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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

BRYAN HICKS, individually, and on behalf of
other members of the general public similarly
situated and other aggrieved employees pursuant
to the California Private Attorneys General Act;

Plaintiff,

vs.

CALIFORNIA WATER SERVICE, an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 21CV376394

Honorable Sunil R. Kulkarni
Department 1

CLASS ACTION

**AMENDMENT NO. 1 TO CLASS
ACTION SETTLEMENT AND
RELEASE**

Complaint Filed: February 23, 2021
FAC Filed: February 24, 2023
Jury Trial Date: None Set

1 Plaintiff Bryan Hicks (“Plaintiff”) and Defendant California Water Service (“Defendant”)
2 (together, “the Parties”), pursuant to Paragraph 81 of the Class Settlement and Release (“Original
3 Agreement”) entered into on or around May 4, 2023, hereby agree to amend the Original
4 Settlement Agreement, as stated herein. The amendments stated herein are incorporated by this
5 reference:

6 **A. Paragraph 20 of the Original Agreement is hereby amended to state as follows:**

7 20. “Notice of Objection” means a Settlement Class Member’s valid and timely written
8 objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include:
9 (i) the case name and number of the Action; (ii) the objector’s full name; (iii) a clear written
10 statement of all grounds for the objection accompanied by any legal support for such objection;
11 (iv) copies of any papers, briefs, or other documents upon which the objection is based; and (v) a
12 statement whether the objector intends to appear at the Final Approval Hearing. Any Settlement
13 Class

14 Member who does not submit a timely written objection to the Settlement, or who fails to
15 otherwise comply with the specific and technical requirements of this paragraph, will be
16 foreclosed from objecting to the Settlement and seeking any adjudication or review of the
17 Settlement, by appeal or otherwise.

18 **B. Paragraph 30 of the Original Agreement is hereby amended to state as follows:**

19 “Request for Exclusion” means a timely letter submitted by a Settlement Class Member
20 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i)
21 contain the case name and number of the Action; (ii) set forth the full name of the Settlement
22 Class Member requesting exclusion; (iii) be signed by the Settlement Class Member; (iv) be
23 returned by mail to the Settlement Administrator at the specified address, postmarked on or
24 before the Response Deadline; (v) clearly state that the Settlement Class Member does not wish
25 to be included in the Settlement. The date of the postmark on the return mailing envelope on
26 the submission will be the exclusive means to determine whether a Request for Exclusion has
27 been timely submitted.


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C. **Exhibit A of the Original Agreement (the “Notice of Class Action Settlement”),**
will be replaced with: the revised Notice of Class Action Settlement that is attached hereto as
Exhibit A.

LAWYERS for JUSTICE, PC


Dated: August 9, 2023

By: 

Brian J. St. John
Attorneys for Plaintiff

GIBSON, DUNN & CRUTCHER LLP

Dated: August 9, 2023

By: 

Catherine A. Conway
Cynthia Chen McTernan
Jacob U. Arber
Attorneys for Defendant

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Bryan Hicks v. California Water Service
Santa Clara County Superior Court, Case No. 21CV376394

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced matter.

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

This Notice is designed to advise you of your rights and options with respect to the settlement.

By order of the Superior Court of California for the County of Santa Clara (the "Court" or "Santa Clara County Superior Court"), you are notified that: preliminary approval of a class action settlement reached between plaintiff Bryan Hicks ("Plaintiff") and Defendant California Water Service Company ("Cal Water" or "Defendant"), was granted on [insert date], in the case entitled *Bryan Hicks v. California Water Service*, Santa Clara County Superior Court, Case No. 21CV376394 (the "Action"), which may affect your legal rights.

If you are a Class Member (or member of the Class), you need not take any action to receive a settlement payment, but you have the opportunity to request exclusion from the Settlement (in which case you will not receive payment under the Settlement), object to the Settlement, and/or dispute the number of Workweeks credited to you, if you so choose, as explained more fully in Section III below.

I. IMPORTANT DEFINITIONS

"**Class**" means all current and former hourly non-exempt Cal Water employees who worked for Cal Water in California between February 23, 2017, through August 8, 2022.

"**Class Member**" means a member of the Class.

"**Class Period**" means the period from February 23, 2017, through August 8, 2022.

"**Allegedly Aggrieved Employees**" means all current and former non-exempt Cal Water employees who were employed by Cal Water between February 23, 2020, and August 8, 2022.

"**PAGA Period**" means the period from February 23, 2020, through August 8, 2022.

II. BACKGROUND OF THE ACTION

On February 23, 2021, Plaintiff Bryan Hicks filed a Class Action Complaint for Damages against Defendant in the Santa Clara County Superior Court, Case No. 21CV376394. The Action alleges causes of action for purported violations of the California Labor Code: Unpaid Overtime Wages (Lab. Code §§ 510 and 1198); Meal Period Violations (Lab. Code §§ 226.7 and 512); Rest Period Violations (Lab. Code § 226.7); Unpaid Minimum Wages (Lab. Code §§ 1194, 1197 and 1197.1); Failure to Timely Pay Final Wages (Lab. Code §§ 201 and 202); Failure to Timely Pay Wages During Employment (Lab. Code § 204); Non-Compliant Wage Statements (Lab. Code § 226); Failure to Maintain Payroll Records (Lab. Code § 1174); Failure to Reimburse Business Expenses (Lab. Code §§ 2800 and 2802); and Unfair Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*)

On or about March 3, 2022, Plaintiff Bryan Hicks submitted a Private Attorneys General Act ("PAGA") Letter ("PAGA Notice") to the Labor and Workforce Development Agency ("LWDA") seeking civil penalties under PAGA, against Cal Water and any and all affiliates, subsidiaries, parents, directors, officers, and employees, on behalf of allegedly aggrieved employees in California ("Allegedly Aggrieved Employees"), for alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders 1-2001, 4-2001, 7-2001, and 16-2001.

On February 24, 2023, Plaintiff Bryan Hicks filed the First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act (“PAGA”), California Cal. Labor Code § 2698, et seq. (“First Amended Complaint” or “Operative Complaint”) in the Action, adding a cause of action for civil penalties under the PAGA on behalf of himself and all other Allegedly Aggrieved Employees.

Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, declaratory relief, penalties, interest, and attorneys’ fees and costs.

Defendant denies all the allegations in the Operative Complaint or that it violated any law and contends that at all times it has fully complied with all applicable federal, state, and local laws.

The Parties participated in a full-day mediation session with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Stipulation of Settlement (“Settlement” or “Settlement Agreement”), which was preliminarily approved by the Court on [Preliminary Approval Date]. The Court has appointed Phoenix Class Action Administration Solution as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Bryan Hicks as representative of the Class (“Class Representative”), and the following law firm as counsel for the Class (“Class Counsel”):

Edwin Aiwazian, Esq.
Arby Aiwazian, Esq.
Joanna Ghosh, Esq.
Brian J. St. John, Esq.
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

The Settlement represents a compromise and Settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff or to Class Members. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and that the Settlement is in the best interests of the Class Members.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total settlement amount is Two Million One Hundred Fifty Thousand Dollars (\$2,150,000) (the “Gross Settlement Fund”). The portion of the Gross Settlement Fund that is available for payment to Class Members who do not opt out of this Settlement (“Settlement Class Members”) is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Fund less the following payments which are subject to approval by the Court: (1) attorneys’ fees in an amount of up to thirty-five percent (35%) of the Gross Settlement Fund (i.e., up to \$752,500) and reimbursement of litigation costs and expenses in an amount of up to Twenty Five Thousand Dollars (\$25,000) to Class Counsel (collectively, “Class Counsel Award”); (2) enhancement payment in an amount not to exceed Eight Thousand Dollars (\$8,000) to Plaintiff Bryan Hicks, in part for his effort and work in prosecuting the Action (“Enhancement Payment”); (3) settlement administration costs in an amount not to exceed Twenty Thousand Dollars (\$20,000) to the Settlement Administrator (“Settlement Administration Costs”); and (4) the allocation of One Hundred Seventy-Five Thousand Dollars (\$175,000) to settle all claims under PAGA (“PAGA Payment”), of which 75%, or \$131,250, will be paid to the Labor and Workforce Development Agency (“LWDA”) and the remaining 25%, or \$43,750, will be distributed to Allegedly Aggrieved Employees.

Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of workweeks during which they worked for Defendant as an hourly non-exempt employee in California during the Class Period (“Workweeks”). Specifically, the Settlement Administrator shall determine the number of weeks that each Class Member was employed by Defendants as a member of the class during the relevant time periods, by taking the total number of any calendar weeks that the Class Member worked during the Class Period.

Each Individual Settlement Share will be allocated as forty percent (40%) to wages (which will be reported on an IRS Form W-2), and sixty percent (60%) to interest, penalties, and other non-wage damages (which will be reported on an IRS Form 1099, if applicable). Allegedly Aggrieved Employees who worked between February 23, 2020, through August 8, 2022, will also be eligible to receive a portion of the PAGA Payment (“Individual PAGA Payment”). Individual PAGA Payments will be treated as 100% penalties and will be reported on IRS Form 1099. Each Individual Settlement Share will be subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of the Individual Settlement Share. The net payment of each Settlement Class Member’s Individual Settlement Share (after reduction for the employee’s share of taxes on the wage portion) and Individual PAGA Payment (if applicable) is referred to as their “Individual Settlement Payment.”

If the Court grants final approval of the Settlement, Defendants will make a one-time deposit of the full Gross Settlement Fund in the amount of Two Million One Hundred Fifty Thousand Dollars (\$2,150,000).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members at the address that is on file with the Settlement Administrator by way of one (1) check following the deposit of the full Gross Settlement Fund. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to.**

B. Your Pay Periods Based on Defendants’ Records

According to Defendant’s records:

From February 23, 2017, through August 8, 2022 you worked for Cal Water as an hourly non-exempt employee in California for [] Workweeks.

From February 23, 2020, through August 8, 2022, you worked for Cal Water as an hourly non-exempt employee in California for [] Workweeks.

If you wish to dispute the number of Workweeks credited to you, you must submit a written letter to the Settlement Administrator. The written dispute must: (a) contain the case name and number of the Action (*Bryan Hicks v. California Water Service*, Case No. 21CV376394); (b) be signed by you; (c) contain your full name, address, telephone number, and the last four digits of your Social Security Number; (d) clearly state that you dispute the number of Workweeks credited to you and what you contend is the correct number(s) to be credited to you; (e) include information and/or attach documentation demonstrating that the number of Workweeks that you contend should be credited to you is correct; and (f) be mailed to the Settlement Administrator at the address listed in Section IV.B below, postmarked **on or before [Response Deadline]**.

C. Your Estimated Individual Settlement Payment

As explained above, your estimated Individual Settlement Payment is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Individual Settlement Payment is estimated to be \$ []. The Individual Settlement Payment is subject to reduction for the employee’s share of taxes and withholding with respect to the wage portion of the Individual Settlement Payment.

Individual Settlement Payments will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The Settlement approval process may take multiple months. Your Individual Settlement Share in this Notice is only an estimate. Your actual Individual Settlement Share may be higher or lower.

D. Released Claims

After the Court enters an order granting final approval of the Settlement or five days after the final resolution of any appeals objecting to the Settlement, each of the Settlement Class Members (including the Class Representative) will be deemed to have, and by operation of the Court’s entry of judgment will have, fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all claims against the Released Parties for the Released Class Claims during the Release Period, and each of the Allegedly Aggrieved Employees will be deemed to have, and by operation of the Court’s entry of judgment will have, fully, finally, and forever released, settled, compromised, relinquished, and

discharged any and all claims against the Released Parties for the Released PAGA Claims during the Release Period..

“Released Class Claims” means all claims under state, federal, or local law during the Release Period that were or could have been alleged based upon the facts pleaded in the Action, including: (a) failure to provide compliant wage statements violations and/or failure to keep requisite payroll records (Labor Code §§ 226 and 1174); (b) failure to pay minimum wages (Labor Code §§ 1194, 1197, and 1197.1); (c) failure to pay overtime wages (Labor Code §§ 510, and 1198); (d) failure to provide compliant meal periods and associated premiums and compliant rest periods and associated premiums (Labor Code §§ 226.7, 512, and IWC Wage Order No. 4); (e) failure to reimburse employees for necessary business expenditures (Labor Code § 2802); (f) to timely pay wages during employment (Labor Code § 204); (g) failure to timely pay wages upon termination (Labor Code §§ 201 and 202); and (h) all claims asserted through California Business & Professions Code §§ 17200 et seq. arising out of the aforementioned claims during the Release Period.

“Released PAGA Claims” means all claims under PAGA for penalties during the PAGA Period that were or could have been alleged based upon the facts pleaded in the Action and the PAGA Notice, for alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders.

“Release Period” means the period from February 23, 2017, through the date of the Court’s final approval of class settlement or December 1, 2022, whichever is earlier.

“Released Parties” means Cal Water and any of its former and present parents, subsidiaries, holding companies, investors, sister and affiliated companies, divisions, and other related entities, as well as its and their successors, predecessors, shareholders, officers, directors, partners, assigns, agents, employees, principals, heirs, administrators, attorneys, vendors, accountants, auditors, consultants, fiduciaries, insurers, reinsurers, employee benefit plans, and representatives, both individually and in their official capacities, past or present, as well as all persons acting by, through, under, or in concert with any of these persons or entities, including, but not limited to, entities holding ownership interests in Cal Water.

E. Class Counsel Award to Class Counsel

Class Counsel will seek attorneys’ fees in an amount of up to thirty-five percent (35%) of the Gross Settlement Fund (i.e., up to \$752,500) and reimbursement of litigation costs and expenses in an amount of up to Twenty-Five Thousand Dollars (\$25,000), to be paid from the Gross Settlement Fund, subject to approval by the Court. Class Counsel has been prosecuting the Action on behalf of Plaintiff and Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of Eight Thousand Dollars (\$8,000) as an Enhancement Payment to Plaintiff Bryan Hicks in recognition of his services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Fund subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Individual Settlement Payment that he is entitled to under the Settlement.

G. Settlement Administrator Costs to the Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Twenty Thousand (\$20,000) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, receiving and reviewing requests for exclusion, objections, and/or disputes, if any, submitted by Class Members, calculating Individual Settlement Payments, and distributing payments and tax forms under the Settlement, and will be paid from the Gross Settlement Fund subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to receive money from the Settlement, you do not have to do anything. You will automatically be issued your Individual Settlement Payment unless you decide to exclude yourself from the Settlement. Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Parties for the Released Class

Claims. As a Class Member, you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

B. Request Exclusion from the Settlement

If you do not wish to participate in the Settlement, you may seek exclusion from (or “opt out” of) the Settlement by submitting a timely, written request for exclusion from the Settlement to the Settlement Administrator at the following address:

[Settlement Administrator]
[Address]

The request for exclusion must: (a) include your full name; (b) include the name and case number of the Action (*Bryan Hicks v. California Water Service*, Case No. 21CV376394); (c) include a clear and unequivocal statement that you wish to be excluded from the Settlement; (d) include your signature; and (e) be mailed to the Settlement Administrator at the address listed above, postmarked **no later than [Response Deadline]**.

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid request for exclusion from the Settlement will not be entitled to receive any payment from the Settlement, will not be bound by the Settlement (and the release of Released Class Claims stated in Section III.D above), and will not have any right to object to, appeal, or comment on the Settlement. Any Class Members who do not submit a timely and valid request for exclusion from the Settlement will be deemed Settlement Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of Released Class Claims stated in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

Notwithstanding the above, all Allegedly Aggrieved Employees will receive their share of the 25% share of the PAGA Payment and will be bound to the Released PAGA Claims, irrespective of whether they submit a Request for Exclusion.

Defendant will have the option to void the settlement agreement if 10 percent of the individuals eligible to become class members have opted out or are deemed by the court not to be bound by the Settlement.

C. Object to the Settlement

You can object to the terms of the Settlement as long as you have not submitted a request for exclusion from the Settlement, by submitting a written objection (“Notice of Objection”) to the Settlement Administrator.

A written Notice of Objection must: (a) include your full name; (b) contain the name and case number of Action (*Bryan Hicks v. California Water Service*, Case No. 21CV376394); (c) contain a statement of the specific legal and factual basis for each objection argument; (d) attach copies of any papers, briefs, or other documents upon which the objection is based; (e) contain a statement whether you or your attorney intend to appear at the Final Approval Hearing, and (f) be filed or postmarked **no later than [Response Deadline]**.

Settlement Class Members who submit timely Notices of Objection may appear at the Final Approval Hearing in order to have their objections heard by the Court. If the Court permits, Settlement Class Members who have not submitted a written Notice of Objection in compliance with the Settlement Agreement may still appear at the Final Approval Hearing and present their objections.

V. FINAL APPROVAL HEARING

The Court will hold a hearing (the “Final Approval Hearing”) in Department 1 of the Santa Clara County Superior Court, located at the Downtown Superior Courthouse at 191 North First Street, San Jose, California 95113 on **DATE, at TIME**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate and whether the attorneys’ fees and costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administrator Costs to the Settlement Administrator should be awarded. If the Court enters an order and judgment granting final approval of the Settlement, a copy of this order and judgment will be posted on the Settlement Administrator’s website; to access it you will need to navigate to the following web URL: [insert]

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to regardless of whether you submitted a Notice of Objection.

The judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 1 (Afternoon Session) or by calling the toll free conference call number for Department 1. Any class member who wishes to appear in person should check in at Court Services (1st floor, Downtown Superior Courthouse, 191 N. 1 st St., San Jose) and wait for a sheriff's deputy to escort him or her to the courtroom for the hearing.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other documents filed in the Action by using the kiosks located at the Downtown Superior Courthouse, 191 North First Street, San Jose, California, 95113, during regular business hours of each court day. You can also access documents filed in the Action, to the extent they have been imaged for online access, as well as basic information regarding hearing dates and filings in the Action by looking the case up on the Case Information Portal of the Court's website (<https://portal.scscourt.org>). Fees may apply for accessing and/or obtaining copies of documents from the Court in person or online. To look up and access documents and information on the Court's systems, you will need to use the case number.

Please note, due to the COVID-19 pandemic, there may be limitations on access to court facilities. Please visit the following link for the Court's most current social distancing procedures and information regarding accessing court facilities: https://www.scscourt.org/general_info/news_media/covid19.shtml.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.