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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Donna Benz, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

MANUEL GARDUNO, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

NEW GENERATION FRAMING, INC., a
California corporation; GOLDEN STATE
CONSTRUCTION & FRAMING, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CV-21-000544

CLASS ACTION

[Assigned to: Hon. Sonny S. Sandhu, Dept.
24]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; and [Proposed] Order]

PRELIMINARY APPROVAL HEARING

Date: February 7, 2023

Time: 8:30 a.m.

Dept: 24

I, Justin F. Marquez, declare as follows:

CASE BACKGROUND

3. Plaintiff alleges that Defendants' payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendants failed to pay for all hours worked. Plaintiff further alleges that Defendants failed to provide employees with legally compliant meal and rest periods. Based on these allegations, Plaintiff asserts claims against Defendants for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate itemized wage statements, unfair business practices, and civil penalties under PAGA.

4. On February 2, 2021, Plaintiff filed a putative wage and hour class action complaint against Defendants for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit

1 rest periods (Labor Code §§ 226.7 and 512); (5) failure to timely pay final wages at termination
2 (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code §
3 226); and (7) unfair business practices (Business and Professions Code 17200, *et seq.*). On
4 February 3, 2021, Plaintiff sent a notice to Defendants and the California Labor & Workforce
5 Development Agency (“LWDA”) alleging similar wage and hour violations pursuant to the PAGA.
6 Attached as **Exhibit 1** is a true and correct copy of Plaintiff’s Notice of Labor Code Violations and
7 PAGA Penalties. Plaintiff also paid the \$75.00 filing fee on February 3, 2021. On January 13,
8 2023, the Parties filed a Joint Stipulation for Leave to File First Amended Class and Representative
9 Action Complaint, which requests that the Court grant Plaintiff leave to file a First Amended Class
10 and Representative Action Complaint (“FAC”) adding a claim for civil penalties pursuant to the
11 PAGA. Following the filing of the FAC, Plaintiff will provide a conformed copy of the FAC to
12 the LWDA.

13 DISCOVERY AND INVESTIGATION

14 5. Following the filing of the initial Complaint, the Parties exchanged documents and
15 information before mediating this action. Defendants produced a sample of timekeeping and pay
16 records for class members. Defendants also provided documents of its wage and hour policies and
17 practices during the class period and information regarding the total number of current and former
18 employees in its informal discovery responses.

19 6. After reviewing documents regarding Defendants’ wage and hour policies and
20 practices, analyzing Defendant’s timekeeping and payroll records, and interviewing Class
21 Members, Class Counsel was able to evaluate the probability of class certification, success on the
22 merits, and Defendants’ maximum monetary exposure for all claims. Class Counsel also
23 investigated the applicable law regarding the claims and defenses asserted in the Litigation. Class
24 Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to
25 mediation.

26 SETTLEMENT NEGOTIATIONS

27 7. On January 6, 2022, the Parties participated in private mediation with experienced
28 class action mediator, Jeffrey A. Ross, Esq. The mediation was conducted via Zoom. The

1 settlement negotiations were at arm's length and, although conducted in a professional manner,
2 were adversarial. The Parties went into the mediation willing to explore the potential for a
3 settlement of the dispute, but each side was also prepared to litigate their position through trial and
4 appeal if a settlement had not been reached.

5 8. After extensive negotiations and discussions regarding the strengths and
6 weaknesses of Plaintiff's claims and Defendants' defenses, the Parties were able to reach a
7 resolution, the material terms of which are encompassed within the Settlement Agreement.
8 Attached as **Exhibit 2** is a true and correct copy of the Class Action and PAGA Settlement
9 Agreement and Class Notice ("Settlement" or "Settlement Agreement").

10 9. The Parties used the Los Angeles Superior Court's Form Class Action and PAGA
11 Settlement Agreement and Class Notice. A document showing edits the Parties made to the
12 template in redline is attached hereto as **Exhibit 3**.

13 10. Class Counsel submitted the proposed Settlement to the LWDA before filing the
14 Motion for Preliminary Approval.

15 11. I requested several bids from experienced class action settlement administrators to
16 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties
17 accepted the bid of Phoenix Settlement Administrators. Phoenix Settlement Administrators has
18 multiple years of experience in the field of Class Action Administration, particularly in the wage
19 and hour arena. In its bid, Phoenix Settlement Administrators agreed to cap its costs at \$11,750 if
20 there are 1,400 class members. Phoenix Settlement Administrators' bid also accounts for Notice
21 in English and Spanish. A true and correct copy of the bid is attached hereto as **Exhibit 4**.

22 12. Plaintiff does not have any interest, financial or otherwise, in the third-party
23 administrator, Phoenix Settlement Administrators.

24 13. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
25 employed at the law firm) has any interest, financial or otherwise, in the third-party administrator,
26 Phoenix Settlement Administrators.

27 14. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
28 this case.

1 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

2 15. Class Counsel has conducted a thorough investigation into the facts of this case.
3 Based on the foregoing discovery and their own independent investigation and evaluation, Class
4 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
5 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
6 of significant delay, the defenses that could be asserted by Defendants both to certification and on
7 the merits, trial risk, and appellate risk.

8 16. Based on an analysis of the facts and legal contentions in this case, documents and
9 information from Defendants, I evaluated Defendants' maximum exposure. I took into account
10 the risk of not having the claims certified and the risk of not prevailing at trial, even if the claims
11 are certified. After using the data Defendants provided, including class member timekeeping and
12 payroll records, as well as class member demographics (i.e., the number of class members,
13 workweeks, and average total compensation of the class), with the assistance of a statistics expert,
14 I created a damages model to evaluate the realistic range of potential recovery for the class. The
15 damages model is based on the following benchmarks:

16 Total Class Members: 1,229
17 Terminated Class Members during 3-year statute: 661
18 Total Workweeks: 27,320
19 Total Shifts Worked by the Class: 97,913
20 PAGA Pay Periods: 10,700
21 PAGA-Eligible Employees: 512
22 Avg. Hourly Rate: \$30.68

23 17. Based on Plaintiff's discovery and investigation, Class Counsel reached the
24 conclusion that: Defendants failed to pay class members for all hours worked, including overtime
25 wages; and Defendants had a policy and practice of not providing its employees with California
26 compliant meal and rest periods which they did not pay appropriate premiums for. Defendants
27 deny these claims.

28 18. Plaintiff further alleges that Defendants failed to pay for all hours worked, including

1 minimum, straight time, and overtime wages. For purposes of calculating Defendants' liability
2 based on a best case scenario for Plaintiff and the Class, I estimate that Defendants' maximum
3 potential exposure by assuming that all unpaid work time should have been paid at the overtime
4 rate, not minimum or straight time wages, even though my expert found that 50% of all shifts
5 worked by class members were over eight hours long, and I assumed that Defendants are liable for
6 30 minutes of unpaid worktime per workweek. This results in an estimate of \$628,633.20 (27,320
7 workweeks * \$30.68 average hourly rate * 1.5 overtime rate * 30 minutes of unpaid work per
8 workweek), but I discounted this figure by 80% to account for the difficulty of prevailing on a
9 motion for class certification and a trial on the merits, yielding a realistic damage estimate of
10 \$125,726.64.¹

11 19. With respect to the meal period claim, Plaintiff alleges that Defendants required him
12 and similarly situated class members to either work in lieu of taking meal periods, or their meal
13 periods were untimely or shortened. My expert analyzed Defendant's timekeeping records and
14 found that Defendants failed to record employees' meal periods. Therefore, based on Plaintiff's
15 and the other class members' experience working for Defendants, I assumed a 50% meal period
16 violation rate for the class period, yielding a damage estimate of \$1,501,985.42 (97,913 shifts *
17 0.5 * \$30.68 average hourly rate); however, I discounted this figure by 80% to account for the
18 difficulty of certifying and proving meal period claims, as well as Defendants' contention that the
19 claim lacks merit, yielding a realistic damage estimate of \$300,397.08.

20 20. With respect to the rest period claim, Plaintiff alleges that Defendants required him
21 and similarly situated class members to work in lieu of taking rest periods. Assuming a 50%
22 violation rate for the class period based on Plaintiff's and other class members' experience working
23 for Defendants, Defendants' potential liability for the rest period claim is \$1,501,985.42 (97,913
24 shifts * 0.5 * \$30.68 average hourly rate); however, I discounted this figure by 80% to account for
25 the difficulty of certifying and proving rest period claims, particularly because rest periods do not
26

27 ¹ An 80% discount for risk at certification and trial is reasonable because the Judicial Council of California
28 found that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested
certification motion. (See Findings of the Study of California Class Action Litigation, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf>.)

1 have to be recorded, and to account for the possibility of class members voluntarily choosing to
2 forego a rest period, yielding a realistic damage estimate of \$300,397.08.

3 21. In sum, I estimated that Plaintiff's maximum recovery for the non-penalty claims is
4 \$3,632,604.04, but, after factoring in the risk and uncertainty of prevailing at certification and trial,
5 I estimate that Plaintiff's realistic estimated recovery for the non-penalty claims is \$726,520.80.

6 22. With respect to Plaintiff's derivative claims for statutory and civil penalties,
7 Plaintiff estimated that Defendant's' realistic potential liability is \$250,000.00. While Defendants'
8 maximum potential liability for waiting time penalties is \$4,258,691.00 based on approximately
9 661 terminated class members during the 3-year statute, \$1,044,400.00 for inaccurate wage
10 statements based on approximately 512 class members who worked 10,700 pay periods within the
11 1-year statute, and \$1,070,000.00 for PAGA violations based on the Court assessing a \$100 penalty
12 for initial violations for all 10,700 pay periods within the 1-year statute, I believe that it would be
13 unrealistic to expect the Court to award the full \$6,373,091.00 in penalties given Defendants'
14 defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties.
15 Considering that the underlying claims are realistically estimated to be \$726,520.80, such a
16 disproportionate award would also raise due process concerns. Weighing these factors and
17 applying a discount to account for the risk and uncertainty of prevailing at trial, I arrived at
18 \$250,000.00 for statutory and civil penalties.

19 23. Using these estimated figures, Plaintiff predicted that the realistic maximum
20 recovery for all claims, including penalties, would be \$976,520.80. This means that the
21 \$750,000.00 settlement figure represents 76.8% of the realistic maximum recovery ($\$750,000.00 /$
22 $\$976,520.80 = 76.8\%$). Considering the risk and uncertainty of prevailing at class certification and
23 at trial, this is an excellent result for the Class.² Indeed, because of the proposed Settlement, class
24 members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

25
26 ² See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* (E.D. Cal. Aug. 21, 2019) 2019 WL 3943859 at
27 *8 (granting preliminary approval where the proposed allocation to settle class claims was between 9.53 percent of
28 Plaintiffs' maximum recovery); *Bravo v. Gale Triangle, Inc.* (C.D. Cal. Feb 16, 2017) 2017 WL 708766 at * 10
(finding that "a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re*
Omnivision Techs., Inc. (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042 (approving settlement amount that "is just over
9% of the maximum potential recovery asserted by either party.").

1 24. While Plaintiff is confident in the merits of their claims, a legitimate controversy
2 exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due
3 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

4 25. This Settlement avoids the risks and the accompanying expense of further litigation.
5 Although the Parties had engaged in a significant amount of investigation, informal discovery and
6 class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff
7 intended to depose corporate officers and managers of Defendants. Moreover, preparation for class
8 certification and a trial remained for the Parties, as well as the prospect of appeals in the wake of
9 a disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the
10 Court certified any claims, Defendants could move to decertify the claims. As a result, the Parties
11 would incur considerably more attorneys' fees and costs through trial.

12 26. The Net Settlement Amount available for Class Member settlement payments is
13 estimated to be \$433,250.00, for a class of 1,229 persons.³ As a result, each Settlement Class
14 Member is eligible to receive an average net benefit of approximately \$352.52.

15 27. The proposed Settlement of \$750,000.00, therefore, represents a substantial
16 recovery when compared to Plaintiff's reasonably forecasted recovery. When considering the risks
17 of litigation, the uncertainties involved in achieving class certification, the burdens of proof
18 necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the
19 settlement amount of \$750,000.00 is within the "ballpark" of reasonableness, and preliminary
20 settlement approval is appropriate.

21 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

22 28. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting
23 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
24 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's
25 requested service award is reasonable particularly in light of the substantial benefits Plaintiff
26

27 ³ The Net Settlement Amount is: \$750,000.00 minus \$250,000.00 for Class Counsel's attorneys' fees, minus
28 \$25,000.00 for Class Counsel's litigation expenses, minus \$11,750.00 in administration costs, minus \$20,000.00 for
the PAGA payment, and minus \$10,000.00 for the class representative service award to Plaintiff.

1 generated for all class members.

2 29. Throughout this Litigation, Plaintiff, who is a former employee of Defendants, has
3 cooperated immensely with my office and have taken many actions to protect the interests of the
4 class. Plaintiff provided valuable information regarding the “off-the-clock,” meal period, and rest
5 period claims. Plaintiff also informed my office of developments and information relevant to this
6 action, participated in decisions concerning this action, made himself available to answer questions
7 during the mediation, and provided my office with the names and contact information of potential
8 witnesses in this action. Before we filed this case, Plaintiff provided my office with documents
9 regarding the claims alleged in this action. The information and documentation provided by
10 Plaintiff were instrumental in establishing the alleged wage and hour violations alleged in this
11 action, and the recovery provided for in the Settlement Agreement would have been impossible to
12 obtain without Plaintiff’s participation.

13 30. At the same time, Plaintiff faced many risks in adding himself as the class
14 representative in this matter. Plaintiff faced actual risks with his future employment, as putting
15 himself on public record in an employment lawsuit could also very well affect his likelihood for
16 future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general release
17 of all claims against Defendants.

18 31. In turn, class members will now have the opportunity to participate in a settlement,
19 reimbursing them for alleged wage violations they may have never known about on their own or
20 been willing to pursue on their own. If these class members would have each tried to pursue their
21 legal remedies on their own, that would have resulted in each having to expend a significant amount
22 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the
23 line on behalf of these other class members.

24 32. In the final analysis, this class action would not have been possible without the aid
25 of Plaintiff, who put his own time and effort into this Litigation, sacrificed the value of his own
26 individual claims, and placed himself at risk for the sake of the class members. The requested
27 service award for Plaintiff for his service as the class representative and for his general release of
28 all individual claims is a relatively small amount of money when the time and effort put into the

1 Litigation are considered and in comparison to enhancements granted in other class actions. The
2 requested incentive award is therefore reasonable to compensate Plaintiff for his active
3 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation*, et al.,
4 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
5 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
6 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
7 class representative incentive award for each named plaintiff.

8 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

9 33. The Settlement provides for attorneys' fees payable to Class Counsel in an amount
10 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$250,000.00,
11 plus actual costs and expenses not to exceed \$25,000.00. The proposed award of attorneys' fees
12 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
13 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
14 percentage method as many of the entries in the time records will have to be redacted to preserve
15 attorney-client and attorney work product privileges.

16 34. I am informed and believe that the fee and costs provision is reasonable. The fee
17 percentage requested is less than that charged by my office for most employment cases. My office
18 invested significant time and resources into the case, with payment deferred to the end of the case,
19 and then, of course, contingent on the outcome.

20 35. It is further estimated that my office will need to expend at least another 50 to 100
21 hours to monitor the process leading up to the final approval and payments made to the class. My
22 office also bears the risk of taking whatever actions are necessary if Defendants fail to pay.

23 36. The risk to my office has been very significant, particularly if we would not be
24 successful in pursuing this class action. In that case, we would have been left with no compensation
25 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
26 that have resulted in thousands of attorney hours being expended and ultimately having
27 certification denied or the defendant company going bankrupt. The contingent risk in these types
28 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing

on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

37. Because most individuals cannot afford to pay for representation in litigation on an hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is taking the risk that we will not be reimbursed for our time unless our client settles or wins his or her case, we cannot afford to represent an individual employee on a contingency basis if, at the end of our representation, all we are to receive is our regular hourly rate for services. It is essential that we recover more than our regular hourly rate when we win if we are to remain in practice so as to be able to continue representing other individuals in civil rights employment disputes.

MY EXPERIENCE AND QUALIFICATIONS

38. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in employment litigation, representing employees in both individual and class actions in both state and federal courts throughout California.

39. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys are experienced in litigating Labor Code violations in both individual, class action, and representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling, numerous wage and hour class action lawsuits, as well as class actions involving consumer rights and data privacy litigation.

40. I graduated from the University of California, Los Angeles's College Honors Program in 2004 with Bachelor of Arts degrees in History and Japanese, magna cum laude and Phi Beta Kappa. As an undergraduate, I also received a scholarship to study abroad for one year at Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in 2008.

41. My practice is focused on advocating for the rights of consumers and employees in class action litigation and appellate litigation. I am currently the primary attorney in charge of

1 litigating several class action cases in state and federal courts across the United States.

2 42. I have received numerous awards for my legal work. From 2017 to 2020, Super
3 Lawyers selected me as a “Southern California Rising Star,” and in 2022, I was selected as a
4 “Southern California Super Lawyer.” I was selected as one of the “Best Lawyers in America” in
5 2023. In 2016 and 2017, the National Trial Lawyers selected me as a “Top 40 Under 40” attorney.
6 I am also rated 10.0 (“Superb”) by Avvo.com.

7 43. I am on the California Employment Lawyers Association (“CELA”)’s Wage and
8 Hour Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced
9 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
10 mentored young attorneys through CELA’s mentorship program.

11 44. I am also a past member of the Consumer Attorneys of California (“CAOC”). In
12 2020, I was selected for a position on CAOC’s Board of Directors. I am also a past member of
13 CAOC’s Diversity Committee, and I helped assist the CAOC in defeating bills that harm
14 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC,
15 in defeating AB 443, which proposed legislation that sought to limit the enforceability of California
16 Labor Code § 226.

17 45. As the attorney responsible for day-to-day management of this matter at the
18 Wilshire Law Firm, PLC, I have over thirteen years of experience with litigating wage and hour
19 class actions. Over the last thirteen years, I have managed and assisted with the litigation and
20 settlement of several wage and hour class actions. In those class actions, I performed similar tasks
21 as those performed in the course of prosecuting this action. My litigation experience includes:

- 22 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
23 million in gross recovery to class members for each year since 2020, including over
24 \$30 million in 2022.
- 25 b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical*
26 *Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a
27 data breach class action holding that consumer plaintiffs adequately alleged injury
28 in fact under the benefit of the bargain theory and monitoring-costs theory.

- 1 c. In 2022, Top Verdict recognized Wilshire Law Firm and myself for having one case
2 in the Top 20 Labor & Employment Settlements (including number 19 for the \$1.6
3 million settlement in *Moreno v. Pretium Packaging, L.L.C*) and four additional
4 cases in the Top 50 Labor & Employment Settlements (numbers 27, 30, 33, and 37).
- 5 d. To my knowledge, I am the only attorney to appear on each of the following Top
6 Verdict lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
7 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 8 e. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
9 winning class certification on behalf of hundreds of thousands of consumers for
10 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
11 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 12 f. As lead counsel, I prevailed against Bank of America by: winning class certification
13 on behalf of thousands of employees for California Labor Code violations; defeating
14 appellate review of the court's order certifying the class; defeating summary
15 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
16 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
17 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
18 2018)). The decision certifying the class in *Frausto* is also discussed in Class
19 Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call
20 Center Employees for Violation of State Law Wage and Hour Rules, 35 A.L.R. Fed.
21 3d Art. 8.
- 22 g. I was the primary author of the class certification and expert briefs in *ABM*
23 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
24 for over 40,000 class members for off-the-clock, meal period, split shift, and
25 reimbursement claims. *ABM Industries Overtime Cases* is the first published
26 California appellate authority to hold that an employer's "auto-deduct policy for
27 meal breaks in light of the recordkeeping requirements for California employers is
28

also an issue amenable to classwide resolution.” (*Id.* at p. 310.)⁴ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.

h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under the PAGA cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as Wright & Miller’s Federal Practice & Procedure, and Newberg on Class Actions. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁵ Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.

i. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)

j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a

⁴ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

⁵ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

1 lawful policy because “[t]he fact that a company has a policy of not violating the
2 law does not mean that the employees follow it, which is the issue here.” The court
3 also ordered defendant to pay for the cost of *Belaire-West* notice.

4 k. In 2013, I represented a whistleblower that reported that his former employer was
5 defrauding the State of California with the help of bribes to public employees. The
6 case, a false claims (qui tam) action, resulted in the arrest and criminal prosecution
7 of State of California employees by the California Attorney General’s Office.

8 l. In 2013, I was part of a team of attorneys that obtained conditional certification for
9 over 2,000,000 class members in a federal labor law case for misclassification of
10 independent contractors that did crowdsourced work on the Internet, *Otey v.*
11 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
12 following pro-plaintiff reported decisions:

13 i. 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an
14 unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting
15 plaintiff’s motion to strike defendant’s affirmative defenses based on
16 *Twombly/Iqbal*).

17 ii. 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting
18 conditional collective certification).

19 iii. 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the
20 magistrate judge’s discovery ruling which held that “evidence of other
21 sources of income is irrelevant to the question of whether a plaintiff is an
22 employee within the meaning of the FLSA”).

23 iv. 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad
24 discovery because “an FLSA plaintiff is entitled to discovery from locations
25 where he never worked if he can provide some evidence to indicate
26 company-wide violations”).

27 m. From 2012 to 2013, I was part of a team of attorneys that obtained class certification
28 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*

1 *Security Services USA, Inc.*, Los Angeles Superior Court. Case No. BC416555. We
2 also successfully opposed subsequent appeals to the California Court of Appeal and
3 California Supreme Court.

4 46. My current contingent billing rate of \$850.00 per hour is consistent with my practice
5 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
6 legal market and accepted hourly rates:

7 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
8 Anymore,” NATIONAL LAW JOURNAL, the following hourly billing rates were
9 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
10 wage and hour class actions that I opposed when litigating wage and hour class
11 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
12 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
13 8th Year - \$455. I am a 14th year attorney and Senior Partner, with most of my
14 experience in class action litigation as a primary practice area. Having successfully
15 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
16 involving CAFA and PAGA, having experience certifying large class actions
17 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
18 having received numerous awards for my legal work, my hourly rate should be
19 adjusted upward.

20 b. On May 6, 2022 the Hon. Jay A. Garcia-Gregory of the United States District Court
21 in Puerto Rico approved my \$850 hourly rate when he granted final approval of the
22 class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt.
23 57 (U.S. Dist. Ct. P.R. May 6, 2022).

24 c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
25 approved my \$800 hourly rate when he granted final approval of the class action
26 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, Case No. 30-
27 2019-01066522-CU-OE-CXC.

28 d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District

1 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
2 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
3 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
4 Court approved my then \$750 hourly rate after finding it was “reasonable, given the
5 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)

- 6 e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
7 Court approved my \$750 hourly rate when he granted final approval of the class
8 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
9 19STCV32396.

10 I declare under penalty of perjury under the laws of the State of California and the United
11 States that the foregoing is true and correct.

12 Executed on January 13, 2023, at Los Angeles, California.


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14 
15 Justin F. Marquez
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Exhibit 1

WILSHIRE LAW FIRM, PLC

3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988
Fax: (213) 381-9989
www.wilshirelawfirm.com



Bobby Saadian, Esq. JD/MBA

Colin M. Jones, Esq.	Nicol Hajjar, Esq.
Ilyas Akbari, Esq.	Thiago Coelho, Esq.
Gail Richardson, Esq.	Benjamin H. Haber, Esq.
Justin F. Marquez, Esq.	Tae Kim, Esq.
Robert Dart, Esq.	Peter Cho, Esq.
Jon Teller, Esq.	Gregory Stuck, Esq.
Sutton A. Shapiro, Esq.	Malalai Anbari, Esq.
Daniel B. Miller, Esq.	Kristen Tojo, Esq.
Hazel Chang, Esq.	Derek Monzon, Esq.
Erik Harper, Esq.	Ryan Medler, Esq.
Johnny Ogata, Esq.	April Yang, Esq.
Daniel DeSantis, Esq.	Rachel J. Vinson, Esq.

February 3, 2021

LWDA

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

New Generation Framing, Inc.
1705 San Mateo Way
Modesto, CA 95358
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9778 86

Juan P Torres
Agent for Service of Process for
New Generation Framing, Inc.
1705 San Mateo Way Modesto, CA 95358
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9778 93

Golden State Construction & Framing, Inc.
1006 N. Carpenter Rd. Unit 1
Modesto, CA 95351
(Via Certified Mail, Return Receipt Requested)
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Modesto, CA 95351
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9779 16

Re: **Manuel Garduno v. New Generation Framing, Inc., et al.**
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Manuel Garduno (Plaintiff) to pursue a

Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, New Generation Framing, Inc. and Golden State Construction & Framing, Inc. (“Defendants”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants Aggrieved Employees.

Plaintiff wishes to pursue this action on behalf of herself as an aggrieved employee, on behalf of the State of California, as well as on behalf of all other persons who worked for Defendants in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees suffered the Labor Code violations described below.

Plaintiff’s Employment with Defendants

Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including Stanislaus County. As such, Defendants are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendants in Stanislaus County, California, as an hourly-paid, non-exempt employee from approximately October 2020 to approximately November 2020. Throughout Plaintiff’s employment, Defendants failed to pay for all hours worked (including minimum wage, straight time, and overtime wages), failed to provide Plaintiff with meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to pay timely pay all final wages to Plaintiff when Defendants terminated Plaintiff’s employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff’s experience working for Defendants was typical and illustrative.

Defendants Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the

employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum wages, straight time wages, and overtime wages. Defendants required Plaintiff and the Aggrieved Employees to work “off-the-clock”, uncompensated, by, for example, requiring Plaintiff and the Aggrieved Employees to work unpaid during legally required meal periods. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendants continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period. Defendants also never informed Plaintiff of the right to, nor permitted Plaintiff to take, a second meal period when Plaintiff worked at least 10 hours of work in a workday. Accordingly, Defendants’ policy and practice was not to provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendants,

however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Defendants have wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendants regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendants continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees permission to take a rest period.

Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages

owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendants, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendants' failure to provide and maintain records required by the California Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and

payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendants failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the

greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Defendants failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Defendants violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendants violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination; and
7. Labor Code § 226 by failing to provide accurate itemized wage statements.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).


LWDA
Notice of Labor Code Violations and PAGA
February 3, 2021
Page 8 of 8

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

A handwritten signature in black ink, appearing to read "Justin Marquez", written over the printed name.

Justin F. Marquez, Esq.



WILSHIRE LAW FIRM, PLC

3055 WILSHIRE BLVD. 12TH FLOOR

LOS ANGELES, CA 90010

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Modesto, CA 95351

213801

Exhibit 2

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Manuel Garduno (“Plaintiff”) and defendants New Generation Framing, Inc. and Golden State Construction & Framing, Inc. (collectively referred to as “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendants captioned *Garduno v. New Generation Framing, Inc., et al.*, Case No. CV-21-000544, initiated on February 2, 2021 and pending in Superior Court of the State of California, County of Stanislaus.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means a person employed by Defendants in California and classified as an hourly-paid, non-exempt employee who worked for Defendants during the PAGA Period.
- 1.5. “Class” means all persons employed by Defendants in California and classified as an hourly-paid, non-exempt employee during the Class Period.
- 1.6. “Class Counsel” means Justin F. Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from February 2, 2017 to January 6, 2022.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Stanislaus.
- 1.16. “Defendants” means named Defendants New Generation Framing, Inc. and Golden State Construction & Framing, Inc.
- 1.17. “Defense Counsel” means Shannon B. Nakabayashi and Gonzalo Morales of Jackson Lewis P.C.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

- 1.22. “Gross Settlement Amount” means \$750,000 which is the total amount Defendants agree to pay under the Settlement, except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Period Pay Periods worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from February 2, 2020 to January 6, 2022.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).
- 1.33. “PAGA Notice” means Plaintiff’s February 3, 2021 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).

- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and the 75% to LWDA (\$15,000) in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Manuel Garduno, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.41. "Released Parties" means: New Generation Framing, Inc. and Golden State Construction & Framing, Inc. and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for Defendants for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On February 2, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for: (1) failure to pay minimum and straight

time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) violation of California's Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* On [date], Plaintiff filed a First Amended Class and Representative Complaint alleging additional causes of action against Defendants for: (8) civil penalties under the PAGA. The First Amended Class and Representative Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint, and deny any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.3. On January 6, 2022, the Parties participated in an all-day mediation presided over by Jeffrey A. Ross, Esq. which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, wage and hour policy and procedure documents, an adequate sampling of employee time and payroll records, and relevant data points pertaining to the class and PAGA claims. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.5. The Court has not granted class certification.
- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendants promise to pay \$750,000 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

- 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%, which is currently estimated to be \$250,000 and a Class Counsel Litigation Expenses Payment of not more than \$25,000. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$15,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$15,000, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1. Tax Allocation of Individual Class Payments. 33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are

subject to tax withholding and will be reported on an IRS W-2 Form. The 67% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

- 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000 to be paid from the Gross Settlement Amount, with 75% (\$15,000) allocated to the LWDA PAGA Payment and 25% (\$5,000) allocated to the Individual PAGA Payments.
 - 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 1,229 Class Members who collectively worked a total of 27,230 Workweeks.
- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class

member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than four months after the Court grants final approval of the Settlement, with the first \$500,000 to be paid within 10 business days of the Court granting final approval of this Settlement and the remaining within four months after Defendants' payment of the first installment as previously defined.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement

check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California State Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under paragraph 5.3, below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.
For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of 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.

5.2 Release by Participating Class Members Who Are Not Aggrieved Employees:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including any and all claims for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) violation of California's Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice, and ascertained in the course of the Action, including any and all claims for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; and (6) failure to provide accurate itemized wage statements.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

6.1 Defendants' Declaration in Support of Preliminary Approval. Within 14 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2); (ii) a draft proposed

Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, with Spanish translation, if applicable, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later

than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator

via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their

validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 1,229 Class Members and 27,320 Total Workweeks during the Class Period. If the amount of workweeks for this time period is determined to be more than 10% higher than this estimate (i.e., 30,053 or more workweeks), the Net Settlement Amount shall be increased by the average payment to the Class Members based on the 27,320 workweeks amount. For example, if there are 20% more workweeks than the initial figure of 27,320 workweeks during the Class Period, then Defendants will increase the Net Settlement Amount by 20%.

9. **DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

 - 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve the right to

contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and

electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Arrash T. Fattahi, Esq.
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989
justin@wilshirelawfirm.com
benjamin@wilshirelawfirm.com
afattahi@wilshirelawfirm.com

To Defendants:

Shannon B. Nakabayashi, Esq.
Gonzalo Morales, Esq.
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, California 94111-4615
Telephone: (415) 394-9400
Facsimile: (415) 394-9401
shannon.nakabayashi@jacksonlewis.com
gonzalo.morales@jacksonlewis.com

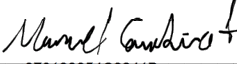
- 12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of

this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

- 12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

On Behalf of Plaintiff:

Dated: 10/31/2022, 2022

DocuSigned by:

970133954C8241B
Manuel Garduno, Plaintiff

On Behalf of Defendant New Generation Framing, Inc.:

Dated: oct/06/, 2022


Juan Torres
Owner

On Behalf of Defendant Golden State Construction & Framing, Inc.:

Dated: oct/06/, 2022



Juan Torres
Owner

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Manuel Garduno v. New Generation Framing, Inc., et al., Stanislaus County Superior Court,
Case No. CV-21-000544

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against defendants New Generation Framing, Inc. and Golden State Construction & Framing, Inc. (collectively referred to as “Defendants”) for alleged wage and hour violations. The Action was filed by a former employee of Defendants, Manuel Garduno (“Plaintiff”), and seeks payment of (1) back wages and other relief for a class of hourly-paid, non-exempt employees (“Class Members”) who worked for Defendants in California during the Class Period (February 2, 2017 to January 6, 2022); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly-paid, non-exempt employees who worked for Defendants in California during the PAGA Period (February 2, 2020 to January 6, 2022) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendants’ records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [date]	<p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).</p>
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [date]	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or

	Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [date] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [date]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [date]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [date]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failing to pay minimum and overtime wages, failing to provide meal periods and rest breaks, failing to pay wages due upon termination, and failing to provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) ("PAGA"). Plaintiff is represented by attorneys in the Action: Justin F. Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC ("Class Counsel.")

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount

considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$750,000 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the LWDA. Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement after the Court grants final approval of the Settlement after the Court grants final approval of the Settlement.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$250,000 (33 1/3% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$15,000 to the Administrator for services administering the Settlement.
 - D. Up to \$20,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 33% of each Individual Class Payment to taxable wages ("Wage Portion") and 67% to penalties and interest ("Non-Wage Portion."). The Wage

Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California State Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by [date]. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the "Administrator"), to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide

Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including any and all claims for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) violation of California's Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former

and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice, and ascertained in the course of the Action, including any and all claims for (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; and (6) failure to provide accurate itemized wage statements.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until [date] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks and/or Pay Periods based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Manuel Garduno v. New Generation Framing, Inc., et al.*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 days before the [date] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website [need details] or the Court's website [need details].

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [date].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Manuel Garduno v. New Generation Framing, Inc., et al.*, and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department 21 of the Stanislaus County Superior Court, located at 801 10th St., 4th Fl., Modesto, CA 95354. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) personally. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [need details] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to [specify whose] website at [URL of website]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://https://stanportal.stanct.org/>) and entering the Case Number for the Action, Case No. CV-21-000544.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Arrash T. Fattahi, Esq.
WILSHIRE LAW FIRM
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Facsimile: (213) 381-9989
justin@wilshirelawfirm.com
benjamin@wilshirelawfirm.com
afattahi@wilshirelawfirm.com

Settlement Administrator:
Phoenix Settlement Administrators
[Email Address]
[Mailing Address]
[Telephone]
[Fax Number]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund website for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

Exhibit 3

~~MODEL~~ CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS ~~NOTICE~~ NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Manuel Garduno (“Plaintiff”) and ~~defendant XYZ~~ defendants New Generation Framing, Inc. and Golden State Construction & Framing, Inc. (collectively referred to as “Defendants”). The Agreement refers to Plaintiff and XYZDefendants collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against XYZDefendants captioned Garduno v. New Generation Framing, Inc., et al., Case No. CV-21-000544, initiated on February 2, 2021 and pending in Superior Court of the State of California, County of Los Angeles- Stanislaus.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means ~~[e.g.,~~ a person employed by XYZDefendants in California and classified as a an hourly-paid, non-exempt employee who worked for XYZDefendants during the PAGA Period~~].~~
- 1.5. “Class” means ~~[define class e.g.,~~ all persons employed by XYZDefendants in California and classified as who worked for XYZan hourly-paid, non-exempt employee during the Class Period~~].~~
- 1.6. “Class Counsel” means Justin F. Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

- 1.8. “Class Data” means Class Member identifying information in XYZ’s Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, ~~7~~ and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a ~~NonParticipating~~Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- ~~1.11.~~ “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be
1.11. mailed to Class Members in English ~~1~~, with a Spanish translation, ~~if applicable~~ in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from February 2, 2017 to January 6, 2022.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles Stanislaus.
- ~~1.16.~~ “XYZ” means named Defendant _____.
- 1.16. “Defendants” means named Defendants New Generation Framing, Inc. and Golden State Construction & Framing, Inc.
- 1.17. “Defense Counsel” means Shannon B. Nakabayashi and Gonzalo Morales of Jackson Lewis P.C.
- 1.18. “Effective Date” means the date by when both of the following have occurred:
(a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement;
and (b) the Judgment is final. The Judgment is final as of the latest of the following

occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

~~1.22.~~ “Gross Settlement Amount” means \$ \$750,000 which is the total amount ~~XYZ agrees~~Defendants agree to pay under the Settlement, except as provided in Paragraph 98 below. The

Gross Settlement Amount will be used to pay Individual Class Payments, Individual 1.22. ~~PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment,~~ and the Administrator’s Expenses.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of ~~Workweeks~~PAGA Period Pay Periods worked during the PAGA Period.

1.25. ~~1.25.~~ “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

~~1.26.~~

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

~~1.28.~~ “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees

- 1.28. _____ Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. _____ “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. _____ “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for XYZ Defendants for at least one day during the PAGA Period.
- 1.31. _____ “PAGA Period” means the period from _____ February 2, 2020 to _____ ⁱⁱⁱ January 6, 2022.
- 1.32. _____ “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698.2, *et seq.*).
- 1.33. _____ “PAGA Notice” means -Plaintiff’s _____ February 3, 2021 letter to XYZ Defendants and the LWDA [and Plaintiff’s _____ letter to XYZ and the LWDA] providing notice pursuant to Labor Code section 2699.3, subd. ~~f~~. (a).
- 1.34. _____ “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (_____) (\$5,000) and the 75% to LWDA (_____) (\$15,000) in settlement of PAGA claims.
- 1.35. _____ “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. _____ “Plaintiff” means _____, Manuel Garduno, the named plaintiff in the Action.
- 1.37. _____ “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38. _____ “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. _____ “Released Class Claims” means the claims being released as described in Paragraph 65.2 below.
- 1.40. _____ “Released PAGA Claims” means the claims being released as described in Paragraph 6.25.3 below.
- 1.41. _____ “Released Parties” means: XYZ New Generation Framing, Inc. and Golden State Construction & Framing, Inc. and each of ~~its~~ their former and present directors, officers,

shareholders, owners, ~~[members]~~, attorneys, insurers, predecessors, successors, -assigns ~~[subsidaries]~~, ~~[and affiliates]~~.

- 1.41.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means ~~[e.g., 60]~~45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for XYZDefendants for at least one day, during the Class Period.^{iv}

2. RECITALS.

- 2.1. _____ On _____, February 2, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against XYZDefendants for _____. ~~[The Complaint is the operative complaint in the Action (the "Operative Complaint.")]~~ ~~[On _____; (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) violation of California's Unfair Competition Law, California Business and Professions Code §§ 17200, et seq. On [date], Plaintiff filed a [e.g., First Amended Class and Representative Complaint] alleging additional causes of action against XYZDefendants for _____.~~ The
- 2.1. ~~[e.g., (8) civil penalties under the PAGA. The First Amended]~~ Class and Representative Complaint is the operative complaint in the Action (the "Operative Complaint.") ~~XYZ denies.~~ Defendants deny the allegations in the Operative Complaint, ~~denies~~ deny any failure to comply with the laws identified in ~~in~~ the Operative Complaint, and ~~denies~~ deny any and all liability for the causes of action alleged.
- 2.2. _____ Pursuant to Labor Code section 2699.3, subd. ~~(f)~~ (a), Plaintiff gave timely written notice to XYZDefendants and the LWDA by sending the PAGA Notice.
- 2.3. _____ On _____, January 6, 2022, the Parties participated in an all-day mediation presided over by _____.

_____Jeffrey A. Ross, Esq. which led to this Agreement to settle the
Action ~~(describe alternative means of negotiation).~~

2.4. _____ Prior to ☐ mediation ~~☐ negotiating the Settlement~~, Plaintiff obtained,
through

☐ formal ☐ informal discovery, _____.

2.4. wage and hour policy and procedure documents, an adequate sampling of employee time
and payroll records, and relevant data points pertaining to the class and PAGA claims.

Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth
in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot
Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. _____ The Court ☐ ~~has~~ ☐ has not granted class certification.

2.6. _____ The Parties, Class Counsel and Defense Counsel represent that they are not aware
of any other pending matter or action asserting claims that will be extinguished or
affected by the Settlement.

3. MONETARY TERMS.

3.1. _____ Gross Settlement Amount. Except as otherwise provided by Paragraph 98 below,
~~XYZ promises~~Defendants promise to pay \$ _____ \$750,000 and no more as
the Gross Settlement Amount ~~and to separately pay any and all employer payroll taxes~~
owed on the Wage Portions of the Individual Class Payments. ~~XYZ has.~~ Defendants
have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to
the deadline stated in Paragraph ~~6.14.3~~ of this Agreement.* The Administrator will
disburse the entire Gross Settlement Amount without asking or requiring Participating
Class Members or Aggrieved Employees to submit any claim as a condition of payment.
None of the Gross Settlement Amount will revert to ~~XYZ.~~ Defendants.

3.2. _____ Payments from the Gross Settlement Amount. The Administrator will make and
deduct the following payments from the Gross Settlement Amount, in the amounts
specified by the Court in the Final Approval:

~~3.2.1.~~ _____ To Plaintiff: Class Representative Service Payment to the Class
Representative of not more than \$ _____ \$10,000 (in addition to any
Individual
Class Payment ~~and any Individual PAGA Payment~~) the Class Representative is

entitled to receive as a Participating Class Member). XYZDefendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class

3.2.1. Representative Service Payments no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. _____ To Class Counsel: A Class Counsel Fees Payment of not more than _____, 33 1/3%, which is currently estimated to be \$ _____ \$250,000 and a Class Counsel Litigation Expenses Payment of not more than \$ _____. XYZ\$25,000. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class

3.2.2. Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds XYZDefendants harmless, and indemnifies XYZ Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3.

3.2.3. _____ To the Administrator: An Administrator Expenses Payment not to exceed \$ _____ \$15,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$ _____ \$15,000, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4.

3.2.4. _____ To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1.

3.2.4.1. _____ Tax Allocation of Individual Class Payments. % _____ 33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are

subject to tax withholding and will be reported on an IRS W-2 Form. The ~~%~~
~~67%~~ of each Participating Class Member's Individual Class Payment
will be allocated to settlement of claims for ~~[e.g., interest and penalties]~~ (the
"Non-Wage Portion").^{vi} The Non-Wage Portions are not subject to wage
withholdings and will be reported on IRS 1099 Forms. Participating Class
Members assume full responsibility and liability for any employee taxes owed
on their Individual Class Payment.

~~3.2.4.2.~~

~~3.2.4.2.~~ Effect of Non-Participating Class Members on Calculation of
Individual Class Payments. Non-Participating Class Members will not receive
any Individual Class Payments. The Administrator will retain amounts equal
to their Individual Class Payments in the Net Settlement Amount for
distribution to Participating Class Members on a pro rata basis.

~~3.2.5.~~

~~3.2.5.~~ To the LWDA and Aggrieved Employees: PAGA Penalties in the amount
of \$ ~~_____~~ \$20,000 to be paid from the Gross Settlement Amount, with
75% (~~\$ _____~~) (\$15,000) allocated to the LWDA PAGA Payment and 25%
(~~\$ _____~~) (\$5,000) allocated to the Individual PAGA Payments.

~~3.2.5.1.~~

~~3.2.5.1.~~ The Administrator will calculate each Individual PAGA Payment
by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA
Penalties \$ ~~_____~~ (\$5,000) by the total number of PAGA Period Pay
Periods worked by all Aggrieved Employees during the PAGA Period and (b)
multiplying the result by each Aggrieved Employee's PAGA Period Pay
Periods. Aggrieved Employees assume full responsibility and liability for any
taxes owed on their Individual PAGA Payment.

~~3.2.5.2.~~

~~3.2.5.2.~~ If the Court approves PAGA Penalties of less than the amount
requested, the Administrator will allocate the remainder to the Net Settlement
Amount. The Administrator will report the Individual PAGA Payments on IRS
1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of
its records to date, ~~XYZ estimates~~ Defendants estimate there are
~~_____~~ 1,229 Class Members who collectively worked a total of
~~_____~~ 27,230 Workweeks, and ~~_____~~ of Aggrieved Employees
who worked a total _____ of PAGA Pay Periods.

4.2. Class Data. Not later than ~~[e.g., 15]~~ days after the Court grants Preliminary
Approval of the Settlement, ~~XYZ~~ Defendants will simultaneously deliver the Class Data
to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class
Members' privacy rights, the Administrator must maintain the Class Data in confidence,
use the Class Data only for purposes of this Settlement and for no other purpose, and

restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. ~~XYZ has~~Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which ~~XYZ~~Defendants must send the Class Data

- 4.2. to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. ~~XYZ~~Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay ~~XYZ's~~Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than ~~[14] days~~four months after the ~~Effective Date.~~Court grants final approval of the Settlement, with the first \$500,000 to be paid within 10 business days of the Court granting final approval of this Settlement and the remaining within four months after Defendants' payment of the first installment as previously defined.
- 4.4. Payments from the Gross Settlement Amount. Within ~~[14]~~ days after ~~XYZ~~Defendants funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
- 4.4. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

~~4.4.2.~~ _____ The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within ~~[7]~~ days of receiving a -returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The

~~4.4.2.~~ Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

~~4.4.3.~~ _____ For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the

~~4.4.3.~~ Administrator shall transmit the funds represented by such checks ~~[to the California State Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).] [or to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient") _____]. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. (b).~~

4.4.4. _____ The payment of Individual Class Payments and Individual PAGA Payments shall not obligate XYZDefendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6.5. RELEASES OF CLAIMS. Effective on the date when XYZDefendants fully fundsfund the entire Gross Settlement Amount and fundsfund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

~~6.1~~ _____ Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences ~~[that occurred during the Class Period]~~, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, -Plaintiff's PAGA Notice, ~~[or ascertained during the Action and released under 6-2paragraph 5.3, below]~~. ("Plaintiff's

5.1 Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff

may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.15.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of 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.

6.25.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from ~~(+)~~all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint ~~[and ascertained in the course of the Action]~~[,] including, ~~e.g., "(a) any and all claims involving any alleged~~for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage; etc.] statements; and (7) violation of California's Unfair Competition Law, California Business and Professions Code §§ 17200, et seq. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint~~[,]~~[,] and the PAGA Notice~~[,]~~[,] and ascertained in the course of the Action~~[,]~~[,] including, ~~e.g., "(a) any and all claims involving any alleged~~for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; and (6) failure to provide accurate itemized wage; etc.] statements.

6.3

7.6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

XYZ’s

7.16.1 Defendants’ Declaration in Support of Preliminary Approval. Within 14 days of the full execution of this Agreement, XYZDefendants will prepare and deliver to Class Counsel a signed Declaration from XYZDefendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and XYZDefendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: -(i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members [and/or the proposed Cy Pres]; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration

6.2 from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, [- and/or] the Administrator [-and/or the proposed Cy Pres]; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); -(vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and -(vii)(l)(2)); and all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.36.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than [30] days after the full execution of this Agreement; obtaining a

prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

7.46.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8.7. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected
7.1 Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.27.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.37.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.47.4 Notice to Class Members.

8.4.17.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

8.4.27.4.2 Using best efforts to perform as soon as possible, and in no event later than [14] days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice-[] with Spanish translation, if applicable], substantially in the form attached to this Agreement as Exhibit

_____.A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.37.4.3 _____ Not later than [3] business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.47.4.4 _____ The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional [14] days beyond the [60]45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.57.4.5 _____ If the Administrator, XYZDefendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than [14] days after 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.
~~receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.~~

8.57.5 Requests for Exclusion (Opt-Outs).

8.5.1 _____ Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written

7.5.1 Request for Exclusion not later than [60]45 days after the Administrator mails the Class Notice (plus an additional [14] days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address

and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.27.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.37.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 65.2 and 65.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for 7.5.4 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.45.3 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have [60]45 days after the Administrator mails the Class Notice (plus an additional [14] days for Class Members whose Class Notice is re-mailed) to challenge the number of Class

Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the

Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The

7.6 Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7

7.7 Objections to Settlement.

8.7.1

7.7.1

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2

7.7.2

Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than ~~60~~45 days after the Administrator's mailing of the Class Notice (plus an additional ~~14~~ days for Class Members whose Class Notice was re-mailed).

8.7.3

7.7.3

Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8

7.8

Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1

Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.1

8.8.2

Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than ~~5~~ days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.8.2

8.8.3

7.8.3

Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things,

tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4

7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5

Administrator’s Declaration. Not later than [14] days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The

7.8.5 Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

8.8.6

Final Report by Settlement Administrator. Within [10] days after the

Administrator disburses all funds in the Gross Settlement Amount, the

7.8.6 Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least [15] days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9.—CLASS SIZE ESTIMATES [and ESCALATOR CLAUSE]. Based on its records, ~~XYZ~~
8. ~~estimates~~Defendants estimate that, as of the date of this Settlement Agreement, (1) there are _____1,229 Class Members and _____27,320 Total Workweeks during the Class Period. If the amount of workweeks for this time period and (2) is determined to be more than 10% higher than this estimate (i.e., 30,053 or more workweeks), the Net Settlement Amount shall be increased by the average payment to the Class Members based on the 27,320 workweeks amount. For example, if there were _____ Aggrieved Employees who worked _____ Pay Periods are 20% more workweeks than the

initial figure of 27,320 workweeks during the ~~PAGA Period.~~^{viii}Class Period, then Defendants will increase the Net Settlement Amount by 20%.

XYZ'S

10.9.DEFENDANTS' RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds % 10% of the total of all Class Members, XYZDefendants may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if XYZDefendants withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, XYZDefendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. XYZDefendants must notify Class Counsel and the Court of its election to withdraw not later than {seven} days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

~~11.~~ MOTION FOR FINAL APPROVAL. Not later than {16} court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor **10.** Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than {seven} days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

~~11.1~~**10.1** Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later ~~that~~ {than} five} court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

~~11.2~~**10.2** Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

~~11.3~~**10.3** Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

~~11.4~~10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

~~11.5~~

~~12.11.~~11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

~~13.12.~~12. **ADDITIONAL PROVISIONS.**

~~13.1~~12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by ~~XYZ~~Defendants that any of the allegations in the Operative Complaint have merit or that ~~XYZ has~~Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that ~~XYZ's~~ Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, ~~XYZ reserves~~Defendants reserve the right to contest certification of any class for any reasons, and ~~XYZ reserves~~Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest

XYZ's Defendants' defenses. The Settlement, this Agreement and Parties' willingness to

12.1 settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.212.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, XYZ Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, XYZ Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.312.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.412.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

13.512.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and XYZ Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

~~13.6~~ Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement

~~12.6~~ the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

~~13.7~~~~12.7~~ No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

~~13.8~~~~12.8~~ No Tax Advice. Neither Plaintiff, Class Counsel, ~~XYZ~~Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

~~12.9~~ Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

~~13.9~~
~~13.10~~~~12.10~~ Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

~~12.11~~ Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

~~13.11~~

~~12.12~~ Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

~~13.12~~

~~13.13~~~~12.13~~ Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

~~13.14~~ Use and Return of Class Data. Information provided to Class Counsel pursuant to

~~12.14~~ Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by ~~XYZ~~Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this

Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from XYZDefendants unless, prior to the Court's discharge of the Administrator's obligation, XYZDefendants makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

~~13.15~~

12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

~~13.16~~

~~13.17~~12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Arrash T. Fattahi, Esq.
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989
justin@wilshirelawfirm.com
benjamin@wilshirelawfirm.com
afattahi@wilshirelawfirm.com

To ~~XYZ~~ Defendants:

Shannon B. Nakabayashi, Esq.
Gonzalo Morales, Esq.
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, California 94111-4615
Telephone: (415) 394-9400
Facsimile: (415) 394-9401
shannon.nakabayashi@jacksonlewis.com

gonzalo.morales@jacksonlewis.com

~~13.18~~12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

~~13.19~~12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

~~For Plaintiff~~

~~For XYZ~~

~~Counsel For Plaintiff~~

~~Counsel For XYZ~~

On Behalf of Plaintiff:

Dated: _____, 2022

Manuel Garduno, Plaintiff

On Behalf of Defendant New Generation Framing, Inc.:

Dated: _____, 2022

Name: _____

Title:

On Behalf of Defendant Golden State Construction & Framing, Inc.:

Dated: _____, 2022

Name: _____

Title:

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Manuel Garduno v. New Generation Framing, Inc., et al., Stanislaus County Superior Court,
Case No. CV-21-000544

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against _____ (abbreviate name; “XYZ” is used herein defendants New Generation Framing, Inc. and Golden State Construction & Framing, Inc. (collectively referred to as a placeholder) “Defendants”) for alleged wage and hour violations. The Action was filed by a [n] former XYZ employee _____ of Defendants, Manuel Garduno (“Plaintiff”), and seeks payment of (1) back wages [and other relief] for a class of [e.g., hourly]-paid, non-exempt employees (“Class Members”) who worked for XYZ Defendants in California during the Class Period (_____ to _____); (February 2, 2017 to January 6, 2022); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all [e.g., hourly]-paid, non-exempt employees who worked for XYZ Defendants in California during the PAGA Period (_____ to _____) (February 2, 2020 to January 6, 2022) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring XYZ Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring XYZ Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on XYZ’s Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual**

PAGA Payment is estimated to be \$_____. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to XYZ's Defendants' records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)
Settlement because you didn't work during the PAGA Period.)

The above estimates are based on XYZ's Defendants' records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires XYZ Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against XYZ Defendants.

If you worked for XYZ Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against XYZ Defendants.
(+)
- (2) Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against XYZ Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

XYZ Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA
-----------------------------	--

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Anything to Participate in the Settlement	Payment (if any). In exchange, you will give up your right to assert the wage claims against <u>XYZDefendants</u> that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____ <u>[date]</u>	<p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. <u>XYZDefendants</u> must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).</p>
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____ <u>[date]</u>	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ <u>[date]</u> Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. <u>[date]</u> . You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____ <u>[date]</u>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to <u>XYZ'sDefendants'</u> records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. <u>[date]</u> . See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a ~~an~~ ~~former~~ XYZ employee ~~of Defendants~~. The Action accuses XYZ Defendants of violating California labor laws by failing to pay ~~[e.g., minimum and~~ overtime wages, ~~minimum wages, wages due upon termination and reimbursable expenses]~~ and failing to provide ~~[e.g.,~~ meal periods, ~~and~~ rest breaks, ~~failing to pay wages due upon termination,~~ and ~~failing to provide~~ accurate itemized wage statements~~].~~ Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) (“PAGA”). Plaintiff is represented by attorneys in the Action: Justin F. Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC (“Class Counsel.”)
(“Class Counsel.”)

~~XYZ~~
~~Defendants~~ strongly ~~denies~~ ~~deny~~ violating any laws or failing to pay any wages and ~~contends~~
~~it contend they~~ complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether XYZ Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and XYZ Defendants hired ~~an~~ an experienced, neutral mediator ~~-an retired judge~~

~~an~~ _____
in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and XYZ Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, ~~XYZ does~~ Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) ~~XYZ has~~ Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. ~~3.~~ WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

XYZ

1. Defendants Will Pay \$_____750,000 as the Gross Settlement Amount (Gross Settlement). ~~XYZ has~~Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, XYZ Defendants will fund the Gross Settlement ~~not more than [14] days after the Judgment entered by the Court become grants~~ final. ~~The Judgment will be final on the date approval of the Settlement after the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.~~ grants final approval of the Settlement.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
- A. Up to \$_____ (_____ %250,000 (33 1/3% of the Gross Settlement)) to Class Counsel for attorneys' fees and up to \$_____ \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$_____ \$10,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$_____ \$15,000 to the Administrator for services administering the Settlement.
 - D. Up to \$_____ \$20,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

4. Taxes Owed on Payments to Class Members. Plaintiff and XYZ Defendants are asking the Court to approve an allocation of % _____ 33% of each Individual Class Payment to taxable wages ("Wage Portion") and % _____ 67% to [e.g., penalties and interest,

LASC CIV 296 NEW 06/22

~~ete.]~~ (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms.

4. ~~[Option 1: (XYZ Defendants~~ will separately pay employer payroll taxes it owes on the Wage Portion~~.)]~~. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and XYZ Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies

☐ will be deposited with the California State Controller's Unclaimed Property Fund in

your name. ☐ ~~will irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).~~

5. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. [date]. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against XYZ Defendants.

~~6.~~

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against XYZ Defendants based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and XYZDefendants have agreed that, in either case, the Settlement will be void: XYZDefendants will not pay any money and Class Members will not release any claims against XYZDefendants.
- ~~8. Administrator.~~ The Court has appointed a neutral company,
8. Phoenix Settlement Administrators (the “Administrator”), to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and remailre-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and XYZ hasDefendants have fully funded the Gross Settlement ~~[Option 1: (and separately paid all employer payroll taxes)]~~, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against XYZDefendants or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from ~~(i)~~ all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint ~~[and ascertained in the course of the Action]~~, including, ~~e.g., “(a) any and all claims involving any alleged~~for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage; ~~etc.]~~ statements; and (7) violation of California’s Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* Except as set forth in Section 65.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period. ^{viii}.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and XYZ hasDefendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims

against XYZDefendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against XYZDefendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint~~[,]~~~~[,]~~ ~~and~~ the PAGA Notice~~[,]~~ and ascertained in the course of the Action~~[,]~~ including, ~~e.g., (a) any and all claims involving any alleged~~for (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; and (6) failure to provide accurate itemized wage; etc.~~]- statements.~~

4. ~~4.~~ **HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$ \$5,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in XYZ'sDefendants' records, are stated in the first page of this Notice. You have until [date] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept XYZ'sDefendants' calculation of Workweeks and/or Pay Periods based on XYZ'sDefendants' records as accurate unless you send copies of

records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and XYZ's Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as

Manuel Garduno v. New Generation Framing, Inc., et al., and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, [date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

7.

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and XYZ Defendants are asking the Court to approve. At least 16 days before the [date] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class

Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ **[need details]** or the Court's website _____ **[need details]**.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____ **[date]**.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action _____ *as Manuel Garduno v. New Generation Framing, Inc., et al.*, and include your name, current address, telephone number, and approximate dates of employment for [XYZ]Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ **[date]** at _____ **[time]** in Department [7]21 of the Los AngelesStanislaus County Superior Court, located at 312 North Spring Street, Los Angeles 801 10th St., 4th Fl., Modesto, CA 9001295354. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (https://www.lacourt.org/lacc/). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ **[need details]** beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything XYZDefendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____'s **[specify whose]** website at _____ **[URL of website]**. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the

Superior Court website by going to (~~http://~~ <https://stanportal.stanct.org/>) and entering the Case Number for the Action, Case No. CV-21-000544.
(~~http://www.lacourt.org/casesummary/ui/index.aspx~~) and entering the Case Number for the Action, Case No. _____. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney:

Email Address:

Name of Firm:

Mailing Address: Justin F. Marquez, Esq.

Benjamin H. Haber, Esq.

Arrash T. Fattahi, Esq.

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor

Los Angeles, CA 90010

Telephone: (213) 381-9988

Facsimile: (213) 381-9989

justin@wilshirelawfirm.com

benjamin@wilshirelawfirm.com

afattahi@wilshirelawfirm.com

Settlement Administrator:

Name of Company:

Phoenix Settlement Administrators

[Email Address:]

[Mailing Address:]

[Telephone:]

[Fax Number:]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund website for instructions on how to retrieve the funds.

☐ you should consult the Unclaimed Property Fund _____ for instructions on how to retrieve the funds

~~☐ you will have no way to recover the money.~~

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

ⁱ ~~_____ This Model Class Action and PAGA Settlement Agreement has been approved by the Court, the Complex litigation judges, and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.~~

ⁱⁱ ~~_____ Whether the “date of preliminary approval” yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties’ Kullar analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount “represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (Luckey v. Superior Court (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)ⁱⁱⁱ See endnote ii above.^{iv} The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.~~

^v ~~_____ The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.~~

^{vi} ~~_____ Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g. a settlement that is solely a Labor Code Section 226(a) claim.)^{vii} Insert negotiated terms, if any, addressing the possibility that XYZ’s estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an “escalator” clause memorializing XYZ’s promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds XYZ’s estimates.~~

^{viii} ~~Releases in Notice should track the releases in the Settlement Agreement.~~

Exhibit 4



CASE ASSUMPTIONS

Class Members	1400
Opt Out Rate	1%
Opt Outs Received	14
Total Class Claimants	1386
Subtotal Admin Only	\$11,750.00

WILL NOT EXCEED \$11,750.00

For 1400 Class Members

January 20, 2022

Case: Garduno v. New Generation Framing Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez

Firm: Wilshire Law Firm, PLC

Contact Number: (213) 381-9988, Ext. 345

Email: justin@wilshirelawfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on 1400 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Call Setup	\$105.14	1	\$105.14
Call Center & Long Distance	\$2.50	140	\$350.00
NCOA (USPS)	\$0.25	1400	\$350.00
Total			\$1,205.14

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Translation / Website			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.15	1,400	\$210.00
Notice Packet & Opt-Out Form	\$0.95	1,400	\$1,330.00
Estimated Postage (up to 2 oz.)*	\$0.70	1,400	\$980.00
Language Translation	\$750.00	1	\$750.00
Website	\$200.00	1	\$200.00
Total			\$3,670.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	2	\$100.00
Skip Tracing Undeliverables	\$1.00	280	\$280.00
Remail Notice Packets	\$0.95	280	\$266.00
Estimated Postage	\$0.70	280	\$196.00
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$942.00

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$100.00	2	\$200.00
Non Opt-Out Processing	\$150.00	1	\$150.00
Case Associate	\$50.00	2	\$100.00
Opt-Outs/Deficiency/Dispute Letters	\$4.00	35	\$140.00
Case Manager	\$75.00	2	\$150.00
Total			\$740.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$100.00	2	\$200.00
Disbursement Review	\$100.00	2	\$200.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$75.00	3	\$225.00
Check Run Setup & Printing	\$100.00	3	\$300.00
Mail Class Checks, W2 and 1099 *	\$0.95	1,386	\$1,316.70
Estimated Postage Checks, W2 and 1099	\$0.56	1,386	\$776.16
Total			\$3,207.86

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	20	\$30.00
Case Associate	\$60.00	2	\$120.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$75.00	2	\$150.00
Final Reporting & Declarations	\$115.00	1	\$115.00
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$1,000.00	1	\$1,000.00
Total			\$1,985.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$11,750.00



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CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

Manuel Garduno v. New Generation Framing, Inc., et al.
CV-21-000544


STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss

On January 13, 2023, I served the foregoing **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, California 94111-4615
Telephone: (415) 394-9400
Facsimile: (415) 394-9401

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

Executed this **January 13, 2023**, at Los Angeles, California.


Ashley Narinyans