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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF FRESNO**

SERGIO MARTINEZ GARCIA,  
individually, and on behalf of all others  
similarly situated,

Plaintiff,

vs.

TRI-VALLEY PLASTERING, INC., a  
limited liability company; and DOES 1  
through 10, inclusive,

Defendants

Case No.: 22CECG00591

CLASS ACTION

[Hon. Jeffrey Y. Hamilton]

**CLASS ACTION AND PAGA SETTLEMENT  
AGREEMENT AND CLASS NOTICE**

Action Filed:  
Trial:

February 24, 2022  
Not yet set

## CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff SERGIO MARTINEZ GARCIA (“Plaintiff”) and defendant TRI-VALLEY PLASTERING, INC. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

### 1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Garcia v. Tri-Valley Plastering, Inc.*, Case No. 22CECG00591 initiated on February 24, 2022, pending in Superior Court of the State of California, County of Fresno.
- 1.2. “Administrator” means Phoenix Class Action Administration Solutions, 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 all persons who worked for Defendant in California as an hourly paid, non-exempt employee during the PAGA Period.
- 1.5. “Class” or “Class Members” means all persons who worked for Defendant in California as an hourly paid, non-exempt employee during the Class Period.
- 1.6. “Class Counsel” means MOON & YANG, APC.
- 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 Defendant’s 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 Spanish and English 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 24, 2018 through March 25, 2023 or the date of entry of order for preliminary approval of the settlement by the court whichever is earlier.
- 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.
- 1.16. “Defendant” means named Defendant TRI-VALLEY PLASTERING, INC.
- 1.17. “Defense Counsel” means MCCORMICK BARSTOW LLP.
- 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 One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 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 Workweeks 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 § 2699(i).

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(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 Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from February 19, 2021 through the date of entry of order for preliminary approval of the settlement.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.33. “PAGA Notice” means Plaintiff’s February 19, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(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 (\$25,000) and the 75% to LWDA (\$75,000) 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 SERGIO MARTINEZ GARCIA, 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: Defendant and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees (current and former), officers, directors, insurers and attorneys.
- 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 sixty (60) 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 Defendant for at least one day, during the Class Period.

## 2. **RECITALS.**

2.1. On February 24, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (7) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. On April 27, 2022, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On January 24, 2023, the Parties participated in an all-day mediation presided over by Hon. Carl J. West (Ret.) and reached an agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, documents and information necessary to evaluate the claims in the Action, including pay and time records for the Class. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*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 9 below, Defendant promises to pay \$1,250,000.00 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. Defendant has 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 Defendant.

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 \$ 7,500 in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. Defendant 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

1 remainder in the Net Settlement Amount. The Administrator will pay the Class Representative  
2 Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for  
3 employee taxes owed on the Class Representative Service Payment and holds Defendant harmless,  
4 and indemnifies Defendant, from any dispute or controversy regarding any tax liability on the  
5 Class Representative Service Payment.

6 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 and 1/3%, which is  
7 currently estimated to be \$416,666.67 and a Class Counsel Litigation Expenses Payment of not  
8 more than \$20,000.00. Defendant will not oppose requests for these payments provided that they  
9 do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel  
10 Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to  
11 the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class  
12 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will  
13 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to  
14 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class  
15 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will  
16 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS  
17 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class  
18 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant  
19 harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or  
20 sharing of any of these Payments.

21 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$25,000.00  
22 except for a showing of good cause and as approved by the Court. To the extent the  
23 Administration Expenses are less or the Court approves payment less than \$25,000.00, the  
24 Administrator will retain the remainder in the Net Settlement Amount. Phoenix Class Action  
25 Administration Solutions has been selected as the Administrator, based upon its "not to exceed"  
26 bid of \$12,000.00.

27 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a)  
28 dividing the Net Settlement Amount by the total number of Workweeks worked by all

1 Participating Class Members during the Class Period and (b) multiplying the result by each  
2 Participating Class Member's Workweeks.

3 3.2.4.1. Tax Allocation of Individual Class Payments. 20 % of each Participating  
4 Class Member's Individual Class Payment will be allocated to settlement  
5 of wage claims (the "Wage Portion"). The Wage Portions are subject to tax  
6 withholding and will be reported on an IRS W-2 Form. 80% of each  
7 Participating Class Member's Individual Class Payment will be allocated  
8 to settlement of claims for interest and penalties (the "Non-Wage  
9 Portion"). The Non-Wage Portions are not subject to wage withholdings  
10 and will be reported on IRS 1099 Forms. Participating Class Members  
11 assume full responsibility and liability for any employee taxes owed on  
12 their Individual Class Payment and hold Defendant harmless, and  
13 indemnify Defendant, from any dispute or controversy regarding any tax  
14 liability on their Individual Class Payment.

15 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual  
16 Class Payments. Non-Participating Class Members will not receive any  
17 Individual Class Payments. The Administrator will retain amounts equal to  
18 their Individual Class Payments in the Net Settlement Amount for  
19 distribution to Participating Class Members on a pro rata basis.

20 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$100,000 to  
21 be paid from the Gross Settlement Amount, with 75% (\$75,000) allocated to the LWDA PAGA Payment  
22 and 25% (\$25,000) allocated to the Individual PAGA Payments.

23 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)  
24 dividing the amount of the Aggrieved Employees' 25% share of PAGA  
25 Penalties (\$25,000) by the total number of PAGA Period Pay Periods  
26 worked by all Aggrieved Employees during the PAGA Period and (b)  
27 multiplying the result by each Aggrieved Employee's PAGA Period Pay  
28 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, Defendant estimates there are 858 Class Members who collectively worked a total of 47,742 Workweeks, and 510 of Aggrieved Employees who worked a total 18,724 of PAGA Pay Periods.

4.2. Class Data. Not later than fourteen (14) days after the Court grants Preliminary Approval of the Settlement, Defendant will 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. Defendant has 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 Defendant 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. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than sixty (60) days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant 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

1 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class  
2 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel  
3 Litigation Expenses Payment and the Class Representative Service Payment shall not precede  
4 disbursement of Individual Class Payments and Individual PAGA Payments.

5 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or  
6 Individual PAGA Payments and send them to the Class Members via First Class  
7 U.S. Mail, postage prepaid. The face of each check shall prominently state the  
8 date when the check will be voided, which date shall be one hundred eighty (180)  
9 days after the date of mailing. The Administrator will cancel all checks not cashed  
10 by the void date. The Administrator will send checks for Individual Settlement  
11 Payments to all Participating Class Members (including those for whom Class  
12 Notice was returned undelivered). The Administrator will send checks for  
13 Individual PAGA Payments to all Aggrieved Employees including Non-  
14 Participating Class Members who qualify as Aggrieved Employees (including  
15 those for whom Class Notice was returned undelivered). The Administrator may  
16 send Participating Class Members a single check combining the Individual Class  
17 Payment and the Individual PAGA Payment. Before mailing any checks, the  
18 Settlement Administrator must update the recipients' mailing addresses using the  
19 National Change of Address Database.

20 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class  
21 Members whose checks are returned undelivered without USPS forwarding address.  
22 Within seven (7) days of receiving a returned check the Administrator must re-  
23 mail checks to the USPS forwarding address provided or to an address ascertained  
24 through the Class Member Address Search. The Administrator need not take  
25 further steps to deliver checks to Class Members whose re-mailed checks are  
26 returned as undelivered. The Administrator shall promptly send a replacement  
27 check to any Class Member whose original check was lost or misplaced, requested  
28 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 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 § 384(b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant 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 Defendant fully funds the entire Gross Settlement Amount and funds 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.**

In addition to the releases made in paragraphs 5.2 and 5.3, Plaintiff will make the following additional general release. Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution hereof ("Plaintiff's Release"). Plaintiff and Defendant both stipulate and agree that each of them have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other provision under federal or state law, which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor or released party.



1           The Parties understand that the General Release does not release any claims that they cannot  
2 lawfully released. It is also understood and agreed by Defendant that this release does not limit Plaintiff  
3 from filing and seeking damages for any Workers' Compensation claims and/or unemployment insurance  
4 claims that are currently pending or may be filed in the future. Defendant represents that as of the date of  
5 this Memorandum execution Defendant has not filed any unemployment insurance claims related to his  
6 employment with Defendant.

7           5.2.   Release by Participating Class Members Who Are Not Aggrieved Employees: All  
8 Participating Class Members, on behalf of themselves and their respective former and present  
9 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties  
10 from all claims, losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil  
11 complaints, arbitration demands or suits which arise from the facts asserted in the Operative Complaint,  
12 including all claims under the California Labor Code as alleged in the Operative Complaint, including  
13 violations for meal periods, rest breaks, non-productive time, off the clock work, unpaid overtime and  
14 minimum wages, timely payment of wages, wage statements, waiting time penalties, unreimbursed  
15 business expenses, penalties under the Private Attorneys General Act sections 2698, et seq., and violations  
16 of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.) occurring during the  
17 Class Period. Except as set forth in Sections 5.2 and 5.3 of this Agreement, Participating Class Members  
18 do not release any other claims, including claims for vested benefits, wrongful termination, violation of the  
19 Fair Employment and Housing Act, unemployment insurance, disability, social security, workers'  
20 compensation, or claims based on facts occurring outside the Class Period .

21           5.3.   Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-  
22 Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of  
23 themselves and their respective former and present representatives, agents, attorneys, heirs, administrators,  
24 successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or  
25 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint  
26 and the PAGA Notice attached hereto as **Exhibit B**.

1     **6.     MOTION FOR PRELIMINARY APPROVAL.**

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

4             6.1.     Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all  
5     documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and  
6     memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the  
7     Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code §  
8     2699(f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA  
9     Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching  
10    its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve;  
11    competency; operative procedures for protecting the security of Class Data; amounts of insurance  
12    coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or  
13    potential conflicts of interest with Class Members; and the nature and extent of any financial relationship  
14    with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming  
15    willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of  
16    interest with Class Members or the Administrator; (v) a signed declaration from each Class Counsel firm  
17    attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all  
18    necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint  
19    (Labor Code § 2699(l)(1)), this Agreement (Labor Code § 2699(l)(2)); (vi) a redlined version of the  
20    parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the  
21    Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the  
22    Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not  
23    aware of any other pending matter or action asserting claims that will be extinguished or adversely  
24    affected by the Settlement.

25             6.2.     Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible  
26    for expeditiously finalizing and filing the Motion for Preliminary Approval no later than sixty (60) days  
27    after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary  
28    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.

6.3. 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 Class Action Administration Solutions to serve as the Administrator and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions 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 § 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

fourteen (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 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 three (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 fourteen (14) days beyond the sixty (60) 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, Defendant 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 fourteen (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 sixty (60) days after the Administrator mails the Class Notice or as otherwise extended for re-mailed Class Notices as described herein. 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, subject to extension for re-mailed Class Notices as described herein.

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 5.4 of this Agreement and are eligible for an Individual PAGA Payment.

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice, or as otherwise extended for re-mailed Class Notices as described herein, 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

1 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class  
2 Counsel Litigation Expenses Payment and/or Class Representative Service  
3 Payment.

4 7.7.2. Participating Class Members may send written objections to the Administrator, by  
5 fax, email, or mail. In the alternative, Participating Class Members may appear in  
6 Court (or hire an attorney to appear in Court) to present verbal objections at the  
7 Final Approval Hearing. A Participating Class Member who elects to send a  
8 written objection to the Administrator must do so not later than the Response  
9 Deadline, or as otherwise extended for re-mailed Class Notices as described herein.

10 7.7.3. Non-Participating Class Members have no right to object to any of the class action  
11 components of the Settlement.

12 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be  
13 performed or observed by the Administrator contained in this Agreement or otherwise.

14 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish  
15 and maintain and use an internet website to post information of interest to Class  
16 Members including the date, time and location for the Final Approval Hearing and  
17 copies of the Settlement Agreement, Motion for Preliminary Approval, the  
18 Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion  
19 for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and  
20 Class Representative Service Payment, the Final Approval and the Judgment. The  
21 Administrator will also maintain and monitor an email address and a toll-free  
22 telephone number to receive Class Member calls, faxes and emails.

23 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will  
24 promptly review on a rolling basis Requests for Exclusion to ascertain their  
25 validity. Not later than seven (7) days after the expiration of the deadline for  
26 submitting Requests for Exclusion, the Administrator shall email a list to Class  
27 Counsel and Defense Counsel containing (a) the names and other identifying  
28 information of Class Members who have timely submitted valid Requests for

1 Exclusion (“Exclusion List”); (b) the names and other identifying information of  
2 Class Members who have submitted invalid Requests for Exclusion; (c) copies of  
3 all Requests for Exclusion from Settlement submitted (whether valid or invalid).

4 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written  
5 reports to Class Counsel and Defense Counsel that, among other things, tally the  
6 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,  
7 Requests for Exclusion (whether valid or invalid) received, objections received,  
8 challenges to Workweeks and/or Pay Periods received and/or resolved, and checks  
9 mailed for Individual Class Payments and Individual PAGA Payments (“Weekly  
10 Report”). The Weekly Reports must include provide the Administrator’s  
11 assessment of the validity of Requests for Exclusion and attach copies of all  
12 Requests for Exclusion and objections received.

13 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to  
14 address and make final decisions consistent with the terms of this Agreement on all  
15 Class Member challenges over the calculation of Workweeks and/or Pay Periods.  
16 The Administrator’s decision shall be final and not appealable or otherwise  
17 susceptible to challenge.

18 7.8.5. Administrator’s Declaration. Not later than fourteen (14) days before the date by  
19 which Plaintiff is required to file the Motion for Final Approval of the Settlement,  
20 the Administrator will provide to Class Counsel and Defense Counsel, a signed  
21 declaration suitable for filing in Court attesting to its due diligence and compliance  
22 with all of its obligations under this Agreement, including, but not limited to, its  
23 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing  
24 of Class Notices, attempts to locate Class Members, the total number of Requests  
25 for Exclusion from Settlement it received (both valid or invalid), the number of  
26 written objections and attach the Exclusion List. The Administrator will  
27 supplement its declaration as needed or requested by the Parties and/or the Court.  
28 Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.



7.8.6. Final Report by Settlement Administrator. Within fourteen (14) 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 fourteen (14) 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, Defendant estimates that, as of January 24, 2023, there are 47,742 Total Workweeks during the Class period. If the total number of Workweeks during the Class Period exceeds 47,742 by more than 10% (i.e., exceeds 52,516 workweeks), Defendant shall increase the Gross Settlement Amount by a pro-rata dollar value equal to the number of workweeks in excess of 52,516 workweeks. For example, if there is a 1% increase over 10% then the Gross Settlement Amount increases by 1%.

**9. DEFENDANT'S 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, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant 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, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

1     **10.     MOTION FOR FINAL APPROVAL.**

2     Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in  
3     Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA  
4     settlement under Labor Code § 2699(*I*), a Proposed Final Approval Order and a proposed Judgment  
5     (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense  
6     Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and  
7     Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to  
8     resolve any disagreements concerning the Motion for Final Approval.

9           10.1.   Response to Objections. Each Party retains the right to respond to any objection raised by  
10           a Participating Class Member, including the right to file responsive documents in Court no  
11           later than nine (9) court days prior to the Final Approval Hearing, or as otherwise ordered  
12           or accepted by the Court.

13          10.2.   Duty to Cooperate. If the Court does not grant Final Approval or conditions Final  
14           Approval on any material change to the Settlement (including, but not limited to, the scope  
15           of release to be granted by Class Members), the Parties will expeditiously work together in  
16           good faith to address the Court’s concerns by revising the Agreement as necessary to  
17           obtain Final Approval. The Court’s decision to award less than the amounts requested for  
18           the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel  
19           Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute  
20           a material modification to the Agreement within the meaning of this paragraph.

21          10.3.   Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the  
22           Court will retain jurisdiction over the Parties, Action, and the Settlement solely for  
23           purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement  
24           administration matters, and (iii) addressing such post-Judgment matters as are permitted by  
25           law.

26          10.4.   Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and  
27           conditions of this Agreement, specifically including the Class Counsel Fees Payment and  
28           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 or a right to appeal the Court decision granting approval of Class Counsel attorney fees and costs in the amount less than provided in this Agreement. 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 § 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

1 Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in  
2 this Agreement is intended or should be construed as an admission by Defendant that any of the  
3 allegations in the Operative Complaint have merit or that Defendant has any liability for any claims  
4 asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in  
5 the Action have merit. The Parties agree that class certification and representative treatment is for  
6 purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final  
7 Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any  
8 reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves  
9 the right to move for class certification on any grounds available and to contest Defendant's defenses. The  
10 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will  
11 not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the  
12 Settlement and this Agreement).

13 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and  
14 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed,  
15 they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to  
16 disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or  
17 generally, to any person, corporation, association, government agency, or other entity except: (1) to the  
18 Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement  
19 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate  
20 taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or  
21 subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each  
22 other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class  
23 Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any  
24 conversation or other communication, before the filing of the Motion for Preliminary Approval, any with  
25 third party regarding this Agreement or the matters giving rise to this Agreement except to respond only  
26 that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's  
27 communications with Class Members in accordance with Class Counsel's ethical obligations owed to  
28 Class Members.

1           12.3. No Solicitation. The Parties separately agree that they and their respective counsel and  
2 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the  
3 Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate  
4 with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

5           12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement  
6 together with its attached exhibits shall constitute the entire agreement between the Parties relating to the  
7 Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or  
8 by any Party.

9           12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
10 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action  
11 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to  
12 execute any other documents reasonably required to effectuate the terms of this Agreement including any  
13 amendments to this Agreement.

14           12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their  
15 best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement  
16 Agreement, submitting supplemental evidence and supplementing points and authorities as requested by  
17 the Court. In the event the Parties are unable to agree upon the form or content of any document  
18 necessary to implement the Settlement, or on any modification of the Agreement that may become  
19 necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court  
20 for resolution.

21           12.7. No Prior Assignments. The Parties separately represent and warrant that they have not  
22 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
23 any person or entity and portion of any liability, claim, demand, action, cause of action, or right released  
24 and discharged by the Party in this Settlement.

25           12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are  
26 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as  
27 such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as  
28 amended) or otherwise.

1           12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,  
2 modified, changed, or waived only by an express written instrument signed by all Parties or their  
3 representatives, and approved by the Court.

4           12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the  
5 benefit of, the successors of each of the Parties.

6           12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be  
7 governed by and interpreted according to the internal laws of the state of California, without regard to  
8 conflict of law principles.

9           12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of  
10 this Agreement. This Agreement will not be construed against any Party on the basis that the Party was  
11 the drafter or participated in the drafting.

12           12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered  
13 during Action and in this Agreement relating to the confidentiality of information shall survive the  
14 execution of this Agreement.

15           12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to  
16 Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by  
17 Defendant in connection with the mediation, other settlement negotiations, or in connection with the  
18 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in  
19 any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days  
20 after the date when the Court discharges the Administrator's obligation to provide a Declaration  
21 confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic  
22 versions of Class Data received from Defendant.

23           12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is  
24 inserted for convenience of reference only and does not constitute a part of this Agreement.

25           12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be  
26 to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or  
27 federal legal holiday, such date or deadline shall be on the first business day thereafter.

28           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:

Kane Moon  
kane.moon@moonyanglaw.com  
Lilit Tunyan  
lilit.tunyan@moonyanglaw.com  
MOON & YANG, APC  
1055 W. Seventh St., Suite 1880  
Los Angeles, California 90017  
Telephone: (213) 232-3128  
Facsimile: (213) 232-3125

To Defendant:

Laura Wolfe  
Laura.Wolfe@mccormickbarstow.com  
Michelle Gagnon  
michelle.gagnon@mccormickbarstow.com  
MCCORMICK BARSTOW LLP  
7647 NORTH FRESNO STREET  
FRESNO, CA 93720  
Telephone: (559) 433-2160  
Facsimile: (559) 433-2300

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.

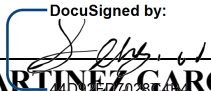
**Plaintiff & Class Representative:**

Dated: 2/6, 2023

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

**SERGIO MARTINEZ GARCIA**

DocuSigned by:





1 **Plaintiff's Counsel:**

2 Dated: 2/6, 2023

**MOON & YANG, APC**

3  
4 By: 

Kane Moon  
Lilit Tunyan

5  
6 Attorneys for Plaintiff SERGIO MARTINEZ  
GARCIA

7  
8 **Defendant:**

9 Dated: 2/6, 2023

**TRI-VALLEY PLASTERING, INC.**

10  
11 By: 

Print Name

12  
13 

Signature

14  
15 CFO

Title

16 **Defendant's Counsel:**

17 Dated: 02/06/2023

**MCCORMICK BARSTOW LLP**

18  
19 By: 

Laura Wolfe  
Michelle Gagnon

20  
21 Attorneys for Defendant TRI-VALLEY  
PLASTERING, INC.,



# EXHIBIT A

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

*Garcia v. Tri-Valley Plastering, Inc.*  
Fresno County Superior Court Case No. 22CECG00591

*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 defendant TRI-VALLEY PLASTERING, INC. (“Defendant” or “TRI-VALLEY PLASTERING”) for alleged wage and hour violations. The Action was filed by former TRI-VALLEY PLASTERING employee plaintiff SERGIO MARTINEZ GARCIA (“Plaintiff”) and seeks payment of unpaid wages and unreimbursed expenses for a class of non-exempt, hourly employees (“Class Members”) who worked for TRI-VALLEY PLASTERING during the Class Period (February 24, 2018 to March 25, 2023) and penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for TRI-VALLEY PLASTERING during the PAGA Period (February 19, 2021 to -----) (“Aggrieved Employees”).

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. 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 Defendant’s 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 Defendant’s records showing that **you worked [REDACTED] workweeks** during the Class Period and **you worked [REDACTED] pay periods** during the PAGA Period. If you believe that you worked more workweeks or pay periods during any of the respective periods, 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 TRI-VALLEY PLASTERING to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against TRI-VALLEY PLASTERING.

If you worked for TRI-VALLEY PLASTERING 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 TRI-VALLEY PLASTERING.
- (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 TRI-VALLEY PLASTERING, 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.

**TRI-VALLEY PLASTERING 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

<b>You Don't Have to Do Anything to Participate in the Settlement</b>	<p>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 TRI-VALLEY PLASTERING that are covered by this Settlement (Released Claims).</p>
<b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b>  <b>The Opt-out Deadline is</b>	<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. TRI-VALLEY PLASTERING 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>
<b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b>  <b>Written Objections Must be Submitted by</b>	<p>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.</p>
<b>You Can Participate in the Final Approval Hearing</b>	<p>The Court's Final Approval Hearing is scheduled to take place on . 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.</p>
<b>You Can Challenge the Calculation of Your Workweeks/Pay Periods</b> <b>Written Challenges Must be Submitted by</b>	<p>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 TRI-VALLEY PLASTERING'S records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by . See Section 4 of this Notice.</p>

### 1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former TRI-VALLEY PLASTERING employee. The Action accuses TRI-VALLEY PLASTERING of violating California labor laws by failing to pay overtime wages, minimum and straight time wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and 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: Moon & Yang, APC (“Class Counsel.”)

TRI-VALLEY PLASTERING strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether TRI-VALLEY PLASTERING or Plaintiff is correct on the merits. In the meantime, Plaintiff and TRI-VALLEY PLASTERING hired an experienced, neutral mediator Hon. Carl West (Retired) 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 TRI-VALLEY PLASTERING 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, TRI-VALLEY PLASTERING does 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) TRI-VALLEY PLASTERING has 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. TRI-VALLEY PLASTERING will pay \$1,250,000.00 as the Gross Settlement Amount (Gross Settlement). TRI-VALLEY PLASTERING has 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 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, TRI-VALLEY PLASTERING will fund the Gross Settlement not more than sixty (60) days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
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 \$416,666.67 (33 and 1/3% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
  - B. Up to \$7,500 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 for representing the Class in this Action other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
  - C. \$----- to the Administrator for services administering the Settlement.

- D. Up to \$100,000 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 TRI-VALLEY PLASTERING are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to interest and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. TRI-VALLEY PLASTERING 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 TRI-VALLEY PLASTERING 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 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 [REDACTED], 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 [REDACTED] Response Deadline. The Request for Exclusion should be a signed 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 TRI-VALLEY PLASTERING.

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 TRI-VALLEY PLASTERING 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 TRI-VALLEY PLASTERING

have agreed that, in either case, the Settlement will be void: TRI-VALLEY PLASTERING will not pay any money and Class Members will not release any claims against TRI-VALLEY PLASTERING.

8. Administrator. The Court has appointed a neutral company, [REDACTED] (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 TRI-VALLEY PLASTERING has 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 another lawsuit against TRI-VALLEY PLASTERING 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, losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil complaints, arbitration demands or suits which arise from the facts asserted in the Operative Complaint, including all claims under the California Labor Code as alleged in the Operative Complaint, including violations for meal periods, rest breaks, non-productive time, off the clock work, unpaid overtime and minimum wages, timely payment of wages, wage statements, waiting time penalties, unreimbursed business expenses, penalties under the Private Attorneys General Act sections 2698, et seq., and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.) occurring during the Class Period. Except as set forth in Sections 5.2 and 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.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final and TRI-VALLEY PLASTERING has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against TRI-VALLEY PLASTERING, 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 TRI-VALLEY PLASTERING 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 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 attached to the Settlement Agreement as Exhibit B.



#### **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 \$25,000 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 TRI-VALLEY PLASTERING'S records, are stated in the first page of this Notice. You have until [REDACTED] 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 TRI-VALLEY PLASTERING'S calculation of Workweeks and/or Pay Periods based on TRI-VALLEY PLASTERING'S 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 TRI-VALLEY PLASTERING'S 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 (if any).
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 *Garcia v. Tri-Valley Plastering Inc.*, Case N 22CECG00591 pending in Los Angeles Superior Court, 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 [REDACTED], 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 TRI-VALLEY PLASTERING are asking the Court to approve. At least [REDACTED] days before the [REDACTED] 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 -----or the Court's website -----.

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 [REDACTED].** 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 and include your name, current address, telephone number, and approximate dates of employment for TRI-VALLEY PLASTERING 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 \_\_\_\_\_ at \_\_\_\_\_ in Department 503 of the Fresno County Superior Court, located at 1130 "O" Street, Fresno, California. 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 remotely. Check the Court's website for the remote appearance guidance.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website-----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 TRI-VALLEY PLASTERING 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 the Administrator's website at----- . 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 -----and entering the Case Number for the Action, Case No. 22CECG00591. You can also make an appointment to personally review court documents in the Clerk's Office at 1130 "O" Street, Fresno, California.



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

Class Counsel:

Kane Moon

kane.moon@moonyanglaw.com

Lilit Tunyan

lilit.tunyan@moonyanglaw.com

MOON & YANG, APC

1055 W. Seventh St., Suite 1880

Los Angeles, California 90017

Telephone: (213) 232-3128

Facsimile: (213) 232-3125

Settlement Administrator:

-----

**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 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 B

# **MOON & YANG, APC**

ATTORNEYS AT LAW  
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880  
LOS ANGELES, CALIFORNIA 90017  
TELEPHONE: (213) 232-3128  
FACSIMILE: (213) 232-3125

Kane Moon, Esq.  
*Kane.Moon@moonyanglaw.com*

February 19, 2022

## **VIA ONLINE SUBMISSION**

Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

## **VIA CERTIFIED MAIL**

Tri-Valley Plastering, Inc.  
1156 Barstow Avenue  
Clovis, CA 93612

## **Notice of Labor Code Violations and PAGA Penalties**

Re: *Sergio Martinez Garcia v. Tri-Valley Plastering, Inc.*

To Whom It May Concern:

Please be advised that my office has been retained by Sergio Martinez Garcia (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Tri-Valley Plastering, Inc. (“Defendant”). 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 Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

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

## **Factual Background Regarding Plaintiff's Employment with Defendant**

Defendant owns and operates an industry, business, and establishment within the State of California, including Fresno County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

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Plaintiff worked for Defendant as a cement plasterer from approximately January 2021 to January 2022, primarily in Fresno County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

### **Failure to Pay for All Hours Worked, Including Overtime**

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 all overtime wages. Plaintiff and the Aggrieved Employees were required to work "off the clock", uncompensated. For example, Plaintiff and the Aggrieved Employees were only paid based on their scheduled shift, as opposed to the actual hours worked. Defendants failed to record the exact time when Plaintiff and the Aggrieved Employees began work, and the exact time when they ceased work activities. Instead, attendance was the only record kept. Plaintiff and the Aggrieved Employees were actually required to arrive at work early in order to change into their work attire, including helmets, goggles, work boots, and other safety and protective equipment. Plaintiff and the Aggrieved Employees were also required to continue to work after their scheduled shift time if they did not complete their work. However, all of this time was off-the-clock and uncompensated, leading to underpayment of wages to Plaintiff and the Aggrieved Employees. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

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As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

### **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, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, 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. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not 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). Defendant, 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, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 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).

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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.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, 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. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

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). Defendant, 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, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

#### **Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by 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.

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

Defendant's failure to provide and maintain records required by the 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 Defendant's 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 Defendant. 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 Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the 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.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

#### **Failure to Reimburse and Indemnify Expenses**

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement, such as the purchase of gloves, dollies, nail proof boots, aluminum plaster hawk, darby, hand tools, and masks. Also, Plaintiff and the Aggrieved Employees were required to use their own personal cellular telephones for work, without reimbursement.

#### **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.

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Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues 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 Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's 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 Defendant 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, Defendant is 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



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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).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating 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 Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is 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.

#### **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, Defendant 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 hours worked. However, during all such times, Defendant 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 Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is 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.

#### **Action for Civil Penalties Under PAGA**

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

LWDA

*Notice of Labor Code Violations and PAGA*

February 19, 2022

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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, 512 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 § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.

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, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, 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,

MOON & YANG, APC



Kane Moon, Esq.  
*Attorney at Law*

**MOON & YANG, APC**  
ATTORNEYS AT LAW  
1055 W. SEVENTH STREET, SUITE 1880, LOS ANGELES, CA 90017



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Clovis, CA 93612

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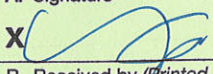
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