

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS

This Class Action and PAGA Settlement Agreement and Release of Claims is entered into by and between Plaintiff Charlie Hear, individually and on behalf of all others similarly situated, and Defendant International Paving Services, Inc., and approved by their respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

A. Definitions

1. “Action” or “Lawsuit” means and refers to the case entitled *Charlie Hear v. International Paving Services, Inc.*, filed and pending in San Bernardino County Superior Court as Case No. CIVSB2133787.

2. “Aggrieved Employees” include all persons who are, or were previously, employed by Defendant in California and classified as an overtime non-exempt employee at any time from December 7, 2020 through March 20, 2024.

3. “Agreement,” “Settlement Agreement,” “Settlement,” or “Stipulation” shall mean this Class Action and PAGA Settlement Agreement and Release of Claims, including any attached exhibit.

4. “Class Claims” or “Released Class Claims,” as more fully described in Paragraph 57 below, include all claims that were pled in the operative Complaint based on the facts alleged therein, or could have been alleged, including claims for failure to timely pay wages, failure to pay overtime wages, failure to pay all sick time wages, meal and rest break violations, failure to provide recovery periods, failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to timely pay all wages upon separation of employment, and unfair business practices.

5. “Class Counsel” refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C.

6. “Class Data” means a complete list of all Settlement Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator on one spreadsheet, and which shall include the Settlement Class Members’ full

1 names, last known addresses, telephone numbers, Social Security numbers, the number of
2 Workweeks as non-exempt employees of Defendant during the Class Period and the PAGA
3 Period for each Settlement Class Member; and the amount paid to any Settlement Class Member
4 during a Pick Up Stix Campaign that obtained individual settlement agreement from some
5 Settlement Class Members conducted in the fall of 2023.

6 7. “Class Period” and “Class Release Period” shall mean December 8, 2017 through
7 March 20, 2024.

8 8. “Class Representative” or “Plaintiff” means and refers to the named plaintiff
9 Charlie Hear.

10 9. “Complaint” refers to the operative Second Amended Class Action and PAGA
11 Complaint filed and pending in the Action.

12 10. “Court” means the San Bernardino County Superior Court or any other court of
13 competent jurisdiction.

14 11. “Defendant” means and refers to International Paving Services, Inc.

15 12. “Defendant’s Counsel” or “Defense Counsel” means and refers to John Purcell,
16 Jeffrey B. Weston, and Paul R. Lynd of ArentFox Schiff LLP.

17 13. “Effective Date” means the latest of the following dates: (i) if no Class Member
18 timely and properly objects, intervenes, or files a motion to vacate the judgment approving the
19 Settlement Agreement under Code of Civil Procedure section 663, then the date the Court enters
20 an order granting Final Approval of the Settlement Agreement; (ii) if a Class Member objects,
21 intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then
22 sixty-one (61) calendar days following the date the Court enters an order granting final approval,
23 assuming no appeal is filed; or (iii) if a Class Member objects, intervenes, or files a motion to
24 vacate the judgment approving the Settlement Agreement, and if a timely appeal is filed, the date
25 of final resolution of that appeal (including any petitions for rehearing or review), remittitur to
26 the San Bernardino County Superior Court, and the finality of a Final Approval order.

27 14. “Final” means that the Settlement has been granted “Final Approval” by the Court
28 and the “Effective Date” has occurred.

1 15. “Final Approval” refers to the order of the Court granting final approval of this
2 Settlement Agreement and entering a judgment approving this Settlement on substantially the
3 same terms provided herein, or as may be modified by subsequent agreement of the Parties or
4 order of the Court.

5 16. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
6 48(d) below.

7 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 48(c)
8 below.

9 18. “Non-Participating Class Members” means any Settlement Class Member, other
10 than Plaintiff, who may request to be excluded from the Participating Settlement Class by
11 submitting a “Request for Exclusion” to the Settlement Administrator, postmarked on or before
12 the Notice Response Deadline.

13 19. “Notice” means the notice of the proposed settlement of class action and PAGA
14 settlement and the setting of a Final Approval Hearing that will be sent to the Settlement Class
15 Members.

16 20. “Notice Response Deadline” is 45 calendar days from the date the Notice is mailed
17 to the Settlement Class Members.

18 21. “Objecting Settlement Class Member” means a Settlement Class Member, other
19 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
20 respect to the Class Claims pursuant to Paragraph 69(a) below.

21 22. “PAGA” shall refer to the Labor Code Private Attorneys General Act of 2004,
22 California Labor Code sections 2698-2699.5.

23 23. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims for
24 civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notice and that
25 were pled in the operative Complaint based on the facts alleged therein, including claims for civil
26 penalties for the alleged violation of Labor Code sections 201, 202, 203, 204, 226.7, 210, 226,
27 510, 516, 558, 1182.12, 1194, 1197, 1198, and 2802.

28 24. “PAGA Notice” shall refer to the notices sent by Plaintiff, by and through Class

1 Counsel, on or about December 7, 2021 and February 14, 2023, to the LWDA and to Defendant,
2 alleging that Defendant engaged in violations of the California Labor Code and California Wage
3 Order(s), and seeking to pursue civil penalties under PAGA for the alleged violations.

4 25. “PAGA Period” and “PAGA Release Period” shall mean December 7, 2020,
5 through February 20, 2024.

6 26. “Participating Class Member(s)” means any and all Settlement Class Members
7 who do not opt-out of the settlement of the Class Claims by timely submitting valid Requests for
8 Exclusion.

9 27. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the
10 Aggrieved Employees, and Defendant, collectively.

11 28. “Pick Up Stix Campaign” means the process before mediation by which
12 Defendant, under *Chindarah v. Pick Up Stix, Inc.* (2009) 179 Cal.App.4th 796, entered into
13 written individual settlement agreements (which Defendant produced to Class Counsel) with
14 some Settlement Class Members in the fall of 2023, to resolve their potential individual claims as
15 alleged in the operative Complaint in the Action, Defendant paying 64 Settlement Class Members
16 \$300,000 based on their individual settlement agreements.

17 29. “Preliminary Approval Date” means the date the Court preliminarily approves the
18 Settlement Agreement, including any exhibit, and enters the Preliminary Approval Order.

19 30. “Preliminary Approval Order” means the judicial Order to be entered by the Court,
20 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and
21 providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt
22 out of settlement of the Class Claims (to the extent a Settlement Class Member has not already
23 released Class Claims through the Pick Up Stix Campaign), an opportunity to submit timely
24 objections to the terms of this Settlement related to the Class Claims, and setting a hearing on the
25 fairness of the terms of Settlement, including approval of attorneys’ fees and costs.

26 31. “QSF” means the Qualified Settlement Fund set up by the Settlement
27 Administrator for the benefit of the Settlement Class, and from which the settlement payments
28 shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code

1 Section 468.

2 32. "Release" shall mean the release and discharge of the Class Claims by Plaintiff
3 and all of the Participating Class Members, and the release and discharge of the PAGA Claims
4 with respect to Plaintiff and all of the Aggrieved Employees.

5 33. "Released Parties" shall refer to Defendant, together with its current and former
6 owners, shareholders, members, officers, directors, managers, employees, agents, parents,
7 principals, heirs, subsidiaries, affiliates, operators, partners, attorneys, successors, and assigns.

8 34. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 69(a)
9 below.

10 35. "Service Payment" or "Service Award" means the amount approved by the Court
11 to be paid to the Class Representative in addition to his Individual Settlement Amount as a
12 Participating Class Member.

13 36. "Settlement Administration Costs" means the actual and direct fees and expenses
14 reasonably incurred by the Settlement Administrator for administering this Settlement, including,
15 but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting,
16 due diligence, reporting and remittance obligations, distributing the Settlement Amount, and
17 providing necessary reports and declarations, as requested by the Parties. The Settlement
18 Administration Costs shall be paid from the Gross Settlement Amount.

19 37. "Settlement Administrator" means and refers to CPT Group, a settlement
20 administrator mutually agreed to by the Parties, that will provide the Notice to the Class Members
21 and perform all duties relating to the administration of the Settlement as required by this
22 Agreement, including, but not limited to, printing, distributing, and tracking documents for this
23 Settlement, tax reporting, distributing the Settlement Amount, and providing necessary reports
24 and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid
25 from the Gross Settlement Amount, including, if necessary, any such costs in excess of the amount
26 represented by the Settlement Administrator as being the maximum costs necessary to administer
27 the Settlement.

28 38. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning

1 ascribed to it in Paragraph 48(a) below.

2 39. “Settlement Class Member” or “Class Member” refers to individual members of
3 the Settlement Class.

4 40. “Settlement Class” and “Settlement Class Members” refers to all persons who are
5 or were previously employed by Defendant in California classified as a non-exempt employee
6 during the Class Period.

7 41. “Workweeks” for each Settlement Class Member or Aggrieved Employee means
8 any workweek during the Class Period or the PAGA Period, as applicable, in which the Settlement
9 Class Member or Aggrieved Employee was employed by Defendant as a non-exempt employee
10 in California and worked at least one shift during the designated workweek. Workweeks will be
11 calculated based on Defendant’s business records. This information shall be treated as
12 confidential. Workweeks of Non-Participating Class Members will not be included in the total
13 number of Workweeks that are reported to the Settlement Administrator to calculate and distribute
14 Individual Settlement Payments to Participating Class Members. The number of full workweeks
15 that a Participating Class Member was on a leave of absence, sick time, or vacation during the
16 Class Period shall be excluded from the total number of Workweeks and from the Workweeks
17 attributed to that Participating Class Member, regardless of whether the Class Member was paid
18 during those Workweeks.

19 **B. General Terms**

20 42. On or about December 8, 2021, Plaintiff filed a Class Action Complaint in the
21 Court against Defendant, alleging various wage and hour violations based on the Labor Code and
22 the Unfair Competition Law (“UCL”; Bus. & Prof. Code § 17200 *et seq.*). On or about July 21,
23 2022, Plaintiff filed a First Amended Complaint to add a cause of action for civil penalties under
24 PAGA based on the underlying alleged Labor Code violations. On or about March 28, 2023,
25 Plaintiff filed the Second Amended Class Action and PAGA Complaint to add claims for the
26 alleged failure to timely pay wages and failure to pay all sick time wages. This operative
27 Complaint alleges causes of action for: (1) failure to timely pay wages under Labor Code section
28 204; (2) failure to pay overtime wages; (3) failure to pay all sick leave wages; (4) meal period

1 violations; (5) rest period violations; (6) failure to provide recovery rest periods; (7) failure to
2 reimburse business expenses; (8) wage statement violations; (9) waiting time penalties under
3 Labor Code section 203; and (10) unfair competition.

4 43. Defendant denies Plaintiff's claims and allegations. It further contends that the
5 Action is not suitable for class certification or cannot be maintained as a representative action.

6 44. Class Representative believes he can proceed with his class and representative
7 claims, that the Action is meritorious, and that class certification is appropriate.

8 45. The Parties conducted a thorough investigation into the facts of the Action. This
9 investigation included written discovery, as well as Defendant's extensive disclosure of
10 information and materials in informal discovery for two mediations. This discovery and
11 disclosures included Defendant's written policies and payroll and timekeeping records for
12 Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable
13 about, and has done extensive research with respect to, the applicable law and potential defenses
14 to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has
15 diligently pursued an investigation of the Class Members' claims against Defendant. Based on
16 the data and information disclosed, and on Class Counsel's own independent investigation and
17 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
18 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
19 adequate, as well as in the best interest of the Settlement Class Members and Aggrieved
20 Employees in light of all known facts and circumstances, including the risk of significant delay
21 and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous
22 potential appellate issues.

23 46. On December 18, 2023, the Parties participated in mediation before Marc Feder,
24 Esq. of Frank Feder Mediators, a highly experienced class action mediator. After a full-day
25 mediation, followed by subsequent negotiations, the Parties reached a settlement by accepting a
26 mediator's proposal.

27 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
28 to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement

1 shall be construed as an admission by Defendant of any wrongdoing or violation of any statute,
2 wage order, or legal requirement, nor liability on the claims or allegations in the Action.

3 48. Stipulation for Class Certification and Representative Treatment. For settlement
4 purposes only, the Parties will stipulate that the Settlement Class Members described herein who
5 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement
6 class, as well as that the Aggrieved Employees are appropriate for representative treatment for
7 purposes of settlement. This stipulation to certification and representative treatment is in no way
8 an admission that class action certification or representative treatment is proper and shall not be
9 admissible in this or any other action, except for the sole purposes of enforcing this Agreement.
10 Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to
11 class certification and representative treatment as part of the Settlement shall become null and
12 void *ab initio*, with no legal bearing, and shall not be admissible in connection with the issues of
13 whether or not class certification or representative treatment would be appropriate in a non-
14 settlement context. Defendant expressly reserves its right to continue to oppose class certification,
15 representative treatment, and the substantive merits of the case if the Court fails to grant Final
16 Approval. Plaintiff expressly reserves his rights to pursue class certification, representative
17 treatment, and a judgment if the Court fails to grant Final Approval.

18 **C. Terms of Settlement**

19 49. The financial terms of the Settlement are as follows:

20 (a) Gross Settlement Amount, or Settlement Amount: The Parties agree to settle this
21 Action for a gross amount of Nine Hundred Seventy-Five Thousand Dollars (\$975,000.00), with
22 a credit for the three hundred thousand dollars (\$300,000.00) that Defendant previously paid to
23 64 Class Members for individual settlement agreements obtained during the Pick Up Stix
24 Campaign process. The exact amount of this credit to be applied against the gross settlement
25 amount shall be determined based on information provided by Defendant showing executed
26 settlement agreements with Class Members from the Pick Up Stix Campaign and the amounts
27 paid to those Class Members as a result of those individual settlements. The \$975,000.00 Gross
28 Settlement Amount is the maximum amount that will be paid by Defendant for this Settlement,

1 with all amounts due paid from that amount after applying the total credit amount based on the
2 Pick Up Stix Campaign, including Individual Settlement Amounts, attorneys' fees awarded to
3 Class Counsel, litigation costs and expenses awarded to Class Counsel, the Service Payment to
4 the Class Representative, all Settlement Administration Costs, and the amount allocated for
5 PAGA civil penalties. Notwithstanding this provision, Defendant shall separately pay the
6 employer's share of applicable payroll taxes due on the portions of Individual Settlement
7 Amounts classified as payment of "wages."

8 (b) The Settlement is based on Defendant's representation that there are
9 approximately 18,586 Workweeks included in the Class Period, subject to Defendant's further
10 calculation and disclosure of Workweeks during the Settlement approval and administration
11 process. If the actual number of Workweeks worked by all Settlement Class Members during this
12 period increases by 10 percent or more, then Defendant shall increase the QSF (i.e., the portion
13 of the Gross Settlement Amount payable to Participating Class Members as Individual Settlement
14 Amounts) on a proportional basis in excess of 10 percent (e.g., if there is a one percent increase
15 in the number of Workweeks, then Defendant will increase the QSF by one percent).

16 (c) Net Settlement Amount: The "Net Settlement Amount" is defined as the
17 Settlement Amount, less attorneys' fees and litigation costs and expenses as approved and
18 awarded by the Court, the Service Payment to Class Representative as approved and awarded by
19 the Court, the Settlement Administration Costs, as approved and awarded by the Court, and
20 amount allocated to settle the claim in the action for PAGA civil penalties as described in
21 paragraph 42 below. In the event that the Court reduces the attorneys' fees and litigation costs or
22 Service Awards, Settlement Administration Costs, or either increases or decreases the amount
23 allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly.

24 (d) Individual Settlement Amounts for the Settlement Class: The Settlement
25 Administrator will use the Class Data provided by Defendant to calculate each Participating Class
26 Member's and Aggrieved Employee's Individual Settlement Amounts based on the following
27 formula:

28 i. PAGA Amount: \$50,000 of the Gross Settlement Amount has been

1 designated for payment to resolve the PAGA claims. In accordance with Labor Code section
2 2699, subdivision (i), (25 percent of the \$50,000, or \$12,500, shall be paid out to Aggrieved
3 Employees. Each Aggrieved Employee shall receive a portion of the \$12,500 proportionate to the
4 number of Workweeks for that individual Aggrieved Employee during the PAGA Period.
5 compared to the total number of Workweeks of all Aggrieved Employees during the PAGA
6 Period. Aggrieved Employees shall have their settlement amount for the Released PAGA claims
7 paid entirely as civil penalties, no tax withholding and for which the Settlement Administrator
8 will issue a Form 1099 for the payment.

9 ii. Class Amount: The Net Settlement Amount shall be allocated to
10 Participating Class Members based on their individual proportionate Workweeks during the Class
11 Period. This is determined by multiplying the Net Settlement Amount by a fraction, the
12 numerator of which is the Participating Class Member's total Workweeks during the Class Period,
13 and the denominator of which is the total Workweeks of all Participating Class Members during
14 the Class Period. To the extent the Participating Class Member previously signed a release
15 agreement and received a settlement payment as a result of the Pick Up Stix Campaign, the
16 Participating Class Member's Individual Settlement Payment shall be reduced by the amount
17 already paid to the Participating Class Member. If there are any timely submitted Requests for
18 Exclusion, the Settlement Administrator shall recalculate the Individual Settlement Amounts for
19 each Participating Class Member, so that any Individual Settlement Payment that an excluded
20 Class Member would have received is distributed to Participating Class Members and the amount
21 actually distributed to Participating Class Members equals all of the Net Settlement Amount
22 allocated toward Released Class Claims.

23 (e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts
24 will be allocated for tax purposes based on the allegations in the Action as follows: 20 percent
25 will be paid as "wages" and thus subject to withholding of all applicable local, state, and federal
26 taxes, and with 80 percent paid as interest and penalties from which no taxes will be withheld.
27 The Settlement compromises causes of action in the Action seeking statutory penalties allegedly
28 due Class Members pursuant to, *inter alia*, Labor Code sections 203, 210, and 226. The

1 Settlement Administrator will issue to each Participating Class Member a Form W-2 or other
2 appropriate tax reporting form for these payments.

3 (f) Service Payment to Class Representative: The amount awarded to Class
4 Representative as a Service Payment will be set by the Court in its discretion, but not to exceed
5 \$10,000. The Parties agree on this amount. The Service Payment to Class Representative will be
6 paid out of the Gross Settlement Amount. The Settlement Administrator shall issue Class
7 Representative a Form 1099 for this payment. Plaintiff shall be solely and legally responsible to
8 pay any and all applicable taxes on this payment. The Parties agree that any amount awarded by
9 the Court as the Service Payment to Plaintiff less than the requested amount shall not be a basis
10 for Plaintiff or Class Counsel to void this Agreement. If the Court approves a lesser amount for
11 the Service Payment, the difference shall be added to the Net Settlement Amount and distributed
12 to the Participating Class Members.

13 (g) Class Counsel's Attorneys' Fees and Costs: Defendant agrees not to oppose a
14 request by Class Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of
15 the Gross Settlement Amount (i.e., \$325,000), plus reasonable litigation costs and expenses not
16 to exceed \$25,000 ("Attorneys' Fees and Cost Award"), as long as the requests do not exceed
17 these amounts. For purposes of this Settlement, Defendant agrees not to oppose any contention
18 by Class Counsel that attorneys' fees should be based on the common fund theory. The
19 Attorneys' Fee and Cost Award shall be paid from the Gross Settlement Amount. Except for this
20 award, Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses
21 to Class Counsel. If the Court approves a lesser amount than what is sought by Class Counsel for
22 attorney's fees or costs, the difference shall be added to the Net Settlement Amount and
23 distributed to the Participating Class Members. Any Court order awarding less than the amount
24 sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise
25 void the Settlement. The Settlement Administrator shall issue to Class Counsel a Form 1099
26 reflecting the amount of attorneys' fees and costs awarded by the Court and paid from the Gross
27 Settlement Amount. The Parties agree that any allocation of fees between or among Class
28 Counsel and any other attorney representing or claiming to represent the Class Members shall be

1 the sole responsibility of Class Counsel.

2 (h) Settlement Administration Costs: The fees and other charges of the Settlement
3 Administrator will be paid from the Gross Settlement Amount, subject to Court approval.

4 (i) PAGA Payment: The Parties agree that \$50,000 is allocated to a PAGA Payment
5 to resolve claims in the Action for civil penalties under PAGA. This amount will be paid from
6 the Gross Settlement Amount, subject to Court approval. Of this amount, pursuant to Labor Code
7 section 2699, subdivision (i), \$37,500, or 75 percent, shall be paid to the California Labor and
8 Workforce Development Agency (“LWDA”), with the remaining 25 percent payable to the
9 Aggrieved Employees as set forth in Paragraph 48(d). Class Counsel shall be responsible for
10 notifying the LWDA of this Settlement in accordance with Labor Code section 2699, subdivision
11 (1)(2).

12 (j) Tax Liability: Class Counsel, Defendant, and Defendant’s Counsel make no
13 representations as to the tax treatment or legal effect of Settlement Amounts provided in this
14 Agreement, and Plaintiff and the Settlement Class Members are not relying on any statement or
15 representation by Class Counsel, Defendant, or Defendant’s Counsel in this regard. Plaintiff and
16 Settlement Class Members understand and agree that they will be solely responsible for paying
17 any taxes and related penalties assessed on their respective Settlement Amounts described.
18 Income tax withholding will also be made pursuant to applicable federal, state, or local
19 withholding codes or regulations. Forms W-2 or Forms 1099 will be distributed at times and in
20 the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this
21 Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law are
22 changed after the date of this Agreement, the processes set forth in this Section may be modified
23 in a manner to bring the Parties into compliance with any such changes.

24 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR
25 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
26 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
27 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
28 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR

1 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
2 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
3 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
4 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
5 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
6 EXCLUSIVELY UPON HIS, HER, THEIR, OR ITS OWN, INDEPENDENT LEGAL AND
7 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH
8 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
9 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR
10 TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
11 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
12 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
13 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
14 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
15 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
16 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
17 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
18 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
19 AGREEMENT.

20 50. "Non-Reversionary" Settlement. The Settlement is a "non-reversionary"
21 settlement. Under no circumstances will any portion of the Settlement Amount revert to
22 Defendant. Settlement Class Members will not have to make a claim to receive an Individual
23 Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made
24 directly to each Settlement Class Member. The Settlement Administrator shall be responsible for
25 accurately and timely reporting any remittance obligations with respect to unclaimed funds as a
26 result of a Settlement Class Member not cashing an Individual Settlement Amount by the check
27 cashing deadline, as set forth in this Agreement.

28 51. Plaintiff and Class Counsel, as representatives of the Settlement Class and the

1 Aggrieved Employees, believe that the Settlement is fair, reasonable, and adequate, and will
2 represent same to the Court.

3 **D. Release by Plaintiff and the Settlement Class**

4 52. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class
5 Member, for themselves and for their respective spouses, domestic partners, marital community,
6 children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors,
7 administrators, trustees, conservators, guardians, assigns, and representatives, will forever
8 completely release and discharge the Released Parties from the Released Class Claims for the
9 Class Release Period.

10 53. Each Participating Class Member will be deemed to have made the foregoing
11 Release as if by manually signing it individually.

12 54. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each
13 Aggrieved Employee, for themselves and for their respective spouses, domestic partners, marital
14 community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees,
15 executors, administrators, trustees, conservators, guardians, assigns, and representatives, will
16 forever completely release and discharge the Released Parties from the Released PAGA Claims
17 for the PAGA Release Period.

18 55. Each Aggrieved Employee and the LWDA will be deemed to have made the
19 foregoing Release as if by manually signing it individually.

20 56. Plaintiff and Defendant intend that the Settlement described in this Agreement will
21 release and preclude any further claim, whether by lawsuit, administrative claim or action,
22 arbitration, demand, or other action of any kind, by each and all of the Participating Class
23 Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released
24 Class Claims. The Settlement Class Members shall be notified in the Notice. This paragraph
25 does not apply to any Settlement Class Member who timely and validly opts out of the Settlement
26 for purposes of Class Claims by submitting a Request for Exclusion.

27 57. Plaintiff and Defendant intend that the Settlement described in this Agreement will
28 release and preclude any further claim, whether by lawsuit, administrative claim or action,

1 arbitration, demand, or other action of any kind, by each and all of the Aggrieved Employees and
2 the LWDA to obtain a recovery based on, arising out of, or related to any and all of the Released
3 PAGA Claims. The Aggrieved Employees and the LWDA shall be so notified in the Notice.

4 58. Upon the Effective Date, and subject to Defendant's full payment of the additional
5 remainder of the Gross Settlement Amount due after credit of monies already paid pursuant to
6 individual settlements after the Pick Up Stix Campaign, Plaintiff and all Participating Class
7 Members who have not validly and timely opted out of the Settlement Class will be deemed to
8 have fully released and discharged the Released Parties from any and all Released Class Claims
9 arising during their employment with Defendant in a non-exempt position in California during
10 the Class Period. The Released Class Claims are all claims asserted in the operative Complaint
11 in the Action, or which could have been asserted in the Action based on the facts alleged,
12 including all claims for failure to timely pay wages under Labor Code section 204 (including for
13 penalties under Labor Code section 210), failure to pay overtime wages (including failure to pay
14 overtime at the correct regular rate of pay), failure to pay all paid sick leave due (including failure
15 to pay sick leave at the correct rate), failure to provide meal, rest, or recovery rest breaks as
16 required or pay premium pay under Labor Code section 226.7, subdivision (c), failure to
17 reimburse business expenses, providing inaccurate wage statements (and penalties under Labor
18 Code section 226), waiting time penalties under Labor Code section 203, and unfair business
19 practices. The Released Class Claims include all claims arising under Labor Code sections 200,
20 201 through 203, 204, 210, 218.5, 226, subdivision (a), 226, subdivision (e), 226.3, 226.7, 246,
21 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, and 2802 through 2804, the applicable Industrial
22 Wage Commission wage order, and Business and Professions Code section 17200 as they relate
23 to the underlying claims and allegations in the Action. The Released Claims further include all
24 other claims for wages, penalties, civil penalties, liquidated damages, punitive damages, interest,
25 attorneys' fees, litigation costs, restitution, declaratory relief, equitable relief, or additional
26 damages that allegedly may arise out of these claims.

27 59. Class representative, on behalf of himself and the Participating Settlement Class
28 Members, acknowledges and agrees that the claims for unpaid wages (including premium pay for

1 meal, rest, and recovery rest period breaks), business expenses, inaccurate wage statements,
2 untimely payment of wages, and otherwise in the Action, are the subject of a bona fide and good
3 faith dispute, and that the payments provided for in this Settlement constitute a compromise of
4 sums allegedly due to them. Plaintiff agrees that Defendant has paid him and Participating Class
5 Member the concededly due amount of wages or premium pay due from their employment, either
6 previously or through the Settlement, with respect to the claims alleged in the Action and released
7 through this Settlement.

8 **E. Release by Class Representative**

9 60. Except for claims or causes of action that cannot be released as a matter of law
10 without court or agency approval, such as worker's compensation claims, Plaintiff agrees to
11 completely release and discharge the Released Parties from any and all individual claims or causes
12 of action that he may have against them, including other claims or causes of action that he may
13 have with respect to his employment with Defendant, including the termination of that
14 employment. Plaintiff releases and discharges Released Parties from such claims or causes of
15 action on behalf of himself and his respective spouses, domestic partners, marital community,
16 children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors,
17 administrators, trustees, conservators, guardians, assigns, and representatives. This individual
18 release is in addition to Plaintiff's release of Released Class Claims and Released PAGA Claims
19 with respect to himself through this Agreement. It extends to any and all further claims
20 concerning any other alleged liabilities, obligations, promises, agreements, contracts,
21 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and
22 expenses (including for back wages, statutory penalties, civil penalties, liquidated damages,
23 exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the
24 beginning of time through the execution of this Agreement, whether known or unknown,
25 suspected or unsuspected, concealed or hidden. Plaintiff agrees not to seek any further
26 compensation or relief from the Released Parties with respect to any of these other released claims
27 or causes of action.

28 61. The claims and causes of action released by Plaintiff in this Agreement specifically

1 include the release of any and all claims, rights, or benefits that Plaintiff may have under Civil
2 Code section 1542. Civil Code section 1542 provides:

3 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
4 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
5 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
6 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
7 **OR HER SETTLEMENT WITH THE DEBTOR.**

8 On behalf of himself, Plaintiff acknowledges that he is familiar with the provisions of Civil Code
9 section 1542. Plaintiff, being aware of Civil Code section 1542, nonetheless agrees expressly to
10 waive any rights he may have under it, as well as under any other statute or common law principles
11 of similar effect.

12 **F. Interim Stay of Proceedings**

13 62. Pending completion of all of the prerequisites necessary to effectuate this
14 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action,
15 except such as are necessary to effectuate the Settlement.

16 **G. Notice Process**

17 63. Appointment of Settlement Administrator. The Parties have agreed to the
18 appointment of CPT Group as the Settlement Administrator to perform the duties of a settlement
19 administrator, including mailing the Notice, using standard devices to obtain forwarding
20 addresses, independently reviewing and verifying documentation associated with any claims or
21 opt-out requests, resolving any disputes regarding the calculation or application of the formula
22 for determining the Individual Settlement Amounts, drafting and mailing the settlement checks
23 to Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities, due
24 diligence, reporting and remittance obligations, and performing such other tasks as set forth herein
25 or as the Parties mutually agree or that the Court orders. The Settlement Administrator shall also
26 be responsible for issuing to Plaintiff, Settlement Class Members, and Class Counsel any Forms
27 W-2, Forms 1099, or other Tax Forms as may be required by law for all amounts paid pursuant
28 to this Agreement. The Settlement Administrator shall also be responsible for setting up all
necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate
government authorities.

1 64. Disputes Regarding Settlement Administration. Any and all disputes relating to
2 the administration of the Settlement by the Settlement Administrator (except for disputes
3 regarding Class Data) shall be referred to the Court, if necessary, which will have continuing
4 jurisdiction over the terms and conditions of this Settlement Agreement until Plaintiff and
5 Defendant notify the Court that all payments and obligations contemplated by this Settlement
6 Agreement have been completed. Before presenting any issue to the Court, counsel for the Parties
7 will confer in good faith to resolve the dispute without the necessity of Court intervention.

8 65. Class Data. Within twenty-one (21) days after service of notice of entry of the
9 Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement
10 Administrator. The Settlement Administrator will run a check of the Class Members' addresses
11 against those on file with the U.S. Postal Service's National Change of Address List. The Class
12 Data provided to the Settlement Administrator will not be provided to Class Counsel, it will
13 remain confidential, it shall be used solely to administer the Settlement, and it will not be used or
14 disclosed to anyone except as required by applicable tax authorities, pursuant to Defendant's
15 express written consent, or by order of the Court. The Settlement Administrator will be required
16 to sign and provide to Defendant a Certification Regarding Confidential Discovery Materials and
17 to be bound by a Stipulated Protective Order as entered by the Court.

18 66. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
19 Administrator to the Settlement Class Members by first-class mail, in English and Spanish, within
20 fourteen (14) calendar days following the Settlement Administrator's receipt of the Class Data.
21 The Settlement Administrator shall use standard devices, including a skip trace, to obtain
22 forwarding addresses of Settlement Class Members if any envelopes are returned.

23 67. Returned Notices. The Settlement Administrator will take steps to ensure that the
24 Notice is received by all Settlement Class Members, including utilization of the National Change
25 of Address Database maintained by the United States Postal Service to review the accuracy of
26 and, if possible, update a mailing address. Notices will be re-mailed to any Settlement Class
27 Member for whom an updated address is located within ten (10) calendar days following both the
28 Settlement Administrator learning of the failed mailing and its receipt of the updated address. The

1 Notice shall be identical to the original Notice, except that it shall notify the Settlement Class
2 Member that the exclusion (opt-out) request or objection must be returned by the later of the
3 Notice Response Deadline or fifteen (15) days after remailing the Notice.

4 68. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
5 if an envelope has not been returned within thirty (30) days of the mailing the Settlement Class
6 Member received the Notice.

7 69. Disputes Regarding Class Data. Settlement Class Members are deemed to
8 participate in the Settlement unless they timely and validly opt out. The Notice will inform
9 Settlement Class Members of their respective estimated Individual Settlement Amount and their
10 respective individual number of Workweeks during the Class Period and the PAGA Period. To
11 the extent a Class Member disputes any of the information listed on his or her Notice, the Class
12 Member may produce evidence to the Settlement Administrator showing such information that
13 the Class Member contends should be reflected in the information and calculations in the Notice.
14 Defendant's records and information will be presumed determinative, however, and the
15 Settlement Administrator's decision on these matters will be final. If the Settlement
16 Administrator increases the number of Workweeks for any Settlement Class Member, then the
17 Settlement Administrator will recalculate the Participating Class Members' Individual Settlement
18 Amounts; accordingly, in no event will Defendant be required to increase the Gross Settlement
19 Amount. The Class Notice also will set forth IRS W-9 information, if required.

20 70. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
21 for the Parties, at least twenty-five (25) days before the final approval hearing, a declaration of
22 due diligence and proof of mailing with regard to the mailing of the Notice.

23 71. Settlement Class Members' Rights. Each Settlement Class Member will be fully
24 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
25 Class Claims, and the ability to opt-out or request exclusion from the Class Claims provisions of
26 the Settlement. The Notice will inform the Settlement Class Members of the Court-established
27 deadlines for filing objections or requesting exclusion from the Class Claims provisions of the
28 Settlement in accordance with the following guidelines:

1 (a) Requests for Exclusion from Participating Settlement Class. Any
2 Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating
3 Settlement Class by submitting a “Request for Exclusion” to the Settlement Administrator,
4 postmarked on or before the Notice Response Deadline. The Request for Exclusion should be
5 stated in words substantially to this effect:

6 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
7 THE HEAR V. INTERNATIONAL PAVING SERVICES LAWSUIT. I
8 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
9 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM
10 THE CURRENT SETTLEMENT OF THE CLASS CLAIMS IN THIS
11 LAWSUIT. IF I PREVIOUSLY ENTERED INTO AN INDIVIDUAL
12 SETTLEMENT WITH THE COMPANY, I UNDERSTAND THAT
13 OPTING OUT WILL NOT VOID MY PREVIOUS SETTLEMENT AND
14 I WILL NOT HAVE TO RETURN THE MONEY THAT I PREVIOUSLY
15 RECEIVED FOR IT, BUT THAT I WILL NOT RECEIVE ANY
16 ADDITIONAL MONEY AS PART OF THIS FURTHER
17 SETTLEMENT.”

18 Any Request for Exclusion must include the full name, address, telephone number, last
19 four digits of the social security number or date of birth, and signature of the Settlement Class
20 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
21 Settlement Administrator at the specified address. Any such Request must be made in accordance
22 with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked
23 by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement
24 Class Member who timely requests exclusion in compliance with these requirements: (i) will not
25 have any rights under this Agreement with respect to the Class Claims, including the right to
26 object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments
27 under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement,
28 or the Judgment, with respect to the Class Claims.

(b) Binding Effect on Participating Settlement Class Members. Except for
those Settlement Class Members who exclude themselves in compliance with the procedures set
forth above, all Settlement Class Members will: (i) be deemed to be Settlement Class Members
for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this

1 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided
2 herein, will be deemed to have waived all objections and oppositions to the fairness,
3 reasonableness, and adequacy of this Settlement.

4 (c) Objections to Settlement of Class Claims. Any Settlement Class Member,
5 other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims
6 and may appear at the Final Approval Hearing and object whether or not they have filed a written
7 objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement
8 Administrator, in writing, of the particular objection, which must be postmarked by the Notice
9 Response Deadline at the address set forth in the Notice. Such objection shall include the full
10 name, address, telephone number, dates of employment with Defendant of the Objecting
11 Settlement Class Member, the case name and number, the basis for the objection, including any
12 legal support, and each specific reason in support of the objection, as well as any documentation
13 or evidence in support thereof, and, if counsel represents the Objecting Settlement Class Member,
14 the name and address of any counsel. If any Objecting Settlement Class Member wishes to speak
15 at the Final Approval Hearing with respect to the Class Claims, that Objecting Settlement Class
16 Member's written submission should include a request to be heard, and the Court will determine
17 whether Objecting Settlement Class Members will be permitted to speak. The Settlement
18 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three
19 days of receipt, and the Settlement Administrator shall attach the same to its declaration of due
20 diligence it files with the Court prior to the Final Approval Hearing. Any Participating Class
21 Member who files an objection remains eligible to receive monetary compensation from the
22 Settlement. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses
23 incurred by any Class Member and/or his/her/their counsel related to any objections to the
24 Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather,
25 the right to appeal is preserved by becoming a party of record by timely and properly intervening
26 or filing a motion to vacate the judgment under Code of Civil Procedure section 663. Settlement
27 Class Members and Aggrieved Employees may not object to, or opt out of, the Settlement with
28 respect to the PAGA Claims. Class Members who entered into individual settlement agreements

1 through the Pick Up Stix Campaign remain bound by their previous settlements even if they opt
2 out of this Settlement, but they may not object to, or opt out of, the Settlement with respect to the
3 PAGA Claims in any event.

4 (d) Failure to Object. Any Settlement Class Member who desires to object
5 with respect to the Class Claims but fails to submit a written objection timely waives any right to
6 object will be foreclosed from making any objection to this Settlement. Any Settlement Class
7 Member who does not timely and properly become a party of record by intervening or filing a
8 motion to vacate the judgment waives any and all rights to appeal from the Judgment, including
9 all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate
10 judgment, motion for new trial, a motion under Code of Civil Procedure section 473, and
11 extraordinary writ.

12 (e) Responses to Objections. Counsel for the Parties may file a response to any
13 objections submitted by Objecting Settlement Class Members at least five court days before the
14 date of the Final Approval Hearing.

15 72. Settlement Class Members will have until the Notice Response Deadline to object
16 or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
17 Administrator shall disclose to Class Counsel and Defendant's counsel what objections or
18 Requests for Exclusion were submitted in a timely manner every week and upon the request of
19 Class Counsel or Defense Counsel.

20 73. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
21 the QSF of the Settlement Amount, as described in Paragraph 73, that is necessary to make all
22 payments required under this Settlement within 20 days after the Effective Date, plus Defendant
23 shall separately pay its share of employer payroll taxes as calculated and directed by the
24 Settlement Administrator.

25 74. Qualified Settlement Fund. The Qualified Settlement Fund shall be established at
26 a federally-insured bank that is acceptable to Defendant and the Settlement Administrator. The
27 Parties agree that the Qualified Settlement Fund is intended to be a "Qualified Settlement Fund"
28 under section 468B of the Code and Treas. Reg. §1.468B-1, 26 CFR § 1.468B-1, *et seq.*, and will

1 be administered by the Settlement Administrator as such. With respect to the Qualified
2 Settlement Fund, the Settlement Administrator shall: (1) open and administer a Settlement
3 Account in such a manner as to qualify and maintain the qualification of the Qualified Settlement
4 Fund as a “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg. §1.468B-
5 1; (2) calculate, withhold, remit and report each Participating Class Member’s share of applicable
6 payroll taxes (including, without limitation, federal, state and local income tax withholding,
7 FICA, Medicare and any state or local employment taxes), and indemnify Defendant for any
8 penalty arising out of any error or incorrect calculation and/or interest with respect to any late
9 deposit of the same; (3) calculate and cooperate with Defendant to remit and to permit Defendant
10 to report Defendant’s share of applicable taxes (including, without limitation, federal, state and
11 local income tax withholding, FICA, Medicare, unemployment insurance, employment training
12 tax, state disability insurance and any state or local employment taxes), and indemnify Defendant
13 for any penalty arising out of any error or incorrect calculation and/or interest with respect to the
14 same; (4) satisfy all federal, state and local income and other tax reporting, return, and filing
15 requirements with respect to the Qualified Settlement Fund and any interest or other income
16 earned by the Qualified Settlement Fund; and (5) satisfy out of the Qualified Settlement Fund all
17 (i) taxes (including any estimated taxes, interest or penalties) with respect to the interest or other
18 income earned by the Qualified Settlement Fund, if any, and (ii) fees, expenses and costs incurred
19 in connection with the opening and administration of the Qualified Settlement Fund and the
20 performance of its duties and functions as described in this Agreement. The aforementioned
21 taxes, fees, costs, and expenses shall be treated as and included in the costs of administering the
22 Qualified Settlement Fund and as Settlement Administration Costs. The Parties and the
23 Settlement Administrator shall treat the Qualified Settlement Fund as coming into existence as a
24 Qualified Settlement Fund on the earliest date permitted as set forth in 26 CFR §1.468B-1(j)(2)(i),
25 and such election statement shall be attached to the appropriate returns as required by 26 CFR
26 §1.468B-1(j)(2)(ii). The Parties agree to cooperate with the Settlement Administrator and one
27 another to the extent reasonably necessary to carry out the provisions of this Section.

28 75. Distribution of Funds. No later than 10 calendar days after deposit of the payment

1 into the QSF, the Settlement Administrator will mail the payments to the Participating Class
2 Members, the payment for the attorneys' fees and costs to Class Counsel, any Service Payment
3 to the Class Representatives, the payment to the LWDA for PAGA civil penalties, and will pay
4 itself the Settlement Administration Costs.

5 76. Deadline for Cashing Settlement Checks. Settlement Class Members shall have
6 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks.
7 If any Settlement Class Member's check is not cashed within that period, the check will be void,
8 and a stop-payment will be issued. The value of any checks remaining uncashed more than 180
9 days after mailing shall be paid to a *cy pres* recipient selected by the Parties in accordance with
10 Code of Civil Procedure section 384: The Family Service Association of Redlands, a charitable,
11 non-profit 501(c)(3) organization serving the community in Redlands and Yucaipa by providing
12 food, clothing, and housing assistance.

13 77. The release will be binding upon all Settlement Class Members who do not cash
14 their checks within the 180-day period. In the event that any settlement check is returned to the
15 Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within
16 five (5) business days of receipt of the returned settlement check, perform a skip trace to locate
17 the individual. If a new address is located by these means, the Administrator will have ten (10)
18 business days to re-issue the check and notify Defense Counsel and Class Counsel that a re-issued
19 check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the
20 Settlement Administrator will have any liability for lost or stolen settlement checks, forged
21 signatures on settlement checks, or unauthorized negotiation of settlement checks. Without
22 limiting the foregoing, in the event that a Settlement Class Member notifies the Settlement
23 Administrator that the Class Member believes that a settlement check has been lost or stolen, the
24 Settlement Administrator shall immediately stop payment on such check. If the check-in question
25 has not been negotiated before the stop payment order, the Settlement Administrator will issue a
26 replacement check.

27 78. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff,
28 Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or

1 reports made in accordance with or pursuant to this Agreement. This provision does not, however,
2 prevent a Party from seeking enforcement of this Agreement.

3 79. Without prejudice to any other remedies, the Settlement Administrator shall agree
4 to be responsible for any breach of its obligations (whether committed by the Settlement
5 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from
6 and against all liabilities, claims, causes of action, costs and expenses (including legal fees and
7 expenses) arising out of any breach committed by the Settlement Administrator or its agents.

8 **H. Duties of the Parties Before the Court's Approval**

9 80. Upon completion of the execution of this Settlement Agreement, Plaintiff will
10 move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval
11 Order accomplishing the following:

12 (a) Scheduling the Final Approval Hearing on the issue of whether this
13 Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members
14 and a hearing on fees, costs, and the Service Payment;

15 (b) Approving as to form and content the proposed Notice;

16 (c) Directing the mailing of the Notice by first class mail to the Settlement
17 Class Members;

18 (d) Preliminarily approving this Settlement; and

19 (e) Preliminarily certifying the class for purposes of this Settlement.

20 81. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
21 hearing, to approve this Agreement because the amount of the PAGA penalties is not adequate,
22 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds within this
23 Agreement, to try to achieve Final Approval of the Agreement upon any subsequent Court
24 hearings.

25 **I. Duties of the Parties Following Court's Final Approval**

26 82. In connection with the Final Approval Hearing provided for in this Settlement
27 Agreement, Class Counsel shall submit a proposed Final Approval Order:

28 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and

1 adequate, and directing consummation of its terms and provisions;

2 (b) Approving Class Counsel’s application for an award of attorneys’ fees and
3 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
4 and the payment to the Settlement Administrator for costs of administering the settlement; and

5 (c) Entering judgment approving the settlement, thereby permanently barring all
6 Participating Class Members from prosecuting any Released Class Claims against any of the
7 Released Parties and permanently barring all Aggrieved Employees and the LWDA from
8 prosecuting any Released PAGA Claims against any of the Released Parties.

9 **J. Voiding the Agreement**

10 83. If the Court fails or refuses to issue the Final Approval Order or fails to approve
11 any material condition of this Settlement Agreement which effects a fundamental change of the
12 Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to
13 all Parties herein at the option of either Party.

14 84. If seven percent or more of the Settlement Class Members timely submit valid
15 Requests for Exclusion, Defendant shall have the sole option of terminating this Agreement
16 without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercises
17 such option under this paragraph, they shall be relieved of any obligation to pay the Settlement
18 Amount or any other obligations from the Settlement by giving notice to Plaintiff’s Counsel and
19 the Settlement Administrator within 10 days of the Notice Response Deadline. In such event, the
20 Parties shall be restored to their respective positions in all respects as though the contemplated
21 settlement never occurred. In the event of such termination, no party may use the fact that the
22 Parties agreed to settle or the terms provided herein as an admission, as evidence, or for any other
23 purpose, including, without limitation, to prove any liability or the amount of any sum allegedly
24 owed by any Party. All parties and counsel shall not encourage opt-outs or objections to this
25 Agreement. The parties specifically agree not to solicit opt-outs, directly or indirectly, through
26 any means.

27 85. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
28 have no further obligations under the Settlement, including any obligation by Defendant to pay

1 the Settlement Amount, or any amounts that otherwise would have been owed under this
2 Settlement.

3 86. If the Settlement is voided or fails for any reason, any costs incurred by the
4 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
5 specified in this Agreement.

6 **K. Other Terms**

7 87. Full and Complete Defense. This Agreement may be pleaded by any Released
8 Party as a full and complete defense to and may be used as the basis for an injunction against, any
9 action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted,
10 asserting any Released Claim.

11 88. Waiver. The waiver by one Party of any breach of this Agreement by another Party
12 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

13 89. Parties' Authority. The signatories represent that they are fully authorized to enter
14 into this Settlement Agreement and bind the Parties to the terms and conditions hereof.

15 90. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
16 accomplish the terms of this Settlement Agreement, including but not limited to the execution of
17 such documents and to take such other action as may reasonably be necessary to implement the
18 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
19 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
20 may become necessary by order of the Court or otherwise, to effectuate this Settlement
21 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement
22 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and
23 Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval
24 of the settlement and the final entry of judgment.

25 91. No Prior Assignments. The Parties represent, covenant, and warrant that they have
26 not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
27 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
28 action, or rights released and discharged by this Settlement Agreement.

1 92. No Admission. Defendant denies any and all liability to Plaintiff and/or any
 2 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
 3 that might have been asserted in this Action. Nonetheless, Defendant wish to settle and
 4 compromise the matters at issue in the Complaint to avoid further substantial expense and the
 5 inconvenience and distraction of protracted and burdensome litigation. Defendant also have taken
 6 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity
 7 in the defenses that they have asserted or could assert against Plaintiff, have determined that it is
 8 desirable and beneficial that Plaintiff’s claims be settled in the manner and upon the terms and
 9 conditions set forth in this Agreement.

10 93. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
 11 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
 12 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
 13 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
 14 Settlement Agreement with the intention of avoiding further disputes and litigation with the
 15 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and
 16 it, along with all related documents such as the notices, and motions for preliminary and final
 17 approval, shall, pursuant to Evidence Code section 1152 or Federal Rule of Evidence 408, be
 18 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
 19 settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class
 20 certification as part of this Settlement Agreement is for settlement purposes only and if, for any
 21 reason the settlement is not approved, the stipulation will be of no force or effect.

22 94. Notices. Unless otherwise specifically provided herein, all notices, demands, or
 23 other communications given hereunder shall be in writing and shall be deemed to have been duly
 24 given as of the third business day after mailing by United States registered or certified mail, return
 25 receipt requested, addressed:

26 To the Settlement Class Members and Aggrieved Employees:

| | |
|---|---|
| Mehrdad Bokhour <i>mehrdad@bokhourlaw.com</i> 1901 Avenue of the Stars, Suite 450 | Joshua Falakassa <i>josh@falakassalaw.com</i> 1901 Avenue of the Stars, Suite 450 |
|---|---|

Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

To Defendant:

John Purcell
john.purcell@afslaw.com
Jeffrey B. Weston
jeffrey.weston@afslaw.com
Paul R. Lynd
paul.lynd@afslaw.com
555 West Fifth Street, Suite 48th Floor
Los Angeles, California 90013
Tel: (213) 629-7400; Fax: (213) 629-7401

95. Construction. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties, and that this Settlement Agreement shall not be construed in favor of or against any Party because of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

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

97. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties.

98. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide

1 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
2 Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to
3 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
4 bear their own attorneys' fees and costs. This provision shall not apply to any legal action or
5 other proceeding instituted by any person or entity other than Plaintiff or Defendant.

6 99. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
7 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
8 section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
9 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
10 of this Agreement.

11 100. Enforceability. Pursuant to California Evidence Code section 1123(a) and (b), this
12 Agreement is intended by the Parties to be and shall be, enforceable, binding, and admissible in
13 a court of law.

14 101. Choice of Law. This Settlement Agreement shall be governed by and construed,
15 enforced, and administered in accordance with the laws of the State of California, without regard
16 to its conflicts-of-law rules.

17 102. Integration Clause. This Settlement Agreement contains the entire agreement
18 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
19 or contemporaneous agreements, understandings, representations, and statements, whether oral
20 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
21 hereunder may be waived except in writing.

22 103. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
23 to the benefit of the Parties and their respective heirs, trustees, executors, administrators,
24 successors, and assigns.

25 104. Signatures of All Class Members Unnecessary to be Binding. The Parties agree
26 that, because the members of the Settlement Class are numerous, it is impossible or impractical
27 to have each Final Class Member execute this Settlement Agreement. The Notice will advise all
28 Settlement Class Members of the binding nature of the releases provided herein and such shall

1 have the same force and effect as if this Settlement Agreement were executed by each Settlement
2 Class Member.

3 105. Counterparts. This Settlement Agreement may be executed in counterparts, and
4 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
5 deemed an original and, when taken together with other signed counterparts, shall constitute one
6 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
7 Electronic signatures shall have the same force and effect as an original.

8 **APPROVAL AND EXECUTION BY THE PARTIES:**

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10 Dated: March ¹⁸, 2024

CLASS REPRESENTATIVE:

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12 _____
13 Charlie Hear
5BAE459560B64C1...

14 Dated: ^{br} March 10, 2024
15 April

DEFENDANT:

INTERNATIONAL PAVING SERVICES, INC.

17 *brent rieger*
18 _____
19 By: Brent Rieger
20 Its: President

1 **APPROVED AS TO FORM:**

2

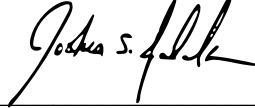
CLASS COUNSEL

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4 Dated: March __, 2024

FALAKASSA LAW, P.C.

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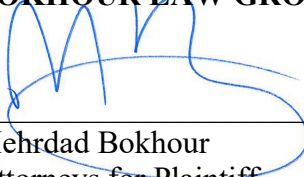
Joshua Falakassa
Attorneys for Plaintiff

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8 Dated: March 29, 2024

BOKHOUR LAW GROUP, P.C.

9



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Mehrdad Bokhour
Attorneys for Plaintiff

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12

13 Dated: April 10, 2024

DEFENDANT'S COUNSEL:

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ARENTOX SCHIFF LLP

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John Purcell
Jeffrey B. Weston
Paul R. Lynd
Attorneys for Defendant
International Paving Services, Inc.

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