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SUPERIOR COURT

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN JOAQUIN**

15 KENNETH WILBURN, individually, and on
16 behalf of all others similarly situated,

17 *Plaintiff,*

18 v.

19 CONCRETE, INC., d/b/a KNIFE RIVER
20 CONSTRUCTION, a California corporation,
21 MDU RESOURCES GROUP, INC., d/b/a
22 KNIFE RIVER CONSTRUCTION, a Delaware
23 corporation, KNIFE RIVER CONSTRUCTION,
24 a Delaware corporation, and DOES 1 through 10,
25 inclusive,

26 *Defendants.*

Case No.: STK-CV-UOE-2021-10183
[Consolidated with STK-CV-UOE-2022-
0002317]

CLASS ACTION

[Assigned for all purposes to Judge Robert T.
Waters, Dept. 11B]

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

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement; Memorandum of
Points and Authorities; Declarations of
Kenneth Wilburn, Ryan L. Eddings, and Julie
Green; and [Proposed] Order]

PRELIMINARY APPROVAL HEARING

Date: ~~August 11, 2023~~ **SEP - 8 2023**
Time: ~~1:30 p.m.~~ **9am**
Dept: 11B

Complaint filed: October 29, 2021

1 **DECLARATION OF JUSTIN F. MARQUEZ**

2 I, Justin F. Marquez, declare as follows:

3 1. I am admitted, in good standing, to practice as an attorney in the State of California,
4 the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern,
5 Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC,
6 counsel of record for Plaintiff Kenneth Wilburn (“Plaintiff”). I have personal knowledge of the
7 facts set forth in this declaration and could and would competently testify to them under oath if
8 called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary
9 Approval of Class Action Settlement.

10 **CASE BACKGROUND**

11 2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal.
12 Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked
13 in California as hourly-paid, non-exempt employees for Defendants during the class period.
14 Defendants are one of the nation’s largest construction materials and contracting businesses
15 building roads, bridges, and airport runways, among many other things. Defendants operate
16 multiple job sites throughout the state of California.

17 3. Plaintiff alleges that Defendants’ payroll, timekeeping, and wage and hour practices
18 resulted in Labor Code violations. Plaintiff alleges that Defendants had non-compliant wage and
19 hour policies throughout most of the relevant class period and failed to provide employees with
20 legally compliant meal and rest periods which it failed to pay all premiums for. Based on these
21 allegations, Plaintiff asserts claims against Defendants for failure to pay minimum and straight
22 time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and
23 permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate
24 itemized wage statements, unfair business practices, and civil penalties under PAGA.

25 4. On October 29, 2021, Plaintiff filed a putative wage-and-hour class action complaint
26 (“Class Action”) against Defendants for: (1) failure to pay minimum and straight time wages; (2)
27 failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and
28 permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide

1 adversarial. The Parties went into the mediation willing to explore the potential for a settlement
2 of the dispute, but each side was also prepared to litigate their position through trial and appeal if
3 a settlement had not been reached.

4 10. After extensive negotiations and discussions regarding the strengths and
5 weaknesses of Plaintiff's claims and Defendants' defenses, the Parties were able to reach a
6 resolution, the material terms of which are encompassed within the Settlement Agreement.
7 Attached as **Exhibit 1** is a true and correct copy of the Class Action and PAGA Settlement
8 Agreement and Class Notice ("Settlement Agreement"), which the Parties prepared based on of
9 the Los Angeles Superior Court's Model Settlement Agreement. Attached as **Exhibit 2** is a
10 document showing changes to the Model Agreement in redline.

11 11. The Settlement includes \$25,000 allocated to Plaintiff's claims under PAGA, with
12 75% of which (\$18,750.00) being paid to the LWDA and 25% (\$6,250.00) being paid to the
13 Participating PAGA Members. (Settlement, § 3.2.5.) Class Counsel submitted the proposed
14 Settlement to the LWDA before filing the Motion for Preliminary Approval.

15 12. The Settlement provides that Defendants will not oppose a fee application of up to
16 33 1/3% (\$178,333.33) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed
17 \$20,000.00. (Settlement, § 3.2.2.)

18 13. I requested several bids from experienced class action settlement administrators to
19 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties
20 accepted the bid of CPT Group, Inc. CPT Group, Inc. has multiple years of experience in the field
21 of Class Action Administration, particularly in the wage-and-hour arena. In its bid, CPT Group,
22 Inc. agreed to a discounted flat fee if there are up to 250 class members. A true and correct copy
23 of the bid is attached hereto as **Exhibit 3**.

24 14. Plaintiff does not have any interest, financial or otherwise, in the proposed *cy pres*
25 recipient, Legal Aid at Work, or the third-party administrator, CPT Group, Inc.

26 15. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
27 employed at the law firm) has any interest, financial or otherwise, in the proposed *cy pres* recipient,
28 Legal Aid at Work, or the third-party administrator, CPT Group, Inc.

1 16. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
2 this case.

3 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

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

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

18 Total Class Members: 195
19 Terminated Class Members during 3-year statute: 75
20 Total Workweeks: 38,873
21 Total Shifts: 204,083
22 PAGA Pay Periods: 12,877
23 Number of Class Members Subject to PAGA: 125
24 Avg. Hourly Rate: \$23.11

25 19. Based on Plaintiff's discovery and investigation, Class Counsel reached the
26 conclusion that Defendants failed to pay class members for all hours worked, including overtime
27 wages, Defendants failed to pay class members premiums for all non-compliant meal and rest
28 breaks, failed to pay waiting time penalties, failed to pay wage statement penalties, and Plaintiff

1 further alleges that Plaintiff and the aggrieved employees are entitled to PAGA penalties related to
2 these violations. Defendants denied these claims.

3 20. Plaintiff alleges that Defendants failed to pay for all hours worked, including
4 minimum wages, straight time wages, and overtime wages. For purposes of calculating
5 Defendants' liability based on a best case scenario for Plaintiff and the Class, and factoring in
6 Defendants' claim that the majority of class members are drivers who are exempt from California's
7 overtime laws, and I assumed that Defendants are liable for 1 hour of unpaid worktime per week.
8 This results in an estimate of \$898,355.03 (38,873 weeks * \$23.11 hourly rate * 1 hour of unpaid
9 work per week), but I discounted this figure by 80% to account for the difficulty of prevailing on
10 a motion for class certification and a trial on the merits, yielding a realistic damage estimate of
11 \$179,671.01.

12 21. With respect to the meal period claim, Plaintiff alleges that Defendants had non-
13 compliant meal policies during most of the class period. In addition, Defendants required his and
14 similarly situated class members to either work in lieu of taking meal periods, or their meal periods
15 were untimely or interrupted. My expert analyzed Defendants' timekeeping records and observed
16 short, missed, or no-meal periods. Potential liability for the meal period claim, assuming a 50%
17 violation rate based on Plaintiff's and other class members' experience working for defendant, is
18 \$2,358,179.07 (204,083 shifts * 50% * \$23.11 hourly rate); however, I discounted this figure by
19 90% to account for the difficulty of certifying and proving meal period claims, as well as
20 Defendants' contention that the claim lacks merit because the majority of class members are
21 subject to the Federal Motor Carrier Safety Administration's ("FMCSA") exemption to California
22 meal and rest period requirements, yielding a realistic damage estimate of **\$235,817.91**.

23 22. With respect to the rest period claim, Plaintiff alleges that Defendants required him
24 and similarly situated class members to work in lieu of taking rest periods, or their rest periods
25 were untimely or interrupted, and Defendants lacked legally compliance rest period policies during
26 the class period, policies which require that putative class members remain on the premises during
27 breaks. Assuming a 50% violation rate for the class period based on Plaintiff's and other class
28 members' experience working for Defendants, Defendants' potential liability for the rest period

1 claim is \$2,358,179.07 (204,083 shifts * 50% * \$23.11 hourly rate); however, I discounted this
2 figure by 90% to account for the difficulty of certifying and proving rest period claims, particularly
3 because rest periods do not have to be recorded, to account for the possibility of class members
4 voluntarily choosing to forego a rest period, and to account for Defendants' contention that the
5 majority of class members are subject to the Federal Motor Carrier Safety Administration's
6 ("FMCSA") exemption to California meal and rest period requirements yielding a realistic damage
7 estimate of **\$235,817.91**.

8 23. In sum, I estimated that Plaintiff's maximum recovery for the off-the-clock claim,
9 meal and rest period violations, is \$5,614,713.16, but, **after factoring in the risk and uncertainty**
10 **of prevailing at certification and trial, I estimate that Plaintiff's realistic estimated recovery**
11 **for the non-penalty claims is \$651,306.82.**

12 24. With respect to Plaintiff's derivative claims for statutory and civil penalties,
13 Plaintiff estimated that Defendants' realistic potential liability is **\$222,317.90**. While Defendants'
14 maximum potential liability for waiting time penalties is \$435,479 based on approximately 75
15 terminated class members during the 3-year statute, \$500,000 for inaccurate wage statements based
16 on approximately 125 class members who worked 12,877 pay periods within the 1-year statute,
17 and \$1,287,700 for PAGA violations based on the Court assessing a \$100 penalty for initial
18 violations for all 12,877 pay periods within the 1-year statute, I believe that it would be unrealistic
19 to expect the Court to award the full \$2,223,179 in penalties given Defendants' defenses, the
20 contested nature of Plaintiff's claims, and the discretionary nature of penalties. Considering that
21 the underlying claims are estimated to be \$651,306.82, such a disproportionate award would also
22 raise due process concerns. Weighing these factors and applying a 90% discount to account for
23 the risk and uncertainty of prevailing at trial, I arrived at \$222,317.90 for statutory and civil
24 penalties.

25 25. **Using these estimated figures, Plaintiff predicted that the realistic maximum**
26 **recovery for all claims, including penalties, would be \$873,624.72. This means that the**
27 **\$535,000.00 settlement figure represents 61.2% of the realistic maximum recovery**
28 **(\$535,000.00/ \$873,624.72 = 61.2%).** Considering the risk and uncertainty of prevailing at class

1 certification and at trial, this is an excellent result for the Class.¹ Indeed, because of the proposed
2 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
3 unfavorable judgment.

4 26. While Plaintiff is confident in the merits of his claims, a legitimate controversy
5 exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due
6 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

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

15 28. The Net Settlement Amount available for Class Member settlement payments is
16 estimated to be \$291,666.67 for a class of 195 persons.² **As a result, each Settlement Class**
17 **Member is eligible to receive an average net benefit of approximately \$1,495.73.**

18 29. The proposed Settlement of \$535,000.00, therefore, represents a substantial
19 recovery when compared to Plaintiff's reasonably forecasted recovery. When considering the risks
20 of litigation, the uncertainties involved in achieving class certification, the burdens of proof

22 ¹ See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8
23 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle
24 class claims was between 9.53 percent of Plaintiff's maximum recovery); *Bravo v. Gale*
25 *Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (finding that "a settlement for
fourteen percent recovery of Plaintiff's maximum recovery is reasonable"); *In re Omnivision*
Techs., Inc., 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is
just over 9% of the maximum potential recovery asserted by either party.").

26 ² The Net Settlement Amount is: \$535,000.00 minus \$178,333.33 for Class Counsel's
27 attorneys' fees, minus \$20,000 for Class Counsel's litigation expenses, minus \$10,000 in
28 administration costs, minus \$18,750.00 for the PAGA portion sent to the LWDA, minus
\$6,250.00 for payments to the Participating PAGA Members, and minus \$10,000.00 for the class
representative service award.

1 necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the
2 settlement amount of \$535,000.00 is within the “ballpark” of reasonableness, and preliminary
3 settlement approval is appropriate.

4 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

5 30. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting
6 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
7 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff’s
8 requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff
9 generated for all class members.

10 31. Throughout this Litigation, Plaintiff, who is a former employee of Defendants, have
11 cooperated immensely with my office and have taken many actions to protect the interests of the
12 class. Plaintiff provided valuable information regarding the off-the-clock claims, unpaid overtime,
13 regular rate issues, and the meal and rest period claims. Plaintiff also informed my office of
14 developments and information relevant to this action, participated in decisions concerning this
15 action, made herself available to answer questions during the mediation, and provided my office
16 with the names and contact information of potential witnesses in this action. Before we filed this
17 case, Plaintiff provided my office with documents regarding the claims alleged in this action. The
18 information and documentation provided by Plaintiff was instrumental in establishing the alleged
19 wage and hour violations alleged in this action, and the recovery provided for in the Settlement
20 Agreement would have been impossible to obtain without Plaintiff’s participation.

21 32. At the same time, Plaintiff faced many risks in adding himself as the class
22 representative in this matter. Plaintiff faced actual risks with his future employment, as putting
23 themselves on public record in an employment lawsuit could also very well affect their likelihood
24 for future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general
25 release of all claims against Defendants.

26 33. In turn, class members will now have the opportunity to participate in a settlement,
27 reimbursing them for alleged wage violations they may have never known about on their own or
28 been willing to pursue on their own. If these class members would have each tried to pursue their

1 legal remedies on their own, that would have resulted in each having to expend a significant amount
2 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the
3 line on behalf of these other class members.

4 34. In the final analysis, this class action would not have been possible without the aid
5 of Plaintiff, who put his own time and effort into this Litigation, sacrificed the value of his own
6 individual claims, and placed themselves at risk for the sake of the class members. The requested
7 enhancement award for Plaintiff for his service as the class representative and for his general
8 release of all individual claims is a relatively small amount of money when the time and effort put
9 into the Litigation are considered and in comparison to enhancements granted in other class actions.
10 The requested incentive award is therefore reasonable to compensate Plaintiff for his active
11 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*,
12 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
13 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
14 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
15 class representative incentive award for each named Plaintiff.

16 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

17 35. The Settlement provides for attorney's fees payable to Class Counsel in an amount
18 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$178,333.33,
19 plus actual costs and expenses not to exceed \$20,000. The proposed award of attorneys' fees to
20 Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
21 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
22 percentage method as many of the entries in the time records will have to be redacted to preserve
23 attorney-client and attorney work product privileges.

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

28 37. It is further estimated that my office will need to expend at least another 50 to 100

1 hours to monitor the process leading up to the final approval and payments made to the class. My
2 office also bears the risk of taking whatever actions are necessary if Defendants fail to pay.

3 38. The risk to my office has been very significant, particularly if we would not be
4 successful in pursuing this class action. In that case, we would have been left with no compensation
5 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
6 that have resulted in thousands of attorney hours being expended and ultimately having
7 certification denied or the Defendants company going bankrupt. The contingent risk in these types
8 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
9 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

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

19 40. As of the drafting of Plaintiff's Motion for Preliminary Approval of Class Action
20 Settlement, my office has incurred around \$16,644.92 in expenses litigating this action, and we
21 anticipate accruing additional costs up to Final Approval of the Settlement. These expenses were
22 reasonably necessary to the Litigation and were actually incurred by my office. They should be
23 reimbursed in full, up to the maximum amount allowed in the Settlement Agreement.

24 MY EXPERIENCE AND QUALIFICATIONS

25 41. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
26 Report as one of the nation's Best Law Firms for every year since 2020 and is comprised of over
27 55 attorneys and over 400 employees. Wilshire Law Firm, PLC is actively and continuously
28 practicing in employment litigation, representing employees in both individual and class actions

1 in both state and federal courts throughout California.

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

7 43. I graduated from the University of California, Los Angeles's College Honors
8 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*
9 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at
10 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
11 2008.

12 44. My practice is focused on advocating for the rights of consumers and employees in
13 class action litigation and appellate litigation. I am currently the primary attorney in charge of
14 litigating several class action cases in state and federal courts across the United States.

15 45. I have received numerous awards for my legal work. From 2017 to 2020, Super
16 Lawyers selected me as a "Southern California Rising Star," and in 2022 and 2023, I was selected
17 as a "Southern California Super Lawyer." I was selected as one of the "Best Lawyers in America"
18 in 2023. In 2016 and 2017, the National Trial Lawyers selected me as a "Top 40 Under 40"
19 attorney. I am also rated 10.0 ("Superb") by Avvo.com.

20 46. I am on the California Employment Lawyers Association ("CELA")'s Wage and
21 Hour Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced
22 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
23 mentored young attorneys through CELA's mentorship program.

24 47. I am also a past member of the Consumer Attorneys of California ("CAOC"). In
25 2020, I was selected for a position on CAOC's Board of Directors. I am also a past member of
26 CAOC's Diversity Committee, and I help assist the CAOC in defeating bills that harm employees.
27 Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating
28 AB 443, which proposed legislation that sought to limit the enforceability of California Labor Code

1 § 226.

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

- 7 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
8 million in gross recovery to class members for each year since 2020, including over
9 \$37.5 million in 2022 and over \$50 million in 2023.
- 10 b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical*
11 *Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a
12 data breach class action holding that consumer plaintiffs adequately alleged injury
13 in fact under the benefit of the bargain theory and monitoring-costs theory.
- 14 c. In 2023, Top Verdict recognized Wilshire Law Firm and myself for having one case
15 in the Top 20 Labor & Employment Settlements (including number 19 for the \$4.1
16 million settlement in *In re: The FPI Management Wage and Hour Cases*) and four
17 additional cases in the Top 50 Labor & Employment Settlements (numbers 36, 39,
18 41, and 49).
- 19 d. In 2022, Top Verdict recognized Wilshire Law Firm and myself for having one case
20 in the Top 20 Labor & Employment Settlements (including number 19 for the \$1.6
21 million settlement in *Moreno v. Pretium Packaging, L.L.C.*) and four additional
22 cases in the Top 50 Labor & Employment Settlements (numbers 27, 30, 33, and 37).
- 23 e. To my knowledge, I am the only attorney to appear on each of the following *Top*
24 *Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
25 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 26 f. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
27 winning class certification on behalf of hundreds of thousands of consumers for
28 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.

1 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).

2 g. As lead counsel, I prevailed against Bank of America by: winning class certification
3 on behalf of thousands of employees for California Labor Code violations; defeating
4 appellate review of the court’s order certifying the class; defeating summary
5 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
6 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
7 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
8 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
9 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
10 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
11 3d Art. 8.

12 h. I was the primary author of the class certification and expert briefs in *ABM*
13 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
14 for over 40,000 class members for off-the-clock, meal period, split shift, and
15 reimbursement claims. *ABM Industries Overtime Cases* is the first published
16 California appellate authority to hold that an employer’s “auto-deduct policy for
17 meal breaks in light of the recordkeeping requirements for California employers is
18 also an issue amenable to classwide resolution.” (*Id.* at p. 310.)³ Notably, the Court
19 of Appeal also held that expert analysis of timekeeping records can also support the
20 predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the
21 case settled for \$140 million, making it one of the largest ever wage and hour class
22 action settlements for hourly-paid employees in California.

23 i. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d
24 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims
25 under California’s Private Attorney Generals Act (“PAGA”) cannot be used to
26

27 ³ As a California district court observed before the *ABM Industries Overtime* decision,
28 “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE*
Connectivity Networks, Inc. (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL
1758048, *7.)

1 calculate the amount in controversy under the Class Action Fairness Act (“CAFA”).
2 This case is cited in several leading treatises such as *Wright & Miller’s Federal*
3 *Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S.
4 Supreme Court denied review of a case that primarily concerned *Yocupicio*. That
5 effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus
6 support from a brief authored by Andrew J. Pincus.⁴ Considering that leading
7 Supreme Court practitioners from the class action defense bar were very motivated
8 in undermining *Yocupicio* case, but failed, this demonstrates the national importance
9 of the *Yocupicio* decision.

- 10 j. On December 13, 2018, the United States District Court granted final approval of
11 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services,*
12 *LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in
13 which I served as lead counsel. In doing so, the Court found: “Class Counsel’s
14 declarations show that the attorneys are experienced and successful litigators.” (*Id.*
15 at p. *10.)
- 16 k. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a
17 reported decision permitting class-wide discovery even though the employer has a
18 lawful policy because “[t]he fact that a company has a policy of not violating the
19 law does not mean that the employees follow it, which is the issue here.” The court
20 also ordered Defendant to pay for the cost of *Belaire-West* notice.
- 21 l. In 2013, I represented a whistleblower that reported that his former employer was
22 defrauding the State of California with the help of bribes to public employees. The
23 case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution
24 of State of California employees by the California Attorney General’s Office.
- 25 m. In 2013, I was part of a team of attorneys that obtained conditional certification for
26 over 2,000,000 class members in a federal labor law case for misclassification of
27 independent contractors that did crowdsourced work on the Internet, *Otey v.*

28 ⁴ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

1 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
2 following pro-Plaintiff reported decisions:

- 3 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding
4 that an unaccepted Rule 68 offer doesn't moot Plaintiff's claims, and
5 granting Plaintiff's motion to strike Defendant's affirmative defenses
6 based on *Twombly/Iqbal*).
- 7 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order
8 granting conditional collective certification).
- 9 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the
10 magistrate judge's discovery ruling which held that "evidence of
11 other sources of income is irrelevant to the question of whether a
12 Plaintiff is an employee within the meaning of the FLSA").
- 13 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting
14 broad discovery because "an FLSA Plaintiff is entitled to discovery
15 from locations where he never worked if he can provide some
16 evidence to indicate company-wide violations").

17 j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification
18 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*
19 *Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also
20 successfully opposed subsequent appeals to the California Court of Appeal and
21 California Supreme Court.

22 49. Christina M. Le is a Senior Attorney at Wilshire Law Firm. She is admitted to
23 practice in the State of California, the Ninth Circuit Court of Appeals, and the United States District
24 Courts for the Central, Southern, Eastern, and Northern Districts of California. She graduated from
25 Loyola Law School, Los Angeles and attended the University of California, Berkeley for her
26 undergraduate studies, where she obtained a Bachelor of Arts in History. She has over 15 years of
27 litigation experience, which includes the successful handling of numerous employment, wage and
28 hour, and class and representative action matters during the latter half of her career in state and

1 federal court through inception through case resolution. Prior to joining Wilshire Law Firm in
2 November 2021, Ms. Le gained invaluable litigation experience working at various Plaintiff and
3 defense firms, including Kristensen Weisberg PLC, Jones Bell LLP, Archer Norris PLC, and Lewis
4 Brisbois Bisgaard & Smith LLP. Ms. Le is a member of NELA, CELA, CAALA, LACBA, and
5 the Vietnamese Bar Association of Southern California. Her current contingent billing rate for this
6 case is \$750.00 per hour, which is commensurate with Ms. Le’s years of experience and work in
7 this practice area.

8 50. Zachary D. Greenberg is a Fourth-year associate at Wilshire Law Firm, PLC.
9 Zachary was admitted to the State Bar of California in 2020 and has since been admitted to the
10 United States District Court for the Central, Eastern, and Southern Districts of California and the
11 United States Court of Appeals for the Ninth Circuit. Zachary received a Bachelor of Arts in
12 International Business and a Minor in Economics from Western Washington University. He
13 received his Juris Doctor from Loyola Law School. Zachary’s practice has been primarily focused
14 on complex class and representative action litigation. His current contingent billing rate for this
15 case is \$450 per hour.

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

- 19 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
20 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
21 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
22 wage-and-hour class actions that I opposed when litigating wage-and-hour class
23 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
24 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
25 8th Year - \$455. I am a 14th year attorney and Senior Partner, with most of my
26 experience in class action litigation as a primary practice area. Having successfully
27 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
28 involving CAFA and PAGA, having experience certifying large class actions

1 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
2 having received numerous awards for my legal work, my hourly rate should be
3 adjusted upward.

4 b. On May 6, 2022 the Hon. Jay A. Garcia-Gregory of the United States District Court
5 in Puerto Rico approved my \$850 hourly rate when he granted final approval of the
6 class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt.
7 57 (U.S. Dist. Ct. P.R. May 6, 2022).

8 c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
9 approved my \$800 hourly rate when he granted final approval of the class action
10 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-
11 01066522-CU-OE-CXC.

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

18 e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
19 Court approved my \$750 hourly rate when he granted final approval of the class
20 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
21 19STCV32396.

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

24 Executed on July 20, 2023, at Los Angeles, California.

25
26 
27 Justin F. Marquez
28

Exhibit 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Kenneth Wilburn (“Plaintiff”) and Defendants Concrete, Inc., doing business as Knife River, MDU Resources Group, Inc., and Knife River Corporation (collectively referred to as “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

“Action” means the Plaintiff’s class action lawsuit alleging wage and hour violations against Defendants, captioned *Wilburn v. Concrete, Inc., et al.*, case no. STK-CV-UOE-2021-0010183 initiated on October 29, 2021, which is the lead action consolidated with Plaintiff’s PAGA action lawsuit, case no. STK-CV-UOC-2022-0002317.

- 1.1. “Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.2. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.3. “Aggrieved Employee” means a person employed by Defendants in California and classified as an hourly-paid, non-exempt employee who worked for Defendants during the PAGA Period.
- 1.4. “Class” means all persons employed by Defendants in California and classified as an hourly-paid, non-exempt employee during the Class Period.
- 1.5. “Class Counsel” means Justin F. Marquez, Christina M. Le, and Zachary D. Greenberg of Wilshire Law Firm, PLC.
- 1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.7. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.8. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.9. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.11. “Class Period” means the period that starts on May 4, 2017, and shall end on January 31, 2023, or on the date when the Court grants preliminary approval of the settlement, whichever date is earlier.
- 1.12. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.13. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.14. “Court” means the Superior Court of California, County of San Joaquin.
- 1.15. “Defendants” means named Defendants Concrete, Inc., doing business as Knife River, MDU Resources Group, Inc., and Knife River Corporation.
- 1.16. “Defense Counsel” means Ryan L. Eddings and Cody S. Chapple of Littler Mendelson, P.C.
- 1.17. “Effective Date” means the date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.18. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.19. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.20. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

- 1.21. “Gross Settlement Amount” means \$535,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.22. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.23. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.24. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.28. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.30. “PAGA Period” means the period that starts on May 4, 2020 and shall end on January 31, 2023 or on the date when the Court grants preliminary approval of the settlement, whichever date is earlier.
- 1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.32. “PAGA Notice” means Plaintiff’s November 2, 2021, and April 19, 2022 letters to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.33. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250.00) and 75% to LWDA (\$18,750.00) in settlement of PAGA claims.
- 1.34. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.35. "Plaintiff" means Kenneth Wilburn, the named plaintiff in the Action.
- 1.36. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.37. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.38. "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.39. "Released PAGA Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.40. "Released Parties" means: Defendants and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.43. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.44. "Workweek" means any week during which a Class Member worked for Defendants for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On October 29, 2021, Plaintiff commenced this class action (“Class Action”) by filing a Complaint alleging causes of action against Defendants for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) violation of California’s Unfair Competition Law, California Business and Professions Code §§ 17200, et seq. On March 30, 2022, Plaintiff filed a PAGA Action (“PAGA Action”) alleging a cause of action for civil penalties under the Private Attorney General Action (Lab. Code § 2699 et seq.). On December 17, 2022, the Court ordered the consolidation of the Class and the PAGA Actions, with the class action as the lead case (both the Class and PAGA actions are hereinafter referred to as the “Action”). Defendants deny the allegations in the Action, deny any failure to comply with the laws identified in the Action, and deny any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.3. On October 31, 2022, the Parties participated in an all-day mediation presided over by mediator Lisa Klerman, which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, wage and hour policy and procedure documents, adequate sampling of employee time and payroll records, and relevant data points pertaining to the class and PAGA claims. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.5. The Court has not granted class certification.
- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay \$535,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to

submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%, which is currently estimated to be \$178,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$20,000.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1. Tax Allocation of Individual Class Payments. 34% of each Participating Class Member's Individual Class Payment will be allocated to the settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 66% of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for interest (33%) and penalties (33%) (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employment taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000 to be paid from the Gross Settlement Amount, with 75% (\$18,750.00) allocated to the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates that Class Members collectively worked a total of 38,875 Workweeks as of July 28, 2022.

- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator

must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) (“Cy Pres Recipient”), Legal Aid at Work, 180 Montgomery St. #600, San Francisco, CA 94104. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

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

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

6.1 Plaintiff’s Release. In exchange for the Class Representative Service Payment, upon the Effective Date, and except as to the right to enforce the terms and conditions of this Agreement, Plaintiff releases the Released Parties from any and all charges, complaints, claims, causes of action, demands, disputes, damages, business expenses, attorneys’ fees, costs, losses, and liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at any time, had, claimed to have, or Plaintiff may have, including but not limited to any and all claims arising out of, relating to, or resulting from his employment with and separation of employment with Released Parties, including any claims arising under any federal, state, or local law relating to employment, including, but in no way limited to, any claim under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 1981; the Americans with Disabilities Act (“ADA”); the Family and Medical Leave Act (“FMLA”); the Employee Retirement Income Security Act (“ERISA”); the California Family Rights Act (“CFRA”); the California Fair Employment and Housing Act (“FEHA”); all claims for wages or penalties under the Fair Labor Standards Act (“FLSA”); all claims for wages or penalties under the California Labor Code; Business and Professions Code §§ 17200 *et seq.*; all laws relating to violation of public policy, retaliation, or interference with legal rights; any and all other employment or discrimination laws; whistleblower claims; any tort, fraud, or constitutional claims; and any breach of contract claims or claims of promissory estoppel. It is agreed that this is a

general release and is to be broadly construed as a release of all claims; provided that, notwithstanding the foregoing, this paragraph expressly does not include a release of any claims that cannot be released hereunder by law (“Plaintiff’s Release”). Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the Class Period. Nothing in this Agreement prohibits Plaintiff from filing a charge or complaint or communicating with a government agency where, as a matter of law, Defendants may not restrict Plaintiff’s ability to do so. However, Plaintiff hereby waives his rights to any monetary benefits or recovery in connection with any such claim, charge or proceeding from Defendants, except this Agreement does not limit Plaintiff’s right to receive an award or monies from any government agency. Nothing in this Agreement waives Plaintiff’s right to testify or prohibits him from testifying in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment when Plaintiff has been required or requested to attend the proceeding pursuant to a court order, subpoena or written request from an administrative agency or the California state legislature. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them. Plaintiff understands and expressly agrees that this Agreement extends to claims that he has against Released Parties, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the Effective Date of this Agreement. Any and all rights granted under any state or federal law or regulation limiting the effect of this Settlement Agreement, including the provisions of section 1542 of the California Civil Code, are hereby expressly waived. Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

- 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including any and all claims for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) violation of California’s Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* Except as set forth in Section 6.3 of

this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

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

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

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

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

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

facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

- 8.1 Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4 Notice to Class Members.
- 8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in

the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, if applicable substantially in the form attached to this Agreement as Exhibit 1. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

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

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

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice

is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

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

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

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

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

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

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

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

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

- 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
9. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, Defendant represents that there are no more than 38,875 workweeks worked by the Class Members from May 4, 2017, through July 28, 2022. In the event the number of workweeks worked by the Class Members increases by more than 15%, or 5,831, then the Class Period shall be reduced until the maximum number work workweeks during the Class Period is 44,706. The Parties will work in good faith to make this determination.

10. DEFENDANTS' RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendants may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

11. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

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

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members

who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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

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

13. ADDITIONAL PROVISIONS.

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate

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

- 13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,

transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

- 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement

falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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

To Plaintiff:

Justin F. Marquez, Esq.
Christina M. Le, Esq.
Zachary D. Greenberg, Esq.
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010
Telephone: (213) 784-3830
Facsimile: (213) 381-9989
justin@wilshirelawfirm.com
cle@wilshirelawfirm.com
zgreenberg@wilshirelawfirm.com

To Defendants:

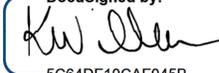
Ryan L. Eddings (SBN 256519)
reddings@littler.com
Cody S. Chapple (SBN 332206)
cchapple@littler.com
LITTLER MENDELSON, P.C.
5200 North Palm Avenue Ste. 302
Fresno, California 93704
Tel: (559) 244-7500
Fax: (559) 244-7525

- 13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP

section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

On Behalf of Plaintiff:

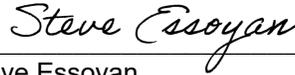
Dated: 4/7/2023, 2022

DocuSigned by:


Kenneth Wilburn, Plaintiff

On Behalf of Defendants Concrete, Inc., doing business as Knife River, MDU Resources Group, Inc, and Knife River Corporation

Dated: 4/21/2023, 2022



Name: Steve Essoyan
Title: President

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

Kenneth Wilburn v. Concrete, Inc., et al., San Joaquin County Superior Court case no. STK-CV-UOE-2021-10183

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendants Concrete, Inc., doing business as Knife River, MDU Resources Group, Inc., and Knife River Corporation (referred to collectively as “Defendants”) for alleged wage and hour violations. The Action was filed by Defendants’ former employee, Kenneth Wilburn (“Plaintiff”), and seeks payment of (1) back wages and other relief for a class of hourly-paid, non-exempt employees (“Class Members”) who worked for Defendants in California during the Class Period (May 4, 2017, to January 31, 2023; and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly-paid, non-exempt employees who worked for Defendants in California during the PAGA Period (May 4, 2020, to January 31, 2023 (“Aggrieved Employees”).

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

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

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

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

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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

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

1. WHAT IS THE ACTION ABOUT?

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

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

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

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

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

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

1. Defendants Will Pay \$535,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than four months after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$178,333.33 (33 1/3% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$10,000.00 to the Administrator for services administering the Settlement.
 - D. Up to \$25,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 34% of each Individual Class Payment to taxable wages (“Wage Portion”) and 66% to penalties (33%) and interest (33%) (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically canceled, and the monies will be irrevocably lost to you because they will be paid to a non-profit organization, Legal Aid at Work, 180 Montgomery St. #600, San Francisco, CA 94104 (“Cy Pres Beneficiary”).
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [date], that you wish to opt out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [date] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against Defendants.

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

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal.

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

8. Administrator. The Court has appointed a neutral company, CPT Group, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendants have fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

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

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendants has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in

any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

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

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

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$6,250.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until [date] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

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

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

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

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

7. HOW DO I OBJECT TO THE SETTLEMENT?

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

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written**

objections to the Administrator is [date]. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Kenneth Wilburn v. Concrete, Inc., et al.*, and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department 11B of the San Joaquin County Superior Court, located at 180 E Weber Ave., Stockton, CA 95202. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via XXX(Website Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to [specify whose] website at [URL of website]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the San Joaquin Superior Court website by going to (<https://cms.sjcourts.org/fullcourtweb/start.do>) and entering the Case Number for the Action, Case No. STK-CV-UOE-2021-10183. You can also make an appointment to personally review court documents in the Clerk's Office at the Stockton Courthouse by calling (209) 992-5697.

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

Class Counsel:

Justin F. Marquez, Esq.
Christina M. Le, Esq.
Zachary D. Greenberg, Esq.
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010
Telephone: (213) 784-3830
Facsimile: (213) 381-9989
justin@wilshirelawfirm.com
cle@wilshirelawfirm.com
zgreenberg@wilshirelawfirm.com

Settlement Administrator:

[Name of Company]
[Email Address]
[Mailing Address]
[Telephone]
[Fax Number]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

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

Exhibit 2

~~[FORM]~~ CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE¹

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between ~~plaintiff [name]~~ Plaintiff Kenneth Wilburn (“Plaintiff”) and ~~defendant XYZ [name] (“XYZ”)~~ Defendants Concrete, Inc., doing business as Knife River, MDU Resources Group, Inc., and Knife River Corporation (collectively referred to as “Defendants”). The Agreement refers to Plaintiff and ~~XYZ~~ Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

~~1.1.~~ “Action” means the Plaintiff’s class action lawsuit alleging wage and hour violations against ~~XYZ~~ Defendants, captioned ~~caption and~~ Wilburn v. Concrete, Inc., et al., case number ~~no. STK-CV-UOE-2021-0010183~~ initiated on ~~[filing date]~~ and pending in Superior Court of ~~October 29, 2021, which is the State of California, County of Los Angeles.~~ lead action consolidated with Plaintiff’s PAGA action lawsuit, case no. STK-CV-UOC-2022-0002317.

~~1.2.1.1.~~ “Administrator” means ~~[name]~~ CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

~~1.3.1.2.~~ “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

~~1.4.1.3.~~ “Aggrieved Employee” means ~~[e.g.,]~~ a person employed by ~~XYZ~~ Defendants in California and classified as ~~a~~ an hourly-paid, non-exempt employee who worked for ~~XYZ~~ Defendants during the PAGA Period~~;~~.

~~1.5.1.4.~~ “Class” means ~~[define class e.g.,]~~ all persons employed by ~~XYZ~~ Defendants in California and classified as ~~who worked for XYZ~~ an hourly-paid, non-exempt employee during the Class Period~~;~~.

~~1.6.1.5.~~ “Class Counsel” means ~~[name]~~ Justin F. Marquez, Christina M. Le, and Zachary D. Greenberg of Wilshire Law Firm, PLC.

~~1.7.1.6.~~ “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

~~1.8.1.7.~~ “Class Data” means Class Member identifying information in ~~XYZ’s~~ Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number~~;~~, and number of Class Period Workweeks and PAGA Pay Periods.

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~~1.9.1.8.~~ “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

~~1.10.1.9.~~ “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

~~1.11.1.10.~~ “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English ~~[with a Spanish translation, if applicable]~~, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

~~1.12.1.11.~~ “Class Period” means the period ~~from [date] to [date]~~ that starts on May 4, 2017, and shall end on January 31, 2023, or on the date when the Court grants preliminary approval of the settlement, whichever date is earlier.

~~1.13.1.12.~~ “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

~~1.14.1.13.~~ “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

~~1.15.1.14.~~ “Court” means the Superior Court of California, County of ~~Los Angeles~~ San Joaquin.

~~1.16.~~ ~~“XYZ” means named Defendant [name].~~

~~1.15.~~ “Defendants” means named Defendants Concrete, Inc., doing business as Knife River, MDU Resources Group, Inc., and Knife River Corporation.

~~1.17.1.16.~~ “Defense Counsel” means ~~[name]~~ Ryan L. Eddings and Cody S. Chapple of Littler Mendelson, P.C.

~~1.18.1.17.~~ “Effective Date” means the date by ~~when~~ which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

- ~~1.19~~.1.18. “Final Approval” means the Court’s order granting final approval of the Settlement.
- ~~1.20~~.1.19. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- ~~1.21~~.1.20. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- ~~1.22~~.1.21. “Gross Settlement Amount” means ~~\$[amount]~~\$535,000.00 which is the total amount ~~XYZ agrees~~Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- ~~1.23~~.1.22. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- ~~1.24~~.1.23. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- ~~1.25~~.1.24. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- ~~1.26~~.1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- ~~1.27~~.1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- ~~1.28~~.1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- ~~1.29~~.1.28. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- ~~1.30~~.1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for ~~XYZ~~Defendants for at least one day during the PAGA Period.

~~1.34.1.30.~~ "PAGA Period" means the period ~~from~~ that starts on May 4, 2020 and shall end on January 31, 2023 or on the date ~~to~~ when the Court grants preliminary approval of the settlement, whichever date ~~is~~ is earlier.

~~1.32.1.31.~~ "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

~~1.33.1.32.~~ "PAGA Notice" means ~~Plaintiff's~~ Plaintiff's ~~[date] letter~~ November 2, 2021, and April 19, 2022 letters to ~~XYZ~~ Defendants and the LWDA ~~[and Plaintiff's [date] letter to XYZ and the LWDA]~~ providing notice pursuant to Labor Code section 2699.3, subd.(a).

~~1.34.1.33.~~ "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees ~~(insert amount)~~ (\$6,250.00) and ~~the~~ 75% to LWDA ~~(insert amount)~~ (\$18,750.00) in settlement of PAGA claims.

~~1.35.1.34.~~ "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

~~1.36.1.35.~~ "Plaintiff" means ~~[name]~~ Kenneth Wilburn, the named plaintiff in the Action.

~~1.37.1.36.~~ "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

~~1.38.1.37.~~ "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

~~1.39.1.38.~~ "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.

~~1.40.1.39.~~ "Released PAGA Claims" means the claims being released as described in Paragraph 6.2 below.

~~1.41.1.40.~~ "Released Parties" means: ~~XYZ~~ Defendants and each of ~~its~~ their former and present directors, officers, shareholders, owners, ~~[members]~~ attorneys, insurers, predecessors, successors, ~~assigns~~ subsidiaries ~~and~~ affiliates.

~~1.42.1.41.~~ "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

~~1.43.1.42.~~ "Response Deadline" means ~~[e.g., 60]~~ 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees; and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

~~1.44.1.43.~~ “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

~~1.45.1.44.~~ “Workweek” means any week during which a Class Member worked for ~~XYZ~~Defendants for at least one day, during the Class Period.^{iv}

2. RECITALS.

2.1. On ~~[date]~~October 29, 2021, Plaintiff commenced this class action (“Class Action”) by filing a Complaint alleging causes of action against ~~XYZ~~Defendants for ~~[specify causes of action]. [The Complaint is the operative complaint in the Action (the “Operative Complaint.”)]~~[On [date]: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) violation of California’s Unfair Competition Law, California Business and Professions Code §§ 17200, et seq. On March 30, 2022, Plaintiff filed a [e.g., First Amended Complaint]PAGA Action (“PAGA Action”) alleging causes a cause of action against XYZ for [specify causescivil penalties under the Private Attorney General Action (Lab. Code § 2699 et seq.). On December 17, 2022, the Court ordered the consolidation of action]. The [e.g., First Amended] Complaint is the operative complaint inClass and the Action (the “Operative Complaint.”)]XYZ deniesPAGA Actions, with the class action as the lead case (both the Class and PAGA actions are hereinafter referred to as the “Action”). Defendants deny the allegations in the Operative Complaint, deniesAction, deny any failure to comply with the laws identified in in the Operative ComplaintAction, and deniesdeny any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to ~~XYZ~~Defendants and the LWDA by sending the PAGA Notice.

2.3. On ~~[date[s]]~~October 31, 2022, the Parties participated in an all-day mediation presided over by ~~[mediator’s name]~~mediator Lisa Klerman, which led to this Agreement to settle the Action~~[or describe alternative means of negotiation]~~.

2.4. Prior to ~~[mediation]~~[negotiating the Settlement], Plaintiff obtained, through ~~[formal][informal]~~ discovery, ~~[identify wage and hour policy and procedure documents, testimony and information obtained]~~adequate sampling of employee time and payroll records, and relevant data points pertaining to the class and PAGA claims. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5. The Court ~~has~~ has not granted class certification. ~~[Insert details as needed.]~~

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, ~~XYZ promises~~ Defendants promise to pay ~~the amount of~~ \$535,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. ~~XYZ has.~~ Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph ~~6.4.3~~ of this Agreement.* The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to ~~XYZ~~ Defendants.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than ~~the amount of~~ \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment) the Class Representative is entitled to receive as a Participating Class Member). ~~XYZ~~ Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than ~~16 court~~ days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than ~~33 1/3%~~, which is currently estimated to be ~~the amount of~~ \$178,333.33 and a Class Counsel Litigation Expenses Payment of not more than ~~the amount of~~ ~~XYZ~~ \$20,000.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than ~~16 court~~ days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or

any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds ~~XYZ~~Defendants harmless, and indemnifies ~~XYZ~~Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed ~~the amount of~~\$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than ~~the amount of~~\$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1. Tax Allocation of Individual Class Payments. ~~Specify~~ percentage34% of each Participating Class Member's Individual Class Payment will be allocated to the settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The ~~specify percentage~~66% of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for ~~e.g., interest (33%) and penalties (33%)~~ (the "Non-Wage Portion").^{vi} The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any ~~employee~~employment taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of ~~the amount of~~\$25,000 to be paid from the Gross Settlement Amount, with 75% (~~the amount of~~18,750.00) allocated to the LWDA PAGA Payment and 25% (~~the amount of~~6,250.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (~~the amount of~~6,250.00) by the total number of PAGA Period Pay Periods

worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, ~~XYZ~~Defendant estimates ~~there are [number] that~~ Class Members ~~who~~ collectively worked a total of ~~[amount]38,875~~ Workweeks, ~~and [number] as of~~ ~~Aggrieved Employees who worked a total [amount] of PAGA Pay Periods~~ July 28, 2022.
- 4.2. Class Data. Not later than ~~[e.g., 15]~~ days after the Court grants Preliminary Approval of the Settlement, ~~XYZ~~Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. ~~XYZ has~~Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which ~~XYZ~~Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. ~~XYZ~~Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay ~~XYZ's~~Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than ~~[14]~~ days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within ~~[14]~~ days after ~~XYZ funds~~Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

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

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within ~~7~~ days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks ~~to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).~~ ~~for~~ to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient") ~~[adding name]~~, Legal Aid at Work, 180 Montgomery St. #600, San Francisco, CA 94104. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

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

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

6.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences [that occurred during the Class Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, [or ascertained during the Action and released under 6.2, below]. ("Plaintiff's Release.") In exchange for the Class Representative Service Payment, upon the Effective Date, and except as to the right to enforce the terms and conditions of this Agreement, Plaintiff releases the Released Parties from any and all charges, complaints, claims, causes of action, demands, disputes, damages, business expenses, attorneys' fees, costs, losses, and liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at any time, had, claimed to have, or Plaintiff may have, including but not limited to any and all claims arising out of, relating to, or resulting from his employment with and separation of employment with Released Parties, including any claims arising under any federal, state, or local law relating to employment, including, but in no way limited to, any claim under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 1981; the Americans with Disabilities Act ("ADA"); the Family and Medical Leave Act ("FMLA"); the Employee Retirement Income Security Act ("ERISA"); the California Family Rights Act ("CFRA"); the California Fair Employment and Housing Act ("FEHA"); all claims for wages or penalties under the Fair Labor Standards Act ("FLSA"); all claims for wages or penalties under the California Labor Code; Business and Professions Code §§ 17200 *et seq.*; all laws relating to violation of public policy, retaliation, or interference with legal rights; any and all other employment or discrimination laws; whistleblower claims; any tort, fraud, or constitutional claims; and any breach of contract claims or claims of promissory estoppel. It is agreed that this is a general release and is to be broadly construed as a release of all claims; provided that, notwithstanding the foregoing, this paragraph expressly does not include a release of any claims that cannot be released hereunder by law ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Nothing in this Agreement prohibits Plaintiff from filing a charge or complaint or communicating with a government agency where, as a matter of law, Defendants may not restrict Plaintiff's ability to do so. However, Plaintiff hereby waives his rights to any monetary benefits or recovery in connection with any such claim, charge or proceeding from Defendants, except this Agreement does not limit Plaintiff's right to receive an award or monies from any government agency. Nothing in this Agreement waives Plaintiff's right to testify or prohibits him from testifying in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment when Plaintiff has been required or requested to attend the proceeding pursuant to a court order, subpoena or written request from an administrative agency or the California state legislature. Plaintiff acknowledges that Plaintiff may discover facts

or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. Plaintiff understands and expressly agrees that this Agreement extends to claims that he has against Released Parties, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the Effective Date of this Agreement. Any and all rights granted under any state or federal law or regulation limiting the effect of this Settlement Agreement, including the provisions of section 1542 of the California Civil Code, are hereby expressly waived. Section 1542 of the California Civil Code reads as follows:

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

~~For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:~~

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

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

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

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

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

7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members ~~and/or~~ the proposed Cy Pres ~~Recipient;~~ and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, ~~and/or~~ the Administrator ~~and/or~~ the proposed Cy Pres ~~Recipient;~~ (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; ~~its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2));~~ and all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their

Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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

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

8. SETTLEMENT ADMINISTRATION.

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

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

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

8.4 Notice to Class Members.

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

8.4.2 Using best efforts to perform as soon as possible, and in no event later than ~~14~~ days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice ~~with Spanish translation, if applicable~~ substantially in the form attached to this Agreement as Exhibit ~~—, 1~~. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

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

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

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than ~~60/45~~ days after the Administrator mails the Class Notice (plus an additional ~~14~~ days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her

representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

- 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.
- 8.6 Challenges to Calculation of Workweeks. Each Class Member shall have ~~f60~~^{f45} days after the Administrator mails the Class Notice (plus an additional ~~f14~~ days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

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

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

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

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

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

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

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

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

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

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

8.8.6 Final Report by Settlement Administrator. Within ~~10~~ days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least ~~15~~ days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. **CLASS SIZE ESTIMATES ~~and ESCALATOR CLAUSE~~.** Based on its records, ~~XYZ estimates~~ Defendant represents that, ~~as of the date of this Settlement Agreement, (1) there are [number] no more than 38,875 workweeks worked by the Class Members and [from May 4, 2017, through July 28, 2022. In the event the number of workweeks worked by the Class Members increases by more than 15%, or 5,831, then the Class Period shall be reduced until the maximum number] Total Workweeks work workweeks during the Class period and (2) there were [number] Aggrieved Employees who worked [number] Pay Periods during the PAGA Period.~~ Period is 44,706. The Parties will work in good faith to make this determination.

10. **XYZ'S DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ~~{specify percentage}~~5% of the total of all Class Members, ~~XYZ~~Defendants may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if ~~XYZ withdraws~~Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, ~~XYZ~~Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. ~~XYZ~~Defendants must notify Class Counsel and the Court of its election to withdraw not later than ~~{seven}~~ days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

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

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

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

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

11.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this

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

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

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

13. **ADDITIONAL PROVISIONS.**

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by ~~XYZ~~Defendants that any of the allegations in the Operative Complaint have merit or that ~~XYZ has~~Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that ~~XYZ's~~Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, ~~XYZ~~ reservesDefendants reserve the right to contest certification of any class for any reasons, and ~~XYZ reserves~~Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest ~~XYZ's~~Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

- 13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, ~~XYZ~~Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by ~~XYZ~~Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from ~~XYZ~~Defendants unless, prior to the Court's discharge of the Administrator's obligation, ~~XYZ~~Defendants makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

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

To Plaintiff:

[Justin F. Marquez, Esq.](#)
[Christina M. Le, Esq.](#)
[Zachary D. Greenberg, Esq.](#)
[WILSHIRE LAW FIRM](#)
[3055 Wilshire Blvd., 12th Floor](#)
[Los Angeles, CA 90010](#)
[Telephone: \(213\) 784-3830](#)
[Facsimile: \(213\) 381-9989](#)
[justin@wilshirelawfirm.com](#)
[cle@wilshirelawfirm.com](#)
[zgreenberg@wilshirelawfirm.com](#)

To XYZ Defendants:

[Ryan L. Eddings \(SBN 256519\)](#)
[reddings@littler.com](#)
[Cody S. Chapple \(SBN 332206\)](#)
[cchapple@littler.com](#)
[LITTLER MENDELSON, P.C.](#)
[5200 North Palm Avenue Ste. 302](#)
[Fresno, California 93704](#)
[Tel: \(559\) 244-7500](#)
[Fax: \(559\) 244-7525](#)

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

admissible in evidence to prove the existence and contents of this Agreement.

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

[Signature] _____ [Signature]
[name] For Plaintiff _____ [name and title] For XYZ

[Signature] _____ [Signature]
[name] Counsel for Plaintiff _____ [name] Counsel for XYZ
On Behalf of Plaintiff:

Dated: _____, 2022

Kenneth Wilburn, Plaintiff

On Behalf of Defendants Concrete, Inc., doing business as Knife River, MDU Resources Group, Inc. and Knife River Corporation

Dated: _____, 2022

Name:
Title:

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

{case name and number}

Kenneth Wilburn v. Concrete, Inc., et al., San Joaquin County Superior Court case no. STK-CV-UOE-2021-10183

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against {name of defendant} (abbreviate name; “XYZ” is used herein Defendants Concrete, Inc., doing business as a placeholder) Knife River, MDU Resources Group, Inc., and Knife River Corporation (referred to collectively as “Defendants”) for alleged wage and hour violations. The Action was filed by a {n} {Defendants’ former} XYZ employee {name}, Kenneth Wilburn (“Plaintiff”), and seeks payment of (1) back wages {and other relief} for a class of {e.g., hourly} paid, non-exempt employees (“Class Members”) who worked for XYZ Defendants in California during the Class Period ({date} to {date}); (May 4, 2017, to January 31, 2023; and (2) penalties under the California Private Attorney General Act (“PAGA”) for all {e.g., hourly} paid, non-exempt employees who worked for XYZ Defendants in California during the PAGA Period ({date} (May 4, 2020, to {date} (January 31, 2023 (“Aggrieved Employees”).

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

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

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

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

Members and Aggrieved Employees to give up their rights to assert certain claims against ~~XYZ~~Defendants.

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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

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

1. WHAT IS THE ACTION ABOUT?

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

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

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

So far, the Court has made no determination whether ~~XYZ~~ Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and ~~XYZ~~ Defendants hired ~~an~~ experienced, neutral mediator ~~[a retired judge]~~ ~~[describe alternative means of negotiations]~~ in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the

Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and ~~XYZ~~Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, ~~XYZ~~Defendants does not admit any violations or concede the merit of any claims.

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

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

1. ~~XYZ~~Defendants Will Pay ~~{Amount}~~\$535,000.00 as the Gross Settlement Amount (Gross Settlement), ~~XYZ~~hasDefendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, ~~XYZ~~Defendants will fund the Gross Settlement not more than ~~{14} days~~four months after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to ~~{Amount}~~ (~~*\$178,333.33 (33 1/3% of the Gross Settlement)~~) to Class Counsel for attorneys’ fees and up to ~~{Amount}~~\$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to ~~{Amount}~~\$10,000.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to ~~{Amount}~~\$10,000.00 to the Administrator for services administering the Settlement.

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D. Up to ~~the amount of~~ \$25,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and ~~XYZ~~ Defendants are asking the Court to approve an allocation of ~~the~~ ~~specified~~ 34% of each Individual Class Payment to taxable wages (“Wage Portion”) and ~~the~~ ~~specified~~ 66% to ~~for example, penalties (33%) and~~ interest ~~etc.~~ (33%) (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. ~~Option 1: XYZ Defendants will separately pay employer payroll taxes it owes on the Wage Portion.~~ The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically ~~cancelled/canceled~~, and the monies ~~will be deposited with the California Controller’s Unclaimed Property Fund in your name~~ ~~will~~ irrevocably lost to you because they will be paid to a non-profit organization ~~or foundation, Legal Aid at Work, 180 Montgomery St. #600, San Francisco, CA 94104 (“Cy Pres”).~~ ~~If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.~~ Beneficiary”).
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [date] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address,

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telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against ~~XYZ-Defendants~~.

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

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

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from ~~(+)~~all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint ~~and ascertained in the course of the Action~~, including, ~~e.g., “(a) any and all claims involving any alleged for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage, etc.~~ statements; (7) violation of California’s Unfair Competition Law, California Business and Professions Code §§ 17200, et seq. Except as set

forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.ⁱⁱⁱⁱ.

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

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

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

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing ~~the amount~~\$6,250.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in ~~XYZ's~~Defendants' records, are stated in the first page of this Notice. You have until [date] to challenge the number of Workweeks and/or Pay Periods

credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

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

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

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

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

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and XYZ Defendants are asking the

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

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

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department [7]11B of the ~~Los Angeles~~San Joaquin County Superior Court, located at ~~312 North Spring Street, Los Angeles~~180 E Weber Ave., Stockton, CA ~~90012~~95202. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via ~~LA Court Connect~~ (https://www.lacourt.org/lacc/. ~~[confirm]~~XXX(Website. Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything ~~XYZ~~Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to [specify whose] website at [URL of website]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the San Joaquin Superior Court website by going to (~~http://www.lacourt~~ (~~https://cms.sjcourts.org/casesummary/ui/index.aspx~~) ~~{confirm}~~fullcourtweb/start.do) and entering the Case Number for the Action, Case No. ~~{number}~~-STK-CV-UOE-2021-10183. You can also make an appointment to personally review court documents in the Clerk's Office at the ~~Stanley Mosk~~Stockton Courthouse by calling (~~213~~-830-0800-209) 992-5697.

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

Class Counsel:

~~{Name of Attorney}~~

~~{Email Address}~~

~~{Name of Firm}~~

~~{Mailing Address}~~

~~{Justin F. Marquez, Esq.~~

Christina M. Le, Esq.

Zachary D. Greenberg, Esq.

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor

Los Angeles, CA 90010

Telephone: (213) 784-3830

Facsimile: (213) 381-9989

justin@wilshirelawfirm.com

cle@wilshirelawfirm.com

zgreenberg@wilshirelawfirm.com

Settlement Administrator:

[Name of Company]

[Email Address]

[Mailing Address]

[Telephone]

[Fax Number]

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10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void ~~[you should consult the Unclaimed Property Fund [website] for instructions on how to retrieve the funds]~~ [you will have no way to recover the money].~~—~~

11. WHAT IF I CHANGE MY ADDRESS?

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

ⁱ This Form Class Action and PAGA Settlement Agreement is for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Form Class Action Settlement Agreement and Class Notice.

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

ⁱⁱⁱ See endnote ii above.

^{iv} The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.

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

^{vi} Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g., a settlement that is solely a Labor Code Section 226(a) claim.)

^{vii} Insert negotiated terms, if any, addressing the possibility that XYZ’s estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an “escalator” clause memorializing XYZ’s promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds XYZ’s estimates.

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

Exhibit 3

CASE NAME: WILBURN v KNIFE RIVER CONSTRUCTION

Date: December 6, 2022

Requesting Attorney: Justin F. Marquez
Plaintiff or Defense: Plaintiff
Firm Name: Wilshire Law Firm, PLC
Telephone: (213) 381-9988
Email: justin@wilshirelawfirm.com

All-In Settlement

Class Size: 250
Opt-Out Rate: 1.5%
No. of Checks Issued: 246
Postage Total: \$399.23
Grand Total: \$14,019.78

DISCOUNTED FLAT FEE: \$9,500.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. The Notice Packet will be Translated into Spanish. All Pertinent Documents will be Posted on a Case Specific Website.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	2	\$190.00
Programming: Data Base Setup	\$150.00	2	\$300.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
		TOTAL	\$2,190.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA. CPT will Mail a Full-Length Notice & 1-Page Exclusion Form in Both English & Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
Print & Mail Notice Packets	\$1.50	250	\$375.00
First-Class Postage (up to 2 oz.)*	\$0.81	250	\$202.50
		TOTAL	\$902.50

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 6% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 91% of the Notice Packets are Remaild.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	15	\$7.50
Skip Trace for Best Address	\$1.00	13	\$13.00
Print & Remail Notice Packets	\$1.50	12	\$18.00
First-Class Postage (up to 2 oz.)	\$0.81	12	\$9.72
		TOTAL	\$108.22

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice

by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Out Requests	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out & Change of Address Processing	\$2.00	4	\$7.50
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.60	1	\$0.60
Review & Process Deficiency Responses	\$10.00	1	\$10.00
		TOTAL	\$324.60

TELEPHONE SUPPORT

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	50	\$150.00
		TOTAL	\$450.00

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	246	\$24.63
		TOTAL	\$459.63

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	246	\$615.63
First-Class Postage (up to 1 oz.)*	\$0.60	246	\$147.75
		TOTAL	\$2,753.38

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	10	\$1,500.00
Update Undeliverable Checks Database	\$0.50	20	\$10.00
Skip Trace for Best Address	\$1.00	20	\$20.00
Remail Undeliverable Checks	\$2.50	18	\$45.00
First-Class Postage (up to 1 oz.)	\$0.60	18	\$10.80
Re-Issue Checks as Required	\$5.00	13	\$65.00
First-Class Postage (up to 1 oz.)	\$0.60	13	\$7.80
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
		TOTAL	\$4,698.60

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	52	\$7.80
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	5	\$25.00
First-Class Postage (up to 1 oz.)	\$0.60	5	\$3.00
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
		TOTAL	\$2,132.86

GRAND TOTAL \$14,019.78

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
 3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
 4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
 5. **Mutual Obligations.**
 - a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

