

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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KEVIN ESQUE on Behalf of Himself and All  
Others Similarly Situated,

Plaintiff,

v.

DWD COMPANY, LLC, DANIEL  
BALLARD, WHITNEY RAWLINGS, and  
DANAE SPANGLER,

Defendant.

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Case No.: 1:23-cv-1791 CSW-JRS

Honorable Crystal S. Wilderman

**CLASS AND COLLECTIVE ACTION SETTLEMENT AGREEMENT  
AND RELEASE OF CLAIMS**

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**CLASS AND COLLECTIVE ACTION SETTLEMENT AGREEMENT  
AND RELEASE OF CLAIMS**

This Class and Collective Action Settlement Agreement and Release of Claims is entered into by Plaintiff Kevin Esque, individually and as representative of the Putative Class as defined below, and Defendants, DWD Company, LLC, Daniel Ballard, Whitney Rawlings, and DaNae Spangler. This Agreement is subject to approval by the United States District Court for the Southern District of Indiana and is made for the sole purpose of consummating the settlement of this Action on a class-wide and collective-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Settlement in substantially the same form and substance set forth below, the Court's order granting final approval of the Settlement is appealed and reversed, or the conditions precedent are not met for any reason, this Settlement is void and of no force whatsoever.

**A. DEFINITIONS**

1. "Action" shall mean the civil action initiated in the United States District Court for the Southern District of Indiana on October 4, 2023, captioned *Kevin Esque, et al. v. DWD Company, LLC, et al.*, Case No. 1:23-cv-1791.
2. "Complaint" shall mean the Second Amended Complaint for Damages filed on March 18, 2024, in this Action.
3. "CAFA Notice" refers to the notice to be sent by Defendants to appropriate federal and state officials pursuant to the requirements of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715(b).
4. "Class Counsel" shall mean Ronald Weldy of Weldy Law.
5. "Class Counsel Fees and Expenses" shall mean Class Counsel's attorneys' fees, costs, and expenses as set forth in Paragraph 47.



6. “Class Representative” shall mean Plaintiff Kevin Esque.
7. “Costs of Administration” shall mean and include all fees, costs, and expenses charged by the Settlement Administrator in connection with the Action.
8. “Court” shall mean the United States District Court for the Southern District of Indiana.
9. “*Cy Pres* Amount” shall be the amount associated with any checks sent to Participating Class Members that remain uncashed 180 days after mailing.
10. “Defendants” shall mean DWD Company, LLC, Daniel Ballard, Whitney Rawlings, and DaNae Spangler.
11. “Defendant Releasees” shall mean Defendants and Defendants’ present and former parent companies, subsidiaries, divisions, related or affiliated companies, owners, shareholders, officers, directors, employees, consultants, agents, attorneys, insurers, successors and assigns, any individual or entity which could be jointly liable with Defendant, and all other persons acting under the supervision, direction, control or on behalf of any of the foregoing.
12. “Defense Counsel” shall mean Scopelitis, Garvin, Light, Hanson, and Feary P.C.
13. “Effective Date” shall be the date when all of the following events have occurred: (a) this Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel; (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the Putative Class Members providing them with an opportunity to object to and/or opt out of the Settlement; (d) the Court has held a Final Approval Hearing and entered a Final Approval Order and judgment certifying the Putative Class, approving this Settlement Agreement and Class Counsel Fees and Expenses, and dismissing the Action with prejudice; and (e) the latest of the following events: (i) if no objection is filed or raised at or before the Final Approval Hearing, then the date a Final Approval Order and judgment certifying the Putative Class, approving this Settlement



Agreement and Class Counsel Fees and Expenses is entered; (ii) if any objection is filed or raised, then thirty-one (31) days have passed since the entry of the Final Approval Order and no appeal, writ or other appellate proceeding has been filed; (iii) the dismissal of any appeal, writ, or other appellate proceeding opposing the Settlement with no right to pursue further remedies or relief; or (iv) the issuance of a final appellate order upholding the Final Approval Order with no right to pursue further remedies or relief.

14. “Final Approval Hearing” shall mean the final hearing held to ascertain the fairness, reasonableness and adequacy of the Settlement. The date of the Final Approval Hearing shall be set by the Court, but in no event shall be scheduled prior to the required time frame set forth in CAFA, and notice of such hearing shall be provided to the Putative Class Members in the Notice, although such hearing may be continued by the Court without further notice to Putative Class Members, other than those who properly and timely file objections to the Settlement.

15. “Final Approval Order” shall mean the order granting final approval of the Settlement Agreement, certifying the Putative Class, entering judgment and dismissing the Action with prejudice.

16. “Gross Settlement Amount” means the total gross amount of \$575,000 to be paid by Defendants to settle the Released Claims, along with Class Counsel Fees and Expenses, the aggregate of the Individual Settlement Amounts, and the Service Awards. In no event shall Defendants be required to pay any amount beyond the Gross Settlement Amount, except for the Costs of Administration and the employer-side payroll taxes described in Paragraph 47.

17. “Individual Settlement Amounts” shall mean the amounts distributed to each Participating Class Member from the Net Settlement Amount in exchange for the Released Claims and the other promises and covenants made herein.

18. “Net Settlement Amount” means the remainder of the Gross Settlement Amount after

deductions for Class Counsel Fees and Expenses, and the Service Awards and shall be the maximum amount to be distributed to the Participating Class Members.

19. “Notice” shall mean the Notice to Putative Class Members agreed upon by Class Counsel and Defense Counsel, as set forth in the form of *Exhibit A* attached hereto, or as otherwise approved by the Court, which is to be delivered by the Claims Administrator via First-Class U.S. Mail, e-mail, and/or text message to Putative Class Members.

20. “Participating Class Member” shall mean all persons who meet either or both of the following definitions: (a) any Putative Class Member who does not timely request exclusion as part of the settlement notice process (the “Rule 23 Indiana Wage Payment Class”); and (b) any Putative Class Member who timely submitted a consent to join form by January 14, 2025 and have claims within three (3) years of date the Opt-In was filed (the “FLSA Collective”). Participating Class Members shall also include any and all of the Participating Class Member’s representatives, heirs, administrators, executors, beneficiaries, agents, and assigns, as applicable and without limitation.

21. “Parties” shall mean Plaintiff and Defendants.

22. “Plaintiff” shall mean the Class Representative, Kevin Esque, and shall also include any and all of his representatives, heirs, administrators, executors, beneficiaries, agents, and assigns, as applicable and without limitation.

23. “Preliminary Approval Order” shall mean the order granting preliminary approval of the Settlement.

24. “Putative Class Member” shall mean all persons who worked as a truck driver for DWD Company at any point from October 4, 2020 to October 13, 2024.

25. “Putative Class Member Information” shall mean a password protected file titled “Confidential-Claims Administrator’s Eyes Only” that Defense Counsel provides to the Settlement Administrator that includes an electronic, encrypted spreadsheet containing the following



information for each Putative Class Member: (1) name; (2) last known address; (3) last known email addresses (to the extent available); (4) last known phone number (to the extent available); and (5) social security number. This information will not be shared with Plaintiff's counsel.

26. "Released Claims" shall mean any and all claims, demands, rights, liabilities, and/or causes of action whatsoever, including but not limited to those relating to Participating Class Members' employment with DWD Company, LLC and/or wages owed arising out of employment with DWD from the beginning of time through the Order granting Preliminary Approval of the Settlement. Released Claims include any and all claims that were brought in this action, that could have been brought in this action, that could have been brought in a separate action, that any party or member of the class or collective have, had, or may have had, and those claims identified in paragraph 63 of this Agreement (Claims Released by Participating Class Members). The parties specifically acknowledge that Tyra Denton does not release her right to assert a retaliation claim under the FLSA against DWD, Daniel Ballard, Whitney Rawlings, and DaNae Spangler. The parties also specifically acknowledge that "Released Claims" does not include any outstanding non-wage and hour grievance or Workers Compensation claims of a Participating Class Member.

27. "Service Awards" shall mean any additional monetary payment provided to Plaintiff and Tyra Denton for their efforts on behalf of the Putative Class in this Action, as set forth in Paragraph 46.

28. "Settlement" shall mean the Settlement between the Parties, which is memorialized in this Settlement Agreement.

29. "Settlement Administrator" shall mean CPT Group, subject to approval by the Court.

30. "Settlement Agreement" shall mean this Class and Collective Action Settlement Agreement and Release of Claims, including any attached exhibits.

## **B. RECITALS**

**31. Procedural History of the Action.** Plaintiff Kevin Esque initiated the Action on October 4, 2023, in this Court. ECF No. 1. Defendant DWD Company, LLC moved to dismiss the original complaint on November 29, 2023. ECF No. 18. On January 5, 2024, Plaintiff filed the First Amended Complaint for Damages, ECF No. 29, which DWD Company moved to dismiss on January 18, 2024. ECF No. 31. Plaintiff filed the Second Amended Complaint for damages on March 18, 2024, adding Defendants Daniel Ballard, Whitney Rawlings, and DaNae Spangler as defendants and seeking relief under the Fair Labor Standards Act (FLSA) (Count I) and the Indiana Wage Payment Statute (Count II). ECF No. 46. Defendants filed a Motion to Dismiss on March 29, 2024. ECF No. 52. On April 15, 2024, Plaintiff filed his Motion for Conditional Certification and Notice of Collective Action Lawsuit. ECF No. 56. The Court denied Defendants' Motion to Dismiss and Plaintiff's Motion for Conditional Certification and Notice of Collective Action Lawsuit on July 29, 2024. ECF No. 80.

**32. Settlement Negotiations.** The Parties have engaged in settlement discussions and attended a settlement conference with Magistrate Judge Crystal S. Wildeman on January 16, 2025. The Parties resolved this matter at the settlement conference, resulting in this settlement agreement.

**33. Class Representative's Claims.** The Complaint alleges that Defendants failed to pay Plaintiff and Putative Class Members for time spent performing certain tasks, and as a result, allegedly failed to pay Plaintiffs and Putative Class Members overtime in violation of the FLSA and Indiana Wage Payment Statute. Defendant denied any liability to Plaintiff and the Putative Class and raised various defenses to the minimum wage claims in its Answer. ECF No. 85.

**34. Discovery, Investigation, and Research.** Class Counsel conducted a thorough investigation into the facts during the prosecution of the Action. This discovery and investigation has included, among other things (a) meetings with the Class Representative; (b) inspection and analysis of documents produced by the Class Representative; (c) analysis of the legal positions taken by



Defendants; (d) investigation into the viability of class treatment of the remaining claims in the case; (e) analysis of potential class-wide damages; (f) research of the applicable law with respect to the claims and potential defenses thereto; and (g) inspecting and analyzing documents and data produced by Defendants for the Putative Class prior to the settlement conference.

**35. Defendants' Denial of Wrongdoing and Liability.** Defendants deny each and all of the claims and contentions alleged by the Class Representative and the Putative Class in the Action. Defendants expressly deny all charges of wrongdoing or liability arising out of any of the conduct, statements, acts, or omissions alleged in the Action. Defendants contend that it complied in good faith with the FLSA and Indiana Wage Payment Statute and dealt legally and fairly with Putative Class Members in all regards. Defendants also denies that there is any basis in law or fact to find that it failed to pay Plaintiff or any Putative Class Member overtime. Defendants further deny that, for any purpose other than settling this Action, these claims are appropriate for class or collective treatment. Nonetheless, Defendants concluded that further proceedings in the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement in order to dispose of burdensome and protracted litigation, and to permit the operation of Defendants' businesses without further expensive litigation and the distraction and diversion of their personnel with respect to matters at issue in the Action. Defendants also accounted for the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendants, therefore, determined that it is desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

**36. Allegations of the Class Representative and Benefit of Settlement.** The Class Representative has vigorously prosecuted this case, and Defendants have vigorously contested it. The factual investigation conducted in this matter, and discussions between Class Counsel and

Defense Counsel, have been adequate to give the Class Representative and Class Counsel a sound understanding of the merits of their positions and to evaluate the potential worth of the claims of the Putative Class. This Settlement was reached only after the Parties engaged in arm's-length settlement discussions and exchange of information over a period of several months, culminating in a settlement conference with the Court at which an agreement between the Parties was reached. The discovery conducted in this Action and the information exchanged by the Parties are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis.

Class Representative and Class Counsel believe that the remaining claims, allegations and contentions asserted in the Action have merit. However, the Class Representative and Class Counsel also recognize and acknowledge the risk inherent in any litigation, as well as the expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendants through trial and through appeals. Class Counsel accounted for the uncertain outcome of the litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation, including the potential difficulty of obtaining certification of the Action and trying the claims of the Putative Class. Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims alleged in the Action.

Class Counsel believes that this Settlement confers substantial benefits upon the Putative Class Members and that an independent review of this Settlement by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel determined that the Settlement set forth in the Settlement Agreement is in the best interests of the Putative Class Members.

**37. Class Certification, Conditional Certification, and Appointment of Class Counsel.** For the purposes of this Settlement only, the Parties stipulate to certification of the Rule 23



Indiana Wage Payment Class pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), to Plaintiff serving as the Class Representative and to Class Counsel serving as counsel for the Putative Class. The Parties further stipulate to certification of the FLSA collective pursuant to 29 U.S.C. 216(b). Defense Counsel believes both certifications are appropriate because the Released Claims are being compromised without the need to establish the elements of those claims on which liability turns.

Therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby settle, compromise, and resolve any and all claims specified herein, except with respect to enforcement of this Settlement Agreement, as follows:

**C. APPROVAL OF SETTLEMENT AND DISMISSAL OF ACTION**

**38. Cooperation.** The Parties agree to cooperate and take all steps necessary to accomplish and implement the terms of this Settlement Agreement.

**39. Fair, Adequate, and Reasonable Settlement.** The Parties agree that the Settlement is fair, adequate, and reasonable and will represent that position to the Court.

**40. Unopposed Motion for Preliminary Approval of Settlement.** Plaintiff will move the Court to (a) preliminarily approve the Settlement Agreement; (b) solely for purposes of the Settlement, certify this Action as a class action pursuant to Fed. R. Civ. P. 23 and as a collective action under the FLSA; (c) approve the Settlement Administrator; and (d) approve a Proposed Notice to Putative Class Members. Defendants shall not oppose this motion, provided that they are afforded the opportunity to review and approve, and has approved, the form and substance of the motion and supporting papers in advance of filing. The Parties agree that in the event that the Settlement fails to receive final approval from the Court, or otherwise fails to become effective, any class action or collective action certified solely for purposes of the Settlement shall be decertified and the Action returned to the *status quo ante*.

**41. Preliminary and Final Orders.** The unopposed Motion for Preliminary Approval of Settlement will ask the Court to enter a proposed Preliminary Approval Order granting preliminary approval of the Settlement, approving the Settlement Administrator, and approving the Notice and Claim Form prepared by Class Counsel and approved by Defendants prior to filing, which will inform Putative Class Members of their right to request exclusion from the Settlement if they do not wish to participate and submit objections to the Settlement if they do not request exclusion. Approximately one week prior to the Final Approval Hearing scheduled by the Court and following the conclusion of the 30-day notice period provided in the Notice, Plaintiff will move the Court for final approval of the Settlement and will submit a proposed Final Approval Order. Class Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination of this motion for final approval and agree to execute all documents necessary to dismiss with prejudice any and all claims raised against Defendants in the Action. Defendants agree



not to oppose such motion for final approval, provided that they are afforded the opportunity to review and approve, and have approved, the form and substance of the motion and supporting papers in advance of filing.

**42. Failure to Procure Approval.** Final approval of the Settlement by the Court is a material term of the Settlement Agreement. If the Court declines to enter a Preliminary Approval Order, or a Final Approval Order granting final approval to this Settlement, in substantially the same form as that submitted by the Parties, or an appellate court reverses the Court's Final Approval Order granting final approval to this Settlement, the Settlement Agreement shall become null and void, provided, however, that the Parties agree to work cooperatively and in good faith for a period of thirty (30) days following any denial or reversal of approval to address and resolve any concerns identified by the Court in declining to enter a Preliminary Approval Order or Final Approval Order for this Settlement, or by the appellate court in reversing the entry of an order by the Court granting final approval to this Settlement.

Should the Parties address and resolve any concerns identified by the Court during that 30-day period, they shall re-submit the Settlement Agreement, as amended, to the Court for approval. Should the Parties' efforts during that 30-day period to address and resolve any such concerns prove unsuccessful, the Settlement Agreement shall become null and void, and no party shall be bound by any of its terms, including any obligation to make any payments or release any claims.

In the event the Settlement Agreement becomes null and void (i) any order certifying a class or collective action for purposes of the Settlement shall be vacated, any such class or collective action shall be decertified, and Defendants shall reserve their right to oppose any future motion or request for class or collective action certification; (ii) the Settlement Agreement and all negotiations, statements, and proceedings relating thereto, shall be without prejudice to

the rights of any of the Parties in the Action, all of whom shall be restored to their respective positions prior to the Settlement; and (iii) neither this Agreement, nor any ancillary documents, actions, statements, or filings in furtherance of Settlement shall be admissible or offered into evidence in the Action or any other legal proceeding for any purpose whatsoever.

**D. SETTLEMENT CONSIDERATION**

**43. Gross Settlement Amount.** Defendants will pay the Gross Settlement Amount of \$575,000, which shall constitute adequate consideration for the Settlement and will be made in full and final settlement of: (1) the Released Claims released by Plaintiff and Participating Class Members; (2) Class Counsel Fees and Expenses; and (3) Service Awards. In no event shall Defendants pay more than \$575,000, except for the Costs of Administration as described in Section E and employer-side payroll taxes described in Paragraph 47. The Net Settlement Amount, approximately 362,500 shall be split up with \$62,500 attributed to the FLSA claim brought in the Complaint and \$300,000 attributed to the Indiana Wage Payment Statute claim brought in the Complaint.

**44. Method of Allocation.** Class Counsel is responsible for determining the Individual Settlement Amounts. The Individual Settlement Amounts to Putative Class Members shall be determined on a pro rata basis, accounting for the number of workweeks that a Putative Class Member worked for DWD Company, LLC over thirty (30) hours in a workweek by adding (a) each Putative Class Member who submitted an opt-in shall be entitled to the number of workweeks between three years prior to the opt-in date and October 3, 2021 plus (b) all Putative Class Members shall be entitled to the number of workweeks between October 4, 2021 through October 13, 2024.

**45. Disputes and Redistribution of Unclaimed Funds.** To the extent any Putative Class Members dispute their estimated Individual Settlement Amounts, they may submit their dispute during the Notice period to the Settlement Administrator along with documentation that supports



their dispute, including the number of workweeks they claim to have worked. . Class Counsel and Defendants' Counsel will confer regarding any disputes with the Settlement Administrator and the Settlement Administrator will have ultimate discretion to resolve each dispute. The Settlement Administrator will inform the Putative Class Member of the result.

**46. Service Awards.** Subject to approval from the Court, in addition to their Individual Settlement Amounts, the Class Representative and Tyra Denton will receive \$10,000 from the Gross Settlement Amount as a Service Award in recognition of their assistance to Class Counsel and contribution to achieving the Settlement on behalf of the Putative Class. Such Service Award shall not be considered wages, and the Settlement Administrator shall issue Plaintiff and Tyra Denton an I.R.S. Form 1099-MISC reflecting such payment as "other income." Plaintiff and Tyra Denton shall be responsible for the payment of any and all taxes with respect to the Service Award and shall indemnify and hold Defendant harmless for any and all liability with regard thereto. The failure of the Court to approve the full amount of the Service Award requested shall not impact the enforceability of this Settlement Agreement in all other respects. Any amount of the Service Award not awarded by the Court shall be distributed to Participating Class Members on a pro rata basis. Under no circumstances shall any amount of the requested Service Award revert to Defendant.

**47. Class Counsel's Fees and Expenses.** Subject to approval from the Court, Class Counsel will receive from the Gross Settlement Amount attorneys' fees in the amount of \$191,666.66 in attorney fees and \$644.01 in expenses of the Gross Settlement Amount. The failure of the Court to approve the full amount of the Class Counsel Fees and Expenses requested shall not impact the enforceability of this Settlement Agreement in all other respects, and any amount not awarded in Class Counsel Fees and Expenses shall be distributed to Participating Class Members on a pro rata basis. Under no circumstances shall any amount of the requested Class Counsel's Fees and Expenses revert to Defendants.

**48. Tax Treatment of Individual Settlement Amounts, Service Award, and Class Counsel Fees Payments.** The Settlement Administrator will treat 1/3 of all Individual Settlement Amounts as W-2 wages and 2/3 as 1099 other income (reported in Box 3) and shall report these amounts to the appropriate taxing authorities. Because Defendant is responsible for employer share of payroll taxes on the W-2 portion of the Individual Settlement Amounts, the Settlement Administrator shall invoice Defendant for the employer-side payroll taxes by the Effective Date of this Agreement, and Defendant shall pay its share of payroll taxes on the W-2 portion of the Individual Settlement Amounts within fourteen (14) days after the Effective Date. Additionally, the amounts paid to Class Counsel as an award of attorneys' fees shall be treated as non-wage income to Class Counsel on a pro rata basis and reported to appropriate taxing authorities on I.R.S. Forms 1099, or the appropriate equivalent, where applicable. To allow for the proper tax reporting, and to avoid the need for backup tax withholdings, Defendant shall provide the Settlement Administrator with the full social security number for each Participating Class Member.

**49. No Effect on Employee Benefit Plans.** Neither the Settlement Agreement nor any amounts paid under the Settlement Agreement will modify any previously credited hours, days, or weeks of service under any benefit plan, policy, or bonus sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under any Defendant-sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Stipulation shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendants' benefit plan, policy or bonus program. Defendants retain the right to modify the language of their respective benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Stipulation are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined by applicable



plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Stipulation. Defendants do not consider the Settlement payments “compensation” for purposes of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs, or any other plan sponsored by Defendants.

**E. SETTLEMENT ADMINISTRATION**

**50. Selection and Approval of Settlement Administrator.** The Settlement will be administered by CPT Group, following approval by the Court. Plaintiff shall request the Court’s approval of CPT Group, and the specific tasks it is to perform in connection with the Settlement, as part of the Motion for Preliminary Approval of the Settlement, discussed in Paragraph 40.

**51. Notice to Putative Class Members.** Within 7 days of the entry of the Preliminary Approval Order, Defendants will provide the Settlement Administrator with the Putative Class Member Information. The Settlement Administrator will update the addresses, as necessary, by reference to the United States Postal Service’s National Change of Address database.

**52. Sending of CAFA Notice.** Within ten (10) days of Plaintiff’s submission of his Motion for Preliminary Approval of the Settlement, Defendant shall mail the CAFA Notice to the appropriate federal and state officials, as required by 28 U.S.C. § 1715.

**53. Confidentiality of Putative Class Member Information.** The Settlement Administrator will (i) hold the Putative Class Member Information in strictest confidence and not disclose or divulge the Putative Class Member Information to Class Counsel; (ii) keep the Putative Class Member Information in secure facilities; (iii) not post on its website the names or any other identifying information concerning the same, or the Settlement Agreement, and (iv) use the Putative Class Member Information exclusively for or to assist in administration of this Settlement and for no other purpose.

**54. Contents and Procedure for Sending Notice to Putative Class Members.** Within twenty-one (21) days after entry of the Preliminary Approval Order, the Settlement Administrator will send the approved Notice to Putative Class Members by First-Class U.S. mail using the addresses listed in the Putative Class Member Information, as updated by the Settlement Administrator from the United States Post Office's National Change of Address database, or a comparable database. Additionally, Putative Class Members will be sent a text message and an email, each containing a link to the settlement website, to the last known telephone number and the last known email address provided as part of the Putative Class Member Information. If any Notice is returned as undelivered by the U.S. Postal Service, the Settlement Administrator shall make all reasonable efforts to follow up on bad addresses and to resend the Notice to the correct address and shall also send the Notice to addresses to Putative Class Members provided Defense Counsel.

**55. Deadline for Submitting Objections and Requests for Exclusion.** Any Putative Class Member who wishes to be excluded from the Settlement shall have thirty (30) days from the date of the postmark when Notice was first sent to submit a written request expressly asserting that he or she wishes to be excluded from the Settlement. Such written requests for exclusion should state at the top of the letter "Request for Exclusion from Settlement in *Kevin Esque, et al. v. DWD Company, LLC, et al.*, Case No. 1:23-cv-1791," and should include the (1) name, address, email



address, and telephone number of the individual requesting exclusion from the Settlement; (2) a statement that the individual understands that the individual will not be eligible to recover any monies as part of the settlement as a result of the request for exclusion; and (3) the signature of the individual requesting exclusion. All written requests for exclusion must be returned by First-Class U.S. Mail to the Settlement Administrator and must be postmarked no later than thirty (30) days from the postmark of the Notice. Any Putative Class Member who requests exclusion from the Settlement will not be eligible to receive an Individual Settlement Amount payment and cannot object to the Settlement. In the event that any Putative Class Member timely and properly submits a written request for exclusion, and also timely submits an objection to the Settlement, the Settlement Administrator shall contact such individual, inform them that they cannot request exclusion from the Settlement and object to the Settlement, and shall ask such individual which option they wish to pursue. Any Putative Class Member who requests exclusion from the Settlement will not be legally bound by the terms of the Settlement Agreement or the Final Approval Order. In contrast, any Putative Class Member who does not return a valid and timely written request for exclusion will be bound by all terms of the Settlement Agreement and the Final Approval Order, regardless of whether the Putative Class Member has objected to the Settlement.

Any Putative Class Member who has not requested exclusion and wishes to object to this Settlement, or any part thereof, must file a written objection with the U.S. District Court for the Southern District of Indiana under *Kevin Esque, et al. v. DWD Company, LLC, et al.*, Case No. 1:23-cv-1791 setting forth the nature of his or her objection; the arguments supporting the objection; a statement of whether the individual intends to appear at the Final Approval Hearing whether in person or through counsel; and the signature of the individual objector, even if represented by counsel. Copies of the written objection must be served on Class Counsel and Defense Counsel. Any objections must be filed and served no later than thirty (30) days from the postmark of the Notice.

Unless otherwise permitted by the Court, objecting Putative Class Members shall not be entitled to speak at the Final Approval Hearing unless they have timely filed and served a written objection. Any Putative Class Member who properly and timely submitted objections may appear at the Final Approval Hearing, either in person or through a lawyer retained at their own expense. Any Putative Class Members who fail to file and serve a timely written objection shall be deemed to have waived any objection and shall be foreclosed from objecting to this Settlement.

The Parties will not solicit or otherwise encourage, directly or indirectly, any Putative Class Member to request exclusion from or object to this Settlement.

**56. Re-sending Notice to Putative Class Members.** Upon request by a Putative Class Member prior to the deadline for requesting exclusion from or objecting to the Settlement, the Settlement Administrator shall re-send the Court-approved Notice.

**57. Administrator's Duty to Keep Parties' Informed.** The Settlement Administrator will keep Class Counsel and Defense Counsel reasonably informed about the progress of the administration including weekly reports of any requests for exclusion or claims received. As soon as practicable following the exclusion and objection deadline, but before the date of the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a declaration of due diligence and proof of mailing or transmittal with regard to the sending of the Notice. Class Counsel shall bear the responsibility of filing this declaration with the Court prior to the Final Approval Hearing Date.

**58. Tolerance of Opt-Outs/Named Plaintiffs Shall Not Object.** Notwithstanding any other provision of this Settlement Agreement, Defendant retains the right in the exercise of its sole discretion, to nullify the settlement within thirty (30) days after the expiration of the class member opt-out period if 15 percent or more of the members of the class opt out of the settlement. Esque will not opt-out of nor object to the settlement, nor refuse to execute a general release of claims as



referenced above.

**59. Time for Payment of Gross Settlement Amount.** Fourteen (14) days after the Effective Date, Defendant will remit the Gross Settlement Amount to the Settlement Administrator. The funds deposited in this account shall constitute a qualifying settlement fund or QSF pursuant to Section 468B of the Internal Revenue Code.

**60. Time for Payment of Individual Settlement Amounts, Service Award, and Class Counsel Fees and Expenses.** Fourteen (14) days after Payment of Gross Settlement Amount, the Administrator will issue the Service Awards to Plaintiff and Tyra Denton, issue Class Counsel's Fees and Expenses to Class Counsel, and issue payment of the Individual Settlement Amounts to Participating Class Members at the address provided by Participating Class Members on their claim forms or any updated address provided to the Settlement Administrator by the Participating Class Member. The Settlement Administrator will use reasonable efforts to locate an updated address for and resend a replacement check to any Participating Class Member whose Individual Settlement Amount check was returned as undeliverable or not deposited within 21 days of the check expiration date. All checks shall clearly indicate that they expire within 180 days of issuance.

**61. Costs of Settlement Administration.** Fourteen (14) days after the Effective Date, the Settlement Administrator shall pay itself the Costs of Administration for all reasonable costs associated with the Settlement Administrator's work under this Settlement Agreement, not to exceed \$10,000.

**62. Cy Pres Amount.** Within 180 days after the Settlement Administrator mails the initial distributions, the Settlement Administrator shall prepare and send to Defense Counsel and Class Counsel an accounting of the settlement distributions that identifies any checks issued but not cashed. Within seven (7) days of providing this accounting to Defense Counsel and Class Counsel, the Settlement Administrator shall issue a check with the *Cy Pres* Amount comprised of the value of the uncashed checks, if any, to Indiana Bar Foundation. Participating Class Members who do not cash their Individual Settlement Amount checks nevertheless remain bound by the Settlement, including the release of claims.

**F. RELEASE OF CLAIMS**

**63. Claims Released by Plaintiff.** In exchange for a Service Award as approved by the Court, Plaintiff shall and does hereby forever release, discharge, and agree to hold harmless the Defendant Releasees and each of Defendants' current and former owners, managers, supervisors, employees, directors, administrators, officers, shareholders, accountants, attorneys, insurers and insurance carriers, and agents, each Defendants' heirs, executors, administrators, agents, successors, and assigns, and each of the Defendants' predecessors, successors, parent companies, holding companies, and subsidiaries for any and all known and unknown claims, complaints, causes of action, lawsuits, demands, back wages, benefits, attorneys' fees, pain and suffering, debts, controversies, damages, judgments, in law or equity, of any kind, nature and character, which Plaintiff has, had, or may have against Defendants arising out of, related to, or in any way connected with his engagement by, employment with, or work for Defendants, including but not limited to the Released Claims, as well as any other claim arising out of any and all transactions, occurrences, or matters between Plaintiff and Defendant Releasees prior to the date this Settlement Agreement is executed, except as prohibited by law. This Release shall include, without limitation, any and all claims alleged by Plaintiff in this Action, any and all wage and hour claims relating to services



performed by Plaintiff on the behalf of any of the Defendant Releasees, and any and all wage and hour claims relating to Plaintiff's employment with any of the Defendant Releasees.

Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans With Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, as amended; (b) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act, 29 U.S.C. § 621, *et seq.*; (f) the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, as amended; (g) the Equal Pay Act of 1963, as amended; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act (COBRA), 29 U.S.C. § 1161 *et seq.*; (j) the Rehabilitation Act of 1973, as amended; (k) the Family and Medical Leave Act of 1993, at amended, 29 U.S.C. § 2601, *et seq.*; (l) the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*; (m) the Workers Adjustment and Retraining Notification Act (WARN), 29 USC § 2100 *et. seq.*, as amended; (n) any state wage payment statutes, including but not limited to the Indiana Wage Payment Statute and Indiana Wage Claims Statute; and (o) any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds, as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all legal, equitable and/or other relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and the Plaintiff hereby forever releases, discharges, and agrees to indemnify

and hold harmless the Defendant Releasees from any and all claims for attorney fees, costs, and expenses arising out of the matters released in this Settlement Agreement. Plaintiff also agrees that, to the extent permitted by law, if a claim is prosecuted in his name against one of the Defendant Releasees before any court or administrative agency, he waives and agrees not to take, any award of money or other damages from such proceeding. Plaintiff agrees that, unless otherwise compelled by law, if a claim is prosecuted in his name against one of the Defendant Releasees that he will immediately request in writing that the claim on his behalf be withdrawn.

**64. Claims Released by Participating Class Members.** It is the desire of the Parties and the Participating Class Members to fully, finally, and forever settle the Released Claims and dismiss the Action, with prejudice. Accordingly, as consideration for Defendant's payment of the Gross Settlement Amount, each Participating Class Member shall and does hereby forever release, discharge, and agree to indemnify and hold harmless the Defendant Releasees of and from the Released Claims. Regardless of whether any Participating Class Member actually negotiates the check by which his or her distribution is to be paid, each Participating Class Member will be bound to the release of Released Claims as a result of this Settlement. The parties specifically acknowledge that Tyra Denton does not release her right to assert a retaliation claim under the FLSA against DWD, Daniel Ballard, Whitney Rawlings, and DaNae Spangler. The parties also specifically acknowledge that "Released Claims" does not include any outstanding non-wage and hour grievance or Workers Compensation claims of a Participating Class Member.



**65. Effective Date of Claims Released by Participating Class Members.** The releases herein shall become effective on the Effective Date and all claims will be released through the date of the Order granting Preliminary Approval of the Settlement.

**G. NON-ADMISSION AND CONFIDENTIALITY**

**66. Non-Admission.** Nothing in this Settlement Agreement shall be construed or deemed an admission of liability, culpability, negligence or wrongdoing on the part of Defendant, and Defendant deny any such liability. The Parties entered into this Settlement for the purpose of compromising disputed claims and with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall be inadmissible in evidence in any proceeding. The preceding sentence shall not apply to an action or proceeding to approve, interpret, or enforce this Settlement.

**67. No Public Statements.** Neither Plaintiff, Participating Class Members, or Plaintiff's counsel shall issue any press release related to the settlement or speak to any member of the press related to the settlement other than to say that Plaintiff, Participating Class Members, and Plaintiff's counsel are satisfied with the settlement terms, or words to that effect. Plaintiff, Participating Class Members, and Plaintiff's counsel agree that, prior to filing the motion for preliminary approval of the settlement, they will keep the terms of the settlement confidential except for purposes of communicating with Plaintiff, Participating Class Members, and the Court, as may be necessary. Plaintiff and Participating Class Members shall also be informed that this Settlement Agreement is confidential until such time as the motion for preliminary approval is filed with the Court and shall be advised to keep the settlement confidential until such time. After preliminary approval of the settlement, Plaintiff, Participating Class Members, and Plaintiff's counsel may (i) as required by law; (ii) as required under the terms of this Settlement Agreement; or (iii) as required under counsel's duties and responsibilities as settlement class counsel, comment regarding the specific terms of the

settlement. In all other cases, Plaintiff, Participating Class Members, and Plaintiff's counsel agree to limit their statements regarding the terms of the settlement, whether oral, written, or electronic, including the worldwide web, to say the action has been resolved and that Plaintiff, Participating Class Members, and Plaintiff's counsel are satisfied with the settlement terms.

#### **H. DUTIES OF THE PARTIES**

**68. Duty to Support and Defend the Settlement.** The Parties agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

**69. Duties Prior to Court Approval.** Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement Agreement, and after affording Defendants the opportunity to review and agree to the form and substance of the materials to be presented to the Court, Class Counsel shall apply to the Court, without opposition from Defendant, for the entry of a preliminary order scheduling a hearing on the question of whether the proposed Settlement should be approved as fair, reasonable, and adequate as to the Putative Class Members, approving as to form and content the proposed Notice, and directing the sending of the Notice to Putative Class Members.

**70. Bar of Other Proceedings.** The Parties agree to support a stay of all proceedings in this Action, except as may be necessary to implement the terms of the Settlement. Pending a final determination of whether the Settlement should be approved, the Putative Class Members and all persons purporting to act on their behalf, including Class Counsel, are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any Defendant Releasees any action, arbitration, or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims or the claims released in Paragraph 65.



**I. CONSTRUCTION**

**71. Construction of Terms.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement.

**72. Invalidation.** Unless otherwise stated herein, invalidation of any material portion of the Settlement shall invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Settlement are to remain in full force and effect.

**73. Captions and Interpretations.** The captions of this Settlement Agreement are solely for reference and have no legal effect whatsoever and will not in any way affect the interpretation or construction of this Settlement Agreement.

**J. MODIFICATION**

**74. Modification.** This Settlement Agreement may not be changed, altered or modified, except in a writing signed by the Parties. This Settlement Agreement may not be discharged except by performance in accordance with the terms or by a writing signed by the Parties.

**75. Integration Clause.** This Settlement Agreement contains the entire agreement between the Parties, and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written and whether by a Party or such Party's counsel, relating to the resolution of the Action, are merged into this Settlement Agreement. No oral understandings, statements, promises or inducements contrary to the terms of this Settlement Agreement exist.

No rights under this Settlement Agreement may be waived except in writing.

**K. MISCELLANEOUS**

**76. Signatory Authorization to Settle.** The signatories to this Settlement Agreement

hereby represent that they are fully authorized to enter into this Settlement and bind the Parties to the terms and conditions of this Settlement.

**77. Execution in Counterparts.** This Settlement Agreement may be executed in counterparts, including, without limitation, by facsimile transmission or by transmission of a .pdf or other similar image file via e-mail. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, including, without limitation, those sent by facsimile transmission or by transmission of a .pdf or other similar image file via e-mail, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

**78. Non-Solicitation.** Class Representative will not solicit, contact, or otherwise encourage other current or former contractors or employees of Defendants, to assert claims against Defendant in this Action outside of the Notice or in any separate proceeding.

**79. No Right to Reengagement or Hire.** Class Representative agrees that he will have no right to be engaged or hired by any of the Defendants or any corporate entity affiliated with any of the Defendants. Should the Court not approve this provision, it shall not constitute grounds for Defendant to void this Settlement Agreement.

**80. Governing Law.** This Settlement shall be governed by and construed in accordance with the internal laws of the State of Indiana without giving effect to choice of law principles.

**81. Attorney Fees, Costs and Expenses.** Except as otherwise specifically provided for herein, each Party shall bear his or its own attorney fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other Party to this Settlement Agreement. However, if a Party breaches this Settlement Agreement, then the other Party shall be entitled to attorney fees and costs incurred in all litigation steps necessary to enforce the Settlement Agreement.



**82. Different Facts.** The Parties hereto, and each of them, acknowledge that, except for matters expressly represented herein, the facts in relation to the dispute and all claims released by the terms of this Settlement may turn out to be other than, or different from, the facts now known by each party and/or its counsel, or believed by such party or counsel to be true, and each party therefore expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this Settlement shall be in all respects effective and binding despite such difference.

**83. No Prior Assignments.** The Parties represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber, to any person or entity any portion of any liability, claim, demand, action, cause, of action or rights herein released and discharged except as set forth herein.

**84. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Plaintiff and Participating Class Members, and their heirs, trustees, executors, administrators, successors and assigns and to the benefit of Defendant and the Defendant Releasees, and their present and former, parent companies, subsidiaries, divisions, affiliates, related companies, joint ventures, and each of their respective present and former officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, general and limited partners, predecessors, successors and assigns, although not specifically named herein.

**85. Signatures of All Putative Class Members Unnecessary to be Binding.** It is agreed that, because the Putative Class Members are numerous, it is impossible or impractical to have each one execute this Agreement. It is agreed that, for purposes of seeking approval of the Settlement, this Agreement may be executed on behalf of Putative Class Members by Class Counsel and Plaintiff.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of the Settlement Agreement shall be the date of the latest signature.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**



**BY PLAINTIFF:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
KEVIN ESQUE

\_\_\_\_\_  
Date

/s/ Ronald E. Weldy  
Ronald E. Weldy, #22571-49  
rweldy@weldylegal.com  
Weldy Law  
11268 Governors Lane  
Fishers, IN 46037  
Tel: 317-842-6600

*Counsel for Plaintiff*

**BY DEFENDANT:**

3/11/2025  
Date

DaNae Spangler  
DWD COMPANY, LLC  
By: DaNae Spangler, President

3/11/2025  
Date

DaNae Spangler  
DANAE SPANGLER

3/11/2025  
Date

Whitney Rawlings  
WHITNEY RAWLINGS

3-11-25  
Date

Daniel Ballard  
DANIEL BALLARD

\_\_\_\_\_  
Date

/s/ A. Jack Finklea  
A. Jack Finklea  
jfinklea@scopelitis.com  
Scopelitis, Garvin, Light, Hanson & Feary, P.C.  
10 West Market Street, Suite 1400  
Indianapolis, IN 46204  
Tel: (317) 637-1777

*Counsel for Defendants*

**BY PLAINTIFF:**

03/11/2025

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
KEVIN ESQUE

\_\_\_\_\_  
Date

/s/ Ronald E. Weldy  
\_\_\_\_\_  
Ronald E. Weldy, #22571-49  
rweldy@weldylegal.com  
Weldy Law  
11268 Governors Lane  
Fishers, IN 46037  
Tel: 317-842-6600

*Counsel for Plaintiff*

**BY DEFENDANT:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
DWD COMPANY, LLC  
By: DaNae Spangler, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
DANAE SPANGLER