parties agreed
2 to the Settlement for any reason, and Defendants shall pay all administration expenses incurred
3 through the date of its termination of the Settlement.

4 **D. Cooperation.**

5 The Parties and their respective counsel agree not to encourage members of the Settlement
6 Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the
7 Settlement, directly or indirectly, through any means. However, if a Settlement Class member
8 contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement
9 Class member’s options.

10 **X. PAYMENT FORMULA AND DISPUTES PROCEDURE**

11 Named Plaintiff and Defendants have agreed upon the following payment formula to resolve
12 all disputes submitted by Settlement Class members during the Class Claim Period and PAGA Claim
13 Period.

14 The Settlement Administrator will calculate the total number of workweeks for all Class
15 Members who were employed by Defendants during the Class Claim Period ("Total Workweeks").
16 The value of each Workweek shall be determined by the Settlement Administrator by dividing the
17 Net Settlement Fund (not including the amount the Court approves in PAGA penalties) by the total
18 number of Workweeks available to the Class Members who do not opt out in accordance with Section
19 IX(C) above during the Class Claim Period (“Workweek Point Value”).

20 An "Individual Settlement Payment" for each Class Member will then be determined by
21 multiplying a Class Member's workweeks worked during the Class Period (“Eligible Workweeks”)
22 by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required
23 legal deductions, for each participating Class Member.

24 As to distribution of PAGA penalties, The Settlement Administrator will calculate the total
25 number of workweeks for all Participating PAGA Members who were employed by any Defendants
26 during the PAGA Claim Period ("Total PAGA Workweeks"). The value of each PAGA Workweek
27 shall be determined by the Settlement Administrator by dividing 25% of the total amount the Court
28 approves in PAGA penalties by the total number of PAGA Workweeks available to Participating

1 PAGA Members (“PAGA Workweek Point Value”). Each payment to Participating PAGA Members
2 shall be treated as 100% penalties.

3 If a member of the Settlement Class does not dispute the number of Eligible Workweeks
4 during the Class Claim Period and PAGA Claim Period set forth in the Workweek Dispute Form,
5 such person need not take further action to participate in the Settlement. If the member of the
6 Settlement Class disputes the number of Eligible Workweeks set forth in the Workweek Dispute
7 Form, such person must follow the directions in the Workweek Dispute Form and in the Notice,
8 including preparing a statement setting forth the number of Eligible Workweeks that such person
9 believes in good faith is correct, and stating that the member of the Settlement Class authorizes the
10 Settlement Administrator to review the Settlement Class member’s personnel file and leave
11 management records to determine such information, and attaching any relevant documentation in
12 support thereof. The member of the Settlement Class must mail the signed and completed statement
13 no later than forty-five (45) days after the date of the mailing of the Workweek Dispute Form, or the
14 number of Eligible Workweeks set forth in the Notice and Workweek Dispute Form will govern the
15 Net Settlement Payment to the member of the Settlement Class.

16 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with
17 Class Counsel and counsel for Defendants, will review the pertinent payroll records showing the
18 dates the Settlement Class member was employed and the pertinent leave(s) taken, which records
19 Defendant agrees to make available to the Settlement Administrator and Class Counsel.

20 After consulting with Class Counsel and counsel for Defendants, the Settlement
21 Administrator shall compute the number of Eligible Workweeks to be used in computing the
22 Settlement Class member’s pro rata share of the Net Settlement Amount. In the event there is a
23 disparity between the dates a Settlement Class member claims he or she worked during the Class
24 Claim Period, the PAGA Claim Period, and the dates indicated by Defendants’ records, Defendants’
25 records will control unless inconsistent with paycheck stub(s) (or bona fide copies thereof) provided
26 by the Settlement Class member, in which case the paycheck stub(s) will control. The Settlement
27 Administrator’s decision as to the total number of Eligible Workweeks shall be final and non-
28 appealable. The Settlement Administrator shall send written notice of the decision on any such claim

1 to the Settlement Class member, to Class Counsel, and counsel for Defendants within ten (10)
2 calendar days of receipt of the dispute.

3 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

4 **A. Distribution Formula.**

5 Members of the Settlement Class not opting out will receive a lump sum payment as good
6 and valuable consideration for the waiver and release of claims set forth in Section VII(A), above,
7 in an amount determined by the Settlement Administrator in accordance with the provisions of this
8 Agreement.

9 All members of the Settlement Class who performed work at any time during the PAGA
10 Claim Period, regardless of whether they opted out pursuant to section IX(B), above, will receive a
11 lump sum payment as good and valuable consideration for the waiver and release of claims set forth
12 in Section VII(B), above, in an amount determined by the Settlement Administrator in accordance
13 with the provisions of this Agreement.

14 The lump sum payment to each member of the Settlement Class not excluding him/ herself
15 will be determined in accordance with the procedure set forth in Section X.

16 **B. Funding of Settlement.**

17 Within fourteen (14) calendar days following the Effective Date, Defendants will deposit the
18 Settlement Amount and the Employer Taxes into an interest-bearing trust account for the benefit of
19 the Settlement Class members and Class Counsel, through the Settlement Administrator. At no time
20 prior to Final Approval of the Settlement shall Defendant be required to escrow any portion of the
21 Settlement Amount.

22 **C. Time for Distribution.**

23 The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net
24 Settlement Amount, the Court approved attorney's fees and Litigation costs, Court approved
25 enhancement to Named Plaintiff, and PAGA Settlement) and the Employer Taxes to be mailed within
26 twenty-one (21) calendar days following the date of funding of the Settlement Amount and
27 accompanying Employer Taxes.

28 If a check is returned to the Settlement Administrator as undeliverable, the Settlement

1 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
2 search and, if another address is identified, shall mail the check to the newly identified address.
3 Settlement checks will be valid for 180 days. Any settlement checks remaining uncashed after one
4 hundred and eighty (180) days shall be deemed unpaid residue pursuant Code of Civil Procedure
5 Section 384(a). Unpaid residue (uncashed or returned checks) will be paid as a *cy pres* award to the
6 Center for Workers' Rights, 2741 Fruitridge Rd., Suite 5, Sacramento, CA 95820. No portion of the
7 uncashed funds shall revert back to Defendant. The Parties select the Center for Workers' Rights,
8 2741 Fruitridge Rd., Suite 5, Sacramento, CA 95820, as the *cy pres* recipient. If the Court does not
9 approve the *cy pres* designee, the Parties shall select a new *cy pres* designee, with approval by the
10 Court.

11 Any Settlement Class member who does not opt-out will be nevertheless bound by the terms
12 of the agreement regardless of whether he or she cashes the check.

13 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

14 The amounts paid under this Agreement do not represent a modification of any previously
15 credited hours of service under any employee benefit plan, policy, or bonus program sponsored by
16 Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or
17 any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendants,
18 policies or bonus programs. Any payments made under the terms of this Settlement shall not be
19 applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other
20 form of compensation for the purposes of Defendants' benefit plan, policy or bonus program.
21 Defendants retain the right to modify the language of their benefit plans, policies and bonus programs
22 to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for
23 "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by
24 applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or
25 any other purpose, and that additional contributions or benefits are not required by this Settlement.

26 **XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

27 Defendants shall not oppose an application by Class Counsel for, and Class Counsel shall not
28 seek or receive an amount in excess of \$100,000.00, which represents 33 1/3% of the Settlement

1 Amount for all past and future attorneys’ fees necessary to prosecute, settle and administer the
2 Litigation and this Settlement. Additionally, Defendants shall not oppose an application by Class
3 Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$15,000.00, which
4 represents all past and future Litigation costs and expenses necessary to prosecute, settle and
5 administer the Litigation and this Settlement. Any attorneys’ fees or Litigation costs awarded to
6 Class Counsel by the Court as part of the Settlement Amount shall be deducted from the Settlement
7 Amount for the purpose of determining the Net Settlement Amount. The “future” aspect of these
8 amounts include, without limitation, all time and expenses expended by Class Counsel in defending
9 the Settlement and securing preliminary and Final Approval (including any appeals therein). There
10 will be no additional charge of any kind to either the members of the Settlement Class or request for
11 additional consideration from Defendants for such work. This amount shall include all attorneys’
12 fees, Litigation costs, and expenses for which Named Plaintiff and Class Counsel could claim under
13 any legal theory whatsoever. Within twenty-one (21) calendar days following the date the settlement
14 is funded pursuant to Section XI(B), the Settlement Administrator shall disburse payment from the
15 Settlement Amount for the amount of attorneys’ fees and Litigation costs approved by the Court to
16 Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or Litigation
17 costs than the amount that Class Counsel ultimately seeks, then any such unapproved portion or
18 portions shall revert into the Net Settlement Amount to be distributed between the participating
19 Settlement Class Members on a pro-rata basis.

20 **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

21 Defendants shall not oppose an application by Named Plaintiff, and Named Plaintiff shall not
22 seek or receive an amount in excess of \$10,000.00 for his participation in and assistance with the
23 Litigation (*i.e.*, Named Plaintiff’s class representative enhancement / service award). Any
24 enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be
25 deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount,
26 and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than
27 \$10,000.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the Net
28 Settlement Amount to be distributed between the participating Settlement Class Members on a pro-

1 rata basis.

2 **XV. TAXATION AND ALLOCATION**

3 The Parties agree that all employment taxes and other legally required withholdings will be
4 withheld from payments to the members of the Settlement Class and Named Plaintiff based on the
5 Parties stipulated allocation of the Net Settlement Amount as provided for in this Section.

6 In Defendants' sole discretion, and to which Named Plaintiff and Class Counsel do not object,
7 the amount of federal income tax withholding will be based upon a flat withholding rate for
8 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
9 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
10 withholding codes or regulations.

11 For withholding tax characterization purposes and payment of taxes, the Net Settlement
12 Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):

- 13 (1) 15 % as wages; and
14 (2) 85 % as penalties and interest.

15 Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the
16 Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement, by the Settlement
17 Administrator. If the Code, the regulations promulgated thereunder, or other applicable tax law, is
18 changed after the date of this Agreement, the processes set forth in this Section may be modified in
19 a manner to bring Defendants into compliance with any such changes.

20 Finally, any and all Employer Taxes which Defendants normally would be responsible for
21 paying based on the Net Settlement Payments made to the individual Class Members will be paid by
22 Defendants in addition to and not as a deduction from the Settlement Amount based on the stipulated
23 Net Settlement Allocation.

24 **XVI. PRIVATE ATTORNEY GENERAL ACT ALLOCATION**

25 In order to implement the terms of this Settlement and to settle claims alleged under the
26 Private Attorneys' General Act, California *Labor Code* section 2698 *et seq.*, the Parties agree to
27 allocate \$25,000.00 from the Settlement Amount as penalties authorized by the California Labor
28 Code Private Attorneys General Act of 2004 (PAGA). Seventy-five percent (75%) of this amount

1 will be paid to the Labor and Workforce Development Agency and 25% of this amount will be
2 distributed to the participating Class Members on a pro-rata basis based on the number of pay periods
3 worked during the PAGA Claim Period. Within twenty one (21) calendar days following the date
4 the settlement is funded pursuant to Section XI(B), the Settlement Administrator shall disburse the
5 PAGA Settlement to the California Labor and Workforce Development Agency (“LWDA”) and will
6 provide notice to the LWDA of the fact that the settlement has been approved by the court along with
7 a copy of the settlement agreement and the court order confirming the approval of the settlement
8 through the appropriate LWDA/DIR website.

9 **XVII. COURT APPROVAL**

10 This Agreement and the Settlement is contingent upon Final Approval by the Court and the
11 entry of judgment. Named Plaintiff and Defendants agree to take all steps as may be reasonably
12 necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent
13 not inconsistent with the terms of this Agreement, and will not take any action adverse to each other
14 in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects.
15 Named Plaintiff and Defendants expressly agree that they will not file any objection to the terms of
16 the Settlement or assist or encourage any person or entity to file any such objection.

17 In the event it becomes impossible to secure approval of the Settlement, the Parties shall be
18 restored to their respective positions in the Litigation, as of the date of the hearing on the Motion for
19 Preliminary Approval, except as otherwise provided in Section XVIII, below.

20 **XVIII. MISCELLANEOUS PROVISIONS**

21 **A. Stay of Litigation.**

22 Named Plaintiff and Defendants agree to the stay of all discovery in the Litigation, pending
23 Final Approval of the Settlement by the Court.

24 **B. Interpretation of the Agreement.**

25 This Agreement constitutes the entire agreement between Named Plaintiff and Defendants.
26 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
27 other written or oral representations or terms, and no such extrinsic oral or written representations or
28 terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree

1 that this Agreement is to be construed according to its terms and may not be varied or contradicted
2 by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State
3 of California, both in its procedural and substantive aspects, without regard to its conflict of laws
4 provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will
5 be resolved solely and exclusively in the Superior Court of the State of California for the County of
6 Sacramento, and Named Plaintiff and Defendants hereby consent to the personal jurisdiction of the
7 Court over them solely in connection therewith. Named Plaintiff, on his own behalf and on behalf
8 of the Settlement Class, and Defendants participated in the negotiation and drafting of this
9 Agreement and had available to them the advice and assistance of independent counsel. As such,
10 neither Named Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be
11 construed against the other.

12 The terms and conditions of this Agreement constitute the exclusive and final understanding
13 and expression of all agreements between Named Plaintiff and Defendants with respect to the
14 Settlement of the Litigation. The Agreement may be modified only by a writing signed by the
15 original signatories and approved by the Court.

16 **C. Further Cooperation.**

17 Named Plaintiff and Defendants and their respective attorneys shall proceed diligently to
18 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
19 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
20 possible.

21 **D. Confidentiality of Documents.**

22 After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator,
23 and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,
24 declarations and other information obtained in the lawsuit, unless necessary for appeal or such
25 documents are ordered to be disclosed by the Court or by a subpoena.

26 **E. Counterparts.**

27 The Agreement may be executed in one or more actual or non-original counterparts, all of
28 which will be considered one and the same instrument and all of which will be considered duplicate

1 originals.

2 **F. Authority.**

3 Each individual signing below warrants that he or she has the authority to execute this
4 Agreement on behalf of the party for whom or which that individual signs.

5 **G. No Third-Party Beneficiaries.**

6 Named Plaintiff, members of the Settlement Class, and Defendants (including the Released
7 Parties) are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

8 **H. Modification.**

9 This Agreement may not be changed, altered, or modified, except in a writing signed by the
10 Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates
11 contained in this Agreement may be modified by agreement of the Parties in writing without Court
12 approval if the Parties agree and cause exists for such modification. This Agreement may not be
13 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

14 **I. Deadlines Falling on Weekends or Holidays.**

15 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or
16 legal holiday, that deadline shall be continued until the following business day.

17 **J. Severability.**

18 In the event that any one or more of the provisions contained in this Agreement shall for any
19 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
20 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
21 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if
22 such invalid, illegal, or unenforceable provision had never been included in this Agreement.

23 APPROVED AS TO FORM AND CONTENT:

24 Date: _____, 2022

ON BEHALF OF PLAINTIFF:

25
26 By: _____
TONG XIONG, *Plaintiff*

1 Date: _____, 2022

ON BEHALF OF DEFENDANT:

2 By: _____

3 Name:

4 Position:

5 For REX MOORE GROUP, INC.,
6 CONSTRUCTION INNOVATIONS
7 GROUP, LLC, REX MOORE
8 ELECTRICAL CONTRACTORS &
9 ENGINEERING, INC., REX SIGNATURE
10 SERVICES, LLC

11 APPROVED AS TO FORM:

12 Date: _____, 2022

WILSHIRE LAW FIRM

13 By: _____

14 Justin F. Marquez

15 Christina M. Le

16 Nicol E. Hajjar, Esq.

17 Arsiné Grigoryan, Esq.

18 *Attorneys for Plaintiff*

19 Date: _____, 2022

COOK BROWN, LLP

20 By: _____

21 Terry A. Wills

22 Barbara A. Cotter

23 Alexis M. Gabrielson

24 *Attorneys for Defendant*