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17 Attorneys for Defendant
 NAES CORPORATION

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 20 COUNTY OF KERN

21
 22 ROGER WESTFALL and JOSEPH M.
 ATWELL, as individuals, and on behalf
 23 of all others similarly situated

24 Plaintiffs,

25 vs.

26 NAES CORPORATION; and DOES 1
 27 through 20, inclusive,

28 Defendants.

CASE NO. BCV-20-101796

**CLASS ACTION AND PAGA
 SETTLEMENT AGREEMENT**

1 This Class Action and PAGA Settlement Agreement is entered into between Defendant
2 NAES CORPORATION and Plaintiffs ROGER WESTFALL and JOSEPH M. ATWELL,
3 individually, and on behalf of all other similarly situated and as representatives of the State of
4 California.

5 **ARTICLE I**

6 **DEFINITIONS**

7 a. Action. "Action" means the class action lawsuit entitled *Westfall, et al. v. NAES*
8 *Corporation, et al.*, filed in the Superior Court of California, Kern County, Case No. BCV-20-
9 101796.

10 b. Agreement. "Agreement" shall refer to the instant Class Action and PAGA
11 Settlement Agreement.

12 c. Attorneys' Fees. "Attorneys' Fees" refers to the amount to be awarded to Class
13 Counsel for the work it has performed in furtherance of the Action, which, pending Court approval,
14 shall not exceed Two Hundred Sixty-Six Thousand Six Hundred and Sixty Seven Dollars
15 (\$266,667.00) and which represents one-third (1/3) of the Gross Settlement Amount.

16 d. Attorneys' Costs. "Attorneys' Costs" refers to the amount to be reimbursed for Class
17 Counsel's litigation costs and expenses, which, pending Court approval, shall not exceed Twenty
18 Thousand Dollars (\$20,000).

19 e. Class Counsel. "Class Counsel" shall mean Samuel A. Wong, Kashif Haque, Jessica
20 L. Campbell, Daniel E. Ishu and Alexander G.L. Davies of Aegis Law Firm, PC and/or any
21 successor(s) thereof.

22 f. Class Members and the Class. "Class" or "Class Members" (individually, "Class
23 Member") are all current and former non-exempt employees of Defendant employed in California
24 during the Class Period.

25 g. Class Notice. "Class Notice" means the Notice of Class Action and PAGA Settlement
26 mutually agreed upon by the Parties and approved by the Court to be sent to the Class Members and
27 PAGA Members following preliminary approval that includes the scope of release language for
28 Settled Claims and Settled PAGA Claims, notifies Class Members and PAGA Members of the

1 Settlement, explains the Class Members' options, including how Class Members may opt out or
2 object to the Settlement, and explains the facts and methods based on which the Class Members' and
3 PAGA Members' estimated settlement payments are calculated, substantially in the form attached
4 hereto as **Exhibit A**.

5 h. **Class List**. "Class List" means a data file based on Defendant's business records that
6 identifies each Class Member's name, last known home or mailing address, Social Security number
7 or, as applicable, other taxpayer identification number, dates of employment, and the number of
8 Qualifying Workweeks and, if applicable, Qualifying PAGA Workweeks worked during the Class
9 Period.

10 i. **Class Period**. "Class Period" means April 6, 2016 through the date of the Preliminary
11 Approval Order.

12 j. **Class Settlement**. "Class Settlement" refers to the settlement and resolution of the
13 Settled Class Claims.

14 k. **Complaint**. "Complaint" or "Third Amended Complaint" refers to the operative
15 complaint in the Action, which in compliance with this Agreement, will be the Third Amended Class
16 Action Complaint.

17 l. **Court**. "Court" refers to the Superior Court of California, Kern County, or other court,
18 that will approve the Agreement.

19 m. **Day**. "Day" or "days" refers to a calendar day(s) unless otherwise stated. If any
20 designated date or deadline falls on a weekend or holiday, the designated date or deadline will occur
21 on the next business day.

22 n. **Date of Finality**. "Date of Finality" means the first business day following the last
23 of the following occurrences: (i) sixty (60) calendar days following the date the Court enters the
24 Final Approval Order and Judgment; or (ii) if an appeal is taken from the Final Approval Order and
25 Judgment, then the date of final resolution of that appeal (including any requests for rehearing and/or
26 petitions for *certiorari*), resulting in final and complete judicial approval of the Settlement in its
27 entirety, with no further challenge to the Settlement being possible.

28 o. **Defendant**. "Defendant" means NAES Corporation.

1 p. Defense Counsel. “Defense Counsel” shall mean Karin M. Cogbill and Elaisha
2 Nandrajog of Hopkins & Carley, ALC, and/or any successor(s) thereof.

3 q. Final Approval Order and Judgment. “Final Approval Order and Judgment” means
4 the order and judgment entered and filed by the Court, that: (1) ultimately approves this Agreement;
5 (2) awards and orders the payment of all required amounts pursuant to the terms of this Agreement,
6 and (3) enters judgment in the Action pursuant to California Rules of Court, 3.769, et seq.. The Final
7 Approval Order and Judgment will constitute a binding and final resolution, have full *res judicata*
8 effect, and discharge Defendant and Released Parties from liability for any and all claims by Named
9 Plaintiffs, all Settlement Class Members as to all Settled Claims, and the State of California and
10 PAGA Members as to all Settled PAGA Claims as set forth in this Agreement.

11 r. Final Approval Hearing. “Final Approval Hearing” means the hearing at which the
12 Court shall consider the Motion for Final Approval and determine whether to fully and finally
13 approve the fairness and reasonableness of this Agreement, and enter the Final Approval Order and
14 Judgment.

15 s. Last Known Address. “Last Known Address” means the most recently recorded
16 mailing address for a Class Member and/or PAGA Member contained in Defendant’s payroll
17 records.

18 t. Gross Settlement Amount. “Gross Settlement Amount” means a total payment of
19 Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00), payable by Defendant under this
20 Agreement. The Gross Settlement Amount includes all Attorneys’ Fees, Attorney’s Costs,
21 Settlement Administration Costs, Incentive Awards to the Named Plaintiffs, the PAGA Allocation,
22 employer taxes for the wage portion of any individual settlement payments, and the Net Settlement
23 Amount. With the exception of the potential pro rata increase noted in Section 4.06(a), in no event
24 shall Defendant be required to pay any amounts above the Gross Settlement Amount to effectuate
25 this Agreement. The Settlement Administrator will withhold the employees’ and employer’s share
26 of taxes on settlement payments, as provided below, and Class Members and PAGA Members shall
27 remain responsible for paying any additional taxes due on any payments they are issued under the
28 settlement. There will be no reversion of the Gross Settlement Amount to Defendant.

1 u. Incentive Award(s). “Incentive Awards” refers to individual payments, approved by
2 the Court, not to exceed Ten Thousand Dollars (\$10,000.00) to each of the Named Plaintiffs, for a
3 cumulative total of Twenty Thousand Dollars (\$20,000.00) in exchange for their service in
4 furtherance of the Action and their Individual Release (as defined in Section 5.03).

5 v. LWDA. “LWDA” means The State of California Labor and Workforce
6 Development Agency.

7 w. Motion for Final Approval. “Motion for Final Approval” means the Named
8 Plaintiffs’ submission of a written motion, including any evidence as may be required for the Court
9 to conduct an inquiry into the fairness of the Settlement as set forth in this Agreement, to conduct a
10 Final Fairness and Approval Hearing, and to enter a Final Order in this Action.

11 x. Motion for Preliminary Approval. “Motion for Preliminary Approval” means the
12 Named Plaintiffs’ submission of a written motion, including any evidence as may be required for the
13 Court to grant preliminary approval of the Agreement as required by Rule 3.769 of the California
14 Rules of Court.

15 y. Named Plaintiffs. “Named Plaintiffs” collectively means Plaintiff Roger Westfall
16 and Joseph M. Atwell.

17 z. Net Settlement Amount. “Net Settlement Amount” means the amount available for
18 distribution to Settlement Class Members, which is the Gross Settlement Amount, less all Attorneys’
19 Fees, Attorney’s Costs, Settlement Administration Costs, Incentive Awards to the Named Plaintiffs,
20 the PAGA Allocation, and employer taxes. Each Settlement Class Member will be entitled to a *pro*
21 *rata* share of the Net Settlement Amount (referred to as “Individual Settlement Payment(s)”) based
22 on the number of Workweeks credited to each Settlement Class Member during the Class Period.
23 The wage portion of the Individual Settlement Payment shall be subject to standard deductions and
24 withholdings.

25 aa. Objection. “Objection” means an objection to the Class Settlement that a Settlement
26 Class Member submits in writing to the Settlement Administrator. Each “Objection” must (1)
27 contain the full name, address, and telephone number of the Settlement Class Member objecting and
28 the case name and number of the Action; (2) be signed by the Settlement Class Member; (3) be

1 postmarked or fax stamped on or before the Response Deadline (as defined below) and returned to
2 the Settlement Administrator at the specified address or fax number; and (4) give the legal and factual
3 basis for objection to the Class Settlement.

4 bb. Opt Out Request. “Opt Out Request” means a request by a Class Member to be
5 excluded from the Class Settlement. Each “Opt Out Request” must (1) contain the full name,
6 address, and telephone number of the Class Member requesting exclusion from the Class Settlement
7 and the case name and number of the Action; (2) be signed by the Class Member; (3) be postmarked
8 or fax stamped on or before the Response Deadline and returned to the Settlement Administrator at
9 the specified address or fax number; and (4) contain a statement substantially similar to:

10 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS
11 CLAIMS IN THE WESTFALL, ET AL. V. NAES CORPORATION, ET
12 AL. LAWSUIT, AND UNDERSTAND THAT IF I ASK TO BE
13 EXCLUDED, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT
14 PAYMENT. I UNDERSTAND THAT, NEVERTHELESS, SETTLED
15 PAGA CLAIMS WILL BE RELEASED AND SETTLED.”

14 cc. PAGA. “PAGA” means the California Private Attorneys General Act of 2004, which
15 is codified in California Labor Code §§ 2698 *et seq.*

16 dd. PAGA Allocation. “PAGA Allocation” refers to the amount of Forty Thousand
17 Dollars (\$40,000.00) which is allocated to the settlement of the Settled PAGA Claims, which will be
18 distributed 75% to the LWDA (“LWDA Payment”) and 25% to PAGA Members (“Net PAGA
19 Distribution Amount”), on a *pro rata* basis (“Individual PAGA Payment(s)” refer to PAGA
20 Members’ *pro rata* share of 25% of the PAGA Allocation).

21 ee. PAGA Members. “PAGA Members” means all current and former non-exempt
22 employees of Defendant employed in the State of California during the PAGA Period.

23 ff. PAGA Period. “PAGA Period” means the period from August 3, 2019 through the
24 date of the Preliminary Approval Order.

25 gg. PAGA Settlement. “PAGA Settlement” refers to the settlement and resolution of the
26 Settled PAGA Claims.

27 hh. Parties. “Parties” shall mean Named Plaintiffs and Defendant.
28

1 ii. Preliminary Approval Order. “Preliminary Approval Order” is the order entered and
2 filed by the Court that preliminarily approves the terms and conditions of this Agreement, including
3 approval of the Parties’ Agreement that specifies the content of notice and manner in which notice
4 will be provided to the Class and responded to by the Class.

5 jj. Released Parties. “Released Parties” means Defendant NAES Corporation and each
6 of its officers, directors, members, partners, owners, shareholders, employees, former employees,
7 agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors,
8 successors, parent companies and organizations, insurers, and any and all other persons, firms and
9 corporations in which Defendant may have an interest.

10 kk. Response Deadline. The “Response Deadline” means the day that is forty-five (45)
11 days after the date the Class Notice is mailed to Class Members via First-Class U.S. Mail and is the
12 deadline to submit an Opt Out Request (as defined herein), Objection (as defined herein), and/or
13 Workweeks Dispute (as defined below). Any Class Members that have their notices re-mailed shall
14 have an additional five (5) days to respond.

15 ll. Settlement. “Settlement” shall refer to the agreement of the Parties to settle the claims
16 as set forth and embodied in this Agreement.

17 mm. Settlement Administrator. “Settlement Administrator” shall mean Phoenix
18 Settlement Administrators, Inc., a neutral third party administrator as mutually chosen by the Parties
19 and approved by the Court.

20 nn. Settlement Administration Costs. “Settlement Administration Costs” refers to the
21 amount to be paid to the Settlement Administrator for the costs of administering this Settlement, not
22 to exceed Twelve Thousand Dollars (\$12,000.00).

23 oo. Settled Class Claims. “Settled Class Claims” means all claims, charges, complaints,
24 liens, demands, causes of action, obligations, damages and liabilities, whether known or unknown,
25 that arise during the Class Period that each Settlement Class Member had, now has, or may hereafter
26 claim to have against the Released Parties and that were asserted in the Complaint, or that could have
27 been asserted in the Complaint based on any of the facts or allegations in the Complaint or PAGA
28 Notice, regardless of whether such claims arise under federal, state and/or local law, statute,

1 ordinance, regulation, common law, or other source of law. The Settled Class Claims specifically
2 include, but are not limited to claims for unpaid wages, claims for unpaid sick pay, the alleged failure
3 to provide meal periods or compensation in lieu thereof, the alleged failure to provide paid rest
4 periods, failure to timely furnish accurate itemized wage statements, record keeping violations,
5 failure to timely pay wages, failure to reimburse business expenses, unfair business practices, and
6 violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including
7 and not limited to, for violations of California Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7,
8 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802 and Industrial Welfare
9 Commission Wage Orders.

10 pp. Settled PAGA Claims. “Settled PAGA Claims” means all claims for civil penalties
11 that were asserted, or could have been asserted, or that arise, whether known or unknown, during the
12 PAGA Period, based for any of the alleged violations of the California Labor Code and/or Industrial
13 Welfare Commission Wage Orders that were asserted, or could have been asserted, within the
14 Complaint and PAGA Notice based on any facts or allegations therein, including, but not limited to,
15 violations of California Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 516, 558, 1174,
16 1174.5, 1194, 1197, 1197.1, 1198, 2802 and Industrial Welfare Commission Wage Orders.

17 qq. Settlement Class/Settlement Class Member(s). “Settlement Class” or “Settlement
18 Class Member(s)” means all Class Members who have not submitted a timely and valid Opt Out
19 Request.

20 rr. Settlement Proceeds Distribution Deadline. “Settlement Proceeds Distribution
21 Deadline” means a date that is fourteen calendar (14) days after the Gross Settlement Amount has
22 been deposited by Defendant.

23 ss. Updated Address. “Updated Address” means a mailing address that was updated by
24 a reasonable address verification measure of the Settlement Administrator or by an updated mailing
25 address provided by the United States Postal Service for a Class Member or PAGA Member.

26 tt. Workweek. “Workweek” shall mean any calendar week (i.e. a week beginning on
27 Sunday and ending on Saturday) in which a Class Member or PAGA Member performed work for
28 Defendant at least one day. The Parties agree that, for purposes of determining a Class Member’s

1 and/or PAGA Member’s Workweeks under this Agreement, Workweeks may be calculated as the
2 number of days between a Class Member’s hire date(s) (the start of the applicable Class Period or
3 PAGA Period, which ever is later) and termination date(s) (or the date of approval of the Settlement
4 Agreement in the absence of a subsequent termination date) based on a 360-day year (using
5 Microsoft Excel’s DAYS360 or similar function which returns the number of days between two
6 dates) and dividing the result by 7 and then rounding that number up to the nearest whole number.

7 **ARTICLE II**

8 **RECITALS**

9 a. Plaintiff Westfall’s Class Action Complaint for Damages was filed on August 3, 2020
10 in the Superior Court of California, Kern County, commencing the Action. The Complaint alleged
11 the following causes of action: (1) failure to pay overtime wages; (2) failure to provide meal periods
12 or compensation in lieu thereof; (3) failure to provide paid rest periods; (4) failure to timely furnish
13 accurate itemized wages statements; (5) Violation of Labor Code § 203; and (6) unfair business
14 practices.

15 b. On August 3, 2020, Plaintiff Westfall provided the Labor and Workforce
16 Development Agency notice of intent to pursue civil penalties against Defendant under the Private
17 Attorneys General Act for alleged violations of the California Labor Code and applicable Industrial
18 Welfare Commission Wage Orders (the “PAGA Notice”). Named Plaintiffs filed an amended PAGA
19 Notice on August 20, 2021, adding Plaintiff Atwell as a second claimant.

20 c. Named Plaintiffs’ will file a Third Amended Complaint that alleges the following
21 causes of action: (1) failure to pay overtime wages, (2) failure to provide meal periods, (3) failure to
22 permit rest breaks, (4) failure to provide accurate itemized wage statements,(5) failure to pay all
23 wages due upon separation of employment, (6) failure to reimburse necessary business expenses, (7)
24 violation of business and professions code 17200 et seq., and (8) enforcement of labor code section
25 2698 *et seq.*

26 d. Named Plaintiffs and Defendant attended mediation with Hon. Jill R. Sperber (Ret.)
27 on November 15, 2022, wherein the Parties reached the Agreement herein. The Parties agree that
28 the terms and conditions of this Agreement are the result of lengthy, intensive arms-length

1 negotiations between the Parties supervised by an experienced employment law mediator. The
2 Parties agree that the Agreement is entered into in good faith as to each Class Member and PAGA
3 Member, and that the Settlement is fair, reasonable and adequate as to each Class Member and PAGA
4 Member.

5 **ARTICLE III**

6 **CONTINGENT NATURE OF THE AGREEMENT**

7 **Section 3.01: Stipulation of Class Certification for Settlement Purposes; Contingent on**
8 **Court Approval**

9 The Parties stipulate to the certification of the Class for purposes of this Settlement only. If,
10 however, the Settlement does not become final for any reason, the Parties' Agreement shall become
11 null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with,
12 whether class certification would be appropriate in any other context in the Action, or any other
13 action, or whether any PAGA claim is manageable in this Action, or any other action.

14 The Parties intend this Settlement to be contingent upon the Court's granting preliminary and
15 final approval of this Agreement; and in the event final approval of this Agreement is not obtained,
16 the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend
17 the Action as if this Agreement never existed. In the event that final approval of this Agreement is
18 denied by the Court, fails to become effective, or is reversed, withdrawn, or modified by the Court
19 or any other court with jurisdiction over the Action, the Agreement shall become null and void *ab*
20 *initio* and shall have no bearing on, and shall not be admissible in connection with, further
21 proceedings in the Action.

22 **Section 3.02: Filing of Third Amended Complaint**

23 Within ten (10) calendar days of a fully executed Agreement, Class Counsel will prepare a
24 stipulation to file the above referenced Third Amended Complaint.

25 **ARTICLE IV**

26 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

27 The procedure for obtaining Court approval of and implementing this Agreement shall be as
28 follows:

1 **Section 4.01: Motion for Preliminary Approval**

2 Within thirty (30) calendar days of all Parties signing this Agreement, Plaintiffs shall file a
3 motion in the Action and take all other necessary steps to request that the Court enter the Preliminary
4 Approval Order based on an agreed-upon Settlement schedule, subject to Court approval, including:

5 a. Class certification on the terms set forth in this Agreement solely for purposes of
6 Settlement;

7 b. Preliminarily approving the proposed Settlement and this Agreement, including the
8 payments to the Settlement Class Members, Class Counsel, Named Plaintiffs, PAGA Members, the
9 Settlement Administrator, and the LWDA;

10 c. Preliminarily approving the appointment of Named Plaintiffs as representatives of the
11 Class for settlement purposes;

12 d. Preliminarily approving the appointment of counsel for Named Plaintiffs as Class
13 Counsel;

14 e. Appointing and approving the Settlement Administrator, to comply with the duties
15 and obligations as required by this Agreement;

16 f. Approving the form of the Class Notice mutually agreed upon by the Parties;

17 g. Scheduling the Final Approval Hearing for consideration of whether to grant final
18 approval of this Agreement;

19 h. Approving the procedure to submit an Opt Out Request, Objection, or Workweeks
20 Dispute;

21 Defendant shall not oppose Class Counsel's Motion for Preliminary Approval and/or
22 Motion for Final Approval of the Settlement so long as the motions and supporting papers are
23 consistent with the terms of this Agreement. Class Counsel shall provide Defendant with at least
24 two (2) business days (in each case) to review and provide comments on the Motion for Preliminary
25 Approval and Motion for Final approval of the Settlement before the motions and supporting papers
26 are filed with the Court. Failure of the Court to grant preliminary approval will be grounds for the
27 Parties to terminate the Settlement and the terms of the Agreement. A request by the Court for
28 supplemental briefing, or a preliminary denial pending additional briefing, shall not be deemed a

1 denial of preliminary approval or final approval. To the extent the Court requests further or
2 supplemental briefing, the Parties will work in good faith to address the Court's concerns and
3 questions.

4 **Section 4.03: Notice to Class Members**

5 **a. Class and PAGA Member Data**

6 Within twenty-one (21) calendar days after notice of entry of the Preliminary Approval Order,
7 Defendant shall provide the Class List to the Settlement Administrator. The Settlement Administrator
8 will keep the Class List confidential and shall not provide it to anyone, including Class Counsel,
9 absent express written approval from Defendant, and shall use it only for the purposes described
10 herein, take adequate safeguards to protect confidential or private information, and return or certify
11 the destruction of the information upon completion of the Settlement Administration process.

12 **b. Settlement Administrator's Initial Duties**

13 i. *Address Information.* Prior to mailing the Class Notice, the Settlement
14 Administrator will update the addresses for the Class Members and PAGA Members using skip trace
15 and/or through a search of the National Change of Address database. To the extent this process
16 yields a different address from the one supplied by Defendant, that Updated Address shall replace
17 the address supplied by Defendant (i.e., Last Known Address) and be treated as the new Last Known
18 Address for purposes of this Agreement and for subsequent mailings in particular.

19 ii. *Notice Process.* Within fourteen (14) calendar days following receipt of the
20 Class List, the Settlement Administrator shall prepare and mail the approved Class Notice. The
21 Settlement Administrator shall deliver the Class Notice by First-Class U.S. Mail to each Class
22 Member and PAGA Member's Last Known Address or Updated Address (if applicable).

23 **c. Settlement Administrator Follow-Up Duties**

24 i. *Undeliverable Class Notice(s).* If a Class Notice is returned by the Post Office
25 as undeliverable, but with a forwarding address, on or before the Response Deadline, then the
26 Settlement Administrator shall re-mail it by First-Class U.S. mail. If a Class Member personally
27 provides an updated address to the Settlement Administrator on or before the Response Deadline,
28 then, the Settlement Administrator shall re-mail said Class Member's Class Notice by First-Class

1 U.S. to the updated address provided by the Class Member. If a Class Notice is returned by the Post
2 Office as undeliverable, without a forwarding address, on or before the Response Deadline, then, the
3 Settlement Administrator shall conduct a skip trace and/or search of the National Change of Address
4 or other appropriate database and, if an alternate address that is likely to be more current is located,
5 proceed to re-mail the Class Notice by First-Class U.S. mail to the alternate address. It is the intent
6 of the parties that reasonable means be used to locate Class Members and that the Settlement
7 Administrator be given discretion to take steps in order to facilitate notice of the Settlement and
8 delivery of the Individual Settlement Payments to all Settlement Members. In the event a Class
9 Member's Class Notice remains undeliverable sixty (60) calendar days after the Class Notice was
10 initially mailed, the Settlement Administrator will not mail the Class Member's Individual Settlement
11 Payment. The Settlement Administrator will hold the Class Member's Individual Settlement
12 Payment during the check validity period on behalf of the Class Member. If, at the conclusion of the
13 check validity period, the Class Member's Class Notice and Individual Settlement Payment remain
14 undeliverable and/or unclaimed and uncashed, the Settlement Administrator will distribute the funds
15 from unclaimed/uncashed checks in accordance with the procedures set forth in Section 4.06(j)
16 below.

17 ii. *Documenting Communications.* The Settlement Administrator shall date
18 stamp documents it receives, including Opt Out Requests, Objections, Workweeks Disputes, and any
19 correspondences and documents from Class Members and PAGA Members. The date of the initial
20 mailing of the Class Notice and the date a signed Opt Out or Objection is postmarked shall be
21 conclusively determined according to the records of the Settlement Administrator.

22 iii. *Settlement Administrator Declaration.* At least ten (10) court days before the
23 Final Approval Hearing, the Settlement Administrator shall prepare, subject to the Parties' input and
24 approval, a declaration setting forth the due diligence and proof of mailing of the Class Notice, the
25 results of the Settlement Administrator's mailings, including tracing and re-mailing efforts, and the
26 Class Members' and PAGA Members' responses (i.e., Opts Out, Objections, Workweeks Disputes)
27 to those mailing, and provide additional information deemed necessary to approve the settlement.
28

1 iv. *Settlement Administrator Written Reports.* Each week after initially mailing
2 the Class Notices and prior to the Response Deadline, the Settlement Administrator shall provide the
3 Parties with a report listing the number of Class Members that submitted Opt Out Requests,
4 Objections, and/or Workweeks Disputes as well as the dates that any Class Notices were re-mailed.
5 Within seven (7) calendar days after the Response Deadline, the Settlement Administrator will
6 provide a final report listing the number of Class Members who submitted Opt Out Requests,
7 Objections, and/or Workweeks Disputes.

8 v. *Settlement Administrator Calculations of Individual Settlement Payments.*
9 Within seven (7) calendar days after resolving all Workweeks Disputes made by Settlement Class
10 Members, and following entry of the Final Approval Order and Judgment, the Settlement
11 Administrator shall provide to the Parties a report showing its calculation of all amounts that must
12 be funded by Defendant under the Settlement, including and not limited to, calculations of the
13 Individual Settlement Payments to be made to Settlement Class Members and Individual PAGA
14 Payments to be made to PAGA Members. After receiving the Settlement Administrator's report,
15 Class Counsel and Defendant's counsel shall review the same to determine if the calculation of
16 payments is consistent with this Agreement and the Court's orders, and shall notify the Settlement
17 Administrator if either counsel does not believe the calculation is consistent with the Agreement
18 and/or the Court's orders. After receipt of comments from counsel, the Settlement Administrator
19 shall finalize its calculations of payments, at least five (5) calendar days prior to the distribution of
20 such payments, and shall provide Class Counsel and Defendant's counsel with a final report listing
21 the amount of all payments to be made to each Settlement Class Member from the Net Settlement
22 Amount and listing the amount of all payments to be made to each PAGA Member from the Net
23 PAGA Distribution Amount. The Settlement Administrator will also provide information that is
24 requested and approved by both Parties regarding its duties and other aspects of the Settlement, and
25 that is necessary to carry out the terms of the Settlement.

26 d. **Requirements for Recovery of Individual Settlement Payments**

27 i. *Class Members.* No claim form is necessary to participate in the Class
28 Settlement. Unless a Class Member submits a valid and timely Opt Out Request, that Class Member

1 will be a Settlement Class Member, bound by the Final Approval Order and Judgment and Class
2 Settlement, and will receive a payment from the Net Settlement Amount (i.e., an Individual
3 Settlement Payment).

4 ii. *PAGA Members.* All PAGA Members shall be bound by the PAGA
5 Settlement, and will be issued payment from the Net PAGA Distribution Amount (i.e., and Individual
6 PAGA payment). No PAGA Member will have a right to opt-out of the PAGA Settlement.

7 iii. *Late Submissions.* The Settlement Administrator shall not accept as timely
8 any Opt Out Request, Objection, or Workweeks Dispute postmarked after the Response Deadline. It
9 shall be presumed that, if an Opt Out Request, Objection, or Workweeks Dispute is not postmarked
10 or fax stamped on or before the Response Deadline, the Class Member did not return the Opt Out
11 Request, Objection, or Workweeks Dispute in a timely manner. However, the Court may consider
12 an Opt Outs, and/or Objections submitted at or before the hearing on Final Approval.

13 iv. *Opt-Out Procedure.* A Class Member will not be entitled to opt out of the
14 Class Settlement established by this Agreement unless he or she submits to the Settlement
15 Administrator a timely and valid Opt Out Request.

16 v. The Settlement Administrator shall not have the authority to extend the
17 deadline for Class Members to submit an Opt Out Request absent agreement by both Parties.

18 vi. Class Members shall be permitted to rescind in writing their Opt Out Request
19 by submitting a written rescission statement to the Settlement Administrator no later than the day
20 before the Final Approval Hearing.

21 vii. If more than ten percent (10%) of the Class Members timely opt out of the
22 Class Settlement, Defendant shall have the sole and absolute discretion to withdraw from this
23 Agreement within seven (7) calendar days after the Response Deadline and written notice from the
24 Settlement Administrator of the final opt out rate. Defendant shall provide written notice of such
25 withdrawal to Class Counsel. In the event that Defendant elects to so withdraw, the withdrawal shall
26 have the same effect as a termination of this Agreement for failure to satisfy a condition of
27 Settlement, and the Agreement shall become null and void and have no further force or effect, and
28 Defendant will be responsible for any and all Settlement Administration Costs incurred thus far.

1 **Section 4.04: Responses to Class Notice**

2 **a. Workweeks Disputes**

3 Class Members will have the right to challenge the number of Qualifying Workweeks and/or
4 Qualifying PAGA Workweeks allocated to them. Class Members shall have until the Response
5 Deadline to submit to the Settlement Administrator their dispute in writing (“Workweek Dispute”)
6 at the address indicated on the Class Notice. Each Workweek Dispute must: (1) contain the full
7 name, address, and telephone number of the Class Member and the case name and number of the
8 Action; (2) be signed by the Class Member; (3) be postmarked or fax stamped on or before the
9 Response Deadline and returned to the Settlement Administrator at the specified address or fax
10 number; (4) clearly state the number of Workweeks and/or PAGA Workweeks he or she believes is
11 correct; and (5) attach any documents the Class Member has to support his or her position that they
12 be credited with the contended number of Workweeks and/or PAGA Workweeks. The Settlement
13 Administrator will inform Class Counsel and Defendant’s counsel in writing of any timely submitted
14 Workweeks Disputes. Defendant shall have the right to respond to any Dispute submitted by any
15 Class Members within seven (7) calendar days of being informed of a timely submitted Workweeks
16 Dispute, and shall cooperate in providing the Settlement Administrator will information to determine
17 all such Workweeks Disputes. The Settlement Administrator will determine all such Workweeks
18 Disputes following Defendant’s opportunity to respond. Subject to Court approval, Workweeks
19 Disputes will be resolved without hearing by the Settlement Administrator, who will make a decision
20 based on Defendant’s records and any documents or other information presented by the Class
21 Member and/or PAGA Member making the Workweeks Dispute, Class Counsel, or Defendant.

22 **b. Opt Out Request**

23 Any Class Member may exclude himself or herself from the Class Settlement. Any such Opt
24 Out Request must be submitted to the Settlement Administrator in writing on or before the Response
25 Deadline. Opt Out Requests do not apply to the PAGA Settlement; PAGA Members will be bound
26 to the PAGA Settlement (i.e., the settlement and release of Settled PAGA Claims) irrespective of
27 whether they exclude themselves from the Class Settlement. Any Class Member who timely and
28 validly Opts Out from the Class and this Settlement will not be entitled to any Individual Settlement

1 Payment, will not be bound by the terms and conditions of this Agreement, and will not have any
2 right to object, appeal, or comment thereon. Any Class Member who fails to timely submit an Opt
3 Out shall automatically be deemed a Class Member whose rights and claims with respect to the issues
4 raised in the Action will be determined by the Court's Final Approval Order and Judgment.

5 **c. Objections to Settlement**

6 Any Settlement Class Member may object to the Class Settlement by submitting an Objection
7 to the Settlement Administrator in writing on or before the Response Deadline. The Parties shall be
8 permitted to file responses to any Objections prior to the Final Approval Hearing and/or to respond
9 to or address the Objection at the Final Approval Hearing. Within three (3) business days after receipt
10 of an Objection, the Settlement Administrator shall serve the Objection on the Parties, and at least
11 sixteen (16) court days before the Final Approval Hearing, the Settlement Administrator shall submit
12 all Objections received by the Settlement Administrator to the Court. The Court retains final authority
13 with respect to the consideration and admissibility of Class Member Opt Outs and Objections. The
14 Court may consider Opt Outs and/or Objections submitted before or at the Final Approval Hearing.
15 If a Class Member submits both an Objection and an Opt Out Request, he or she will be excluded
16 from the Class Settlement and the Objection will not be considered.

17 **d. Encouragement of Class Members**

18 At no time shall any of the Parties or their counsel (either directly or indirectly) seek to solicit
19 or otherwise encourage Settlement Class Members to submit any Opt Outs or Objections to the
20 Settlement or any appeal from the Final Approval Order and Judgment. Class Counsel shall not
21 represent any Settlement Class Members with respect to any such Objections. However, Class
22 Counsel may respond to inquiries from Class Members.

23 **Section 4.05: Final Approval Hearing**

24 **a. Entry of Final Judgment**

25 At the Final Approval Hearing, Named Plaintiffs will request, and Defendant will concur in
26 said request, that the Court enter a jointly-agreed upon Final Approval Order and Judgment.

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1 **b. Motion for Final Approval**

2 Within thirty (30) calendar days of the Response Deadline, Named Plaintiffs will draft and
3 file a motion for final approval in conformity with any requirements from the Court and will take
4 any other actions necessary to request the entry of a Final Approval Order and Judgment in
5 accordance with this Agreement. In conjunction with the motion for final approval and requesting
6 an award of Attorneys' Fees, Attorneys' Costs, and Service Payments, Class Counsel shall file a
7 declaration from the Settlement Administrator confirming that the Class Notice was mailed to all
8 Class Members as required by this Agreement, as well as any additional information Class Counsel,
9 with the input and approval of Defendant, deems appropriate to provide to the Court.

10 **c. Final Approval Order and Judgment**

11 The Parties shall take all reasonable efforts to secure entry of the Final Approval Order and
12 Judgment. If the Court denies final approval of the Settlement, this Agreement shall be void *ab*
13 *initio*, and Defendant shall have no obligation to make any payments under the Agreement besides
14 any Settlement Administration Costs incurred thus far. A request by the Court for supplemental
15 briefing, or a preliminary denial pending additional briefing, shall not be deemed a denial of final
16 approval of the Settlement. To the extent the Court requests further or supplemental briefing, the
17 Parties will work in good faith to address the Court's concerns and questions. Said Final Approval
18 Order and Judgment shall contain the following provisions:

19 i. Wherein the Court enters judgment, finding that this Agreement and
20 Settlement is fair, just, equitable, reasonable, adequate, and in the best interests of the Class and was
21 reached as a result of intensive, serious, and non-collusive arms-length negotiations and was achieved
22 with the aid of an experienced mediator and in good faith as to each Class Member;

23 ii. Affirming that each side will bear its own costs and fees (including
24 attorneys' fees), except as provided by the Agreement, and that Defendant shall not be required to
25 pay any amounts other than as set forth in the Agreement;

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- 1 iii. Confirming the certification of the Class for purposes of Settlement only;
- 2 iv. Finding that the Settlement Administration process as carried out afforded
- 3 adequate protections to Class Members, provided the best notice practicable, and satisfied the
- 4 requirements of law and due process;
- 5 v. Ruling on any Objections to the Settlement;
- 6 vi. Approving the settlement of Settled PAGA Claims consistent with the
- 7 Settlement;
- 8 vii. Retaining Court jurisdiction after entry of judgment to oversee administration
- 9 and enforcement of the terms of the Agreement; and
- 10 viii. Requiring the Parties to carry out the provisions of this Agreement.

11 **Section 4.06: Settlement Payment Procedures**

12 Subject to final Court approval and the conditions specified in this Agreement, and in
13 consideration of the mutual covenants and promises set forth herein, Defendant agrees to make a
14 payment or payments as set forth herein totaling an amount of, but not to exceed the Gross Settlement
15 Amount. The Gross Settlement Amount shall be apportioned as follows:

16 a. **Pro-Rata Adjustment to Gross Settlement Amount**

17 Defendant has estimated the number of Class Members as 400. If the number of Settlement
18 Class Members exceeds 400 by more than 5% at the end of the Class Period, then there will be a pro
19 rata adjustment to the Gross Settlement Amount equal to \$2,125.00 per additional Settlement Class
20 Member.

21 b. **Attorneys' Fees**

22 Class Counsel will apply to the Court for an award of attorneys' fees of one-third (1/3) of
23 the Gross Settlement Amount, which is no more than Two Hundred Sixty-Six Thousand Six Hundred
24 and Sixty Seven Dollars (\$266,667.00) (i.e., Attorneys' Fees). The Attorneys' Fees shall be paid
25 from and be deducted from the Gross Settlement Amount subject to Court approval, and Defendant
26 will not oppose such application. In the event the Court approves an amount of attorneys' fees that
27 is less than the amount provided herein, the unawarded amount shall become part of the Net
28

1 Settlement Amount for distribution to Settlement Class Members. Any reduction by the Court shall
2 not constitute grounds for revocation or cancellation of this Agreement by the Named Plaintiffs.

3 **c. Attorneys' Costs**

4 Class Counsel shall request approval of an amount not to exceed Thirty Thousand Dollars
5 and Zero Cents (\$30,000.00) for reimbursement of litigation costs and expenses incurred in the
6 Action (i.e., Attorneys' Costs), which will be paid and deducted from the Gross Settlement Amount
7 subject to Court approval. Defendant will not oppose such application. Any unawarded Attorneys'
8 Costs shall become part of the Net Settlement Amount for distribution to Settlement Class Members.
9 Any reduction by the Court shall not constitute grounds for revocation or cancellation of this
10 Agreement by Plaintiffs. Attorneys' Fees as specified in the preceding paragraph and Attorneys'
11 Costs as specified in this paragraph shall cover all claimed and unclaimed Attorneys' Fees,
12 Attorneys' Costs, and other amounts payable or awardable against Defendant for Class Counsel's
13 work, effort, or involvement in the Action and in carrying out the Agreement and includes any and
14 all work, effort, or involvement to carry out the terms of the Agreement and as may be potentially or
15 actually necessary or advisable to defend the Agreement and/or Settlement through appeal, or
16 collateral attack or in any other forum or proceeding. These specified Attorneys' Fees and Attorneys'
17 Costs shall be the sole payment for attorneys' fees and costs and, otherwise, the Parties and Class
18 Members and their counsel shall bear their own fees and costs in connection with the Action.

19 **d. Settlement Administration Costs**

20 Class Counsel will also apply to the Court for approval of costs of settlement administration
21 in an amount estimated to be up to Twenty Thousand Dollars (\$20,000.00), which the Parties agree
22 will be paid and deducted from the Gross Settlement Amount (i.e., Settlement Administration Costs)
23 subject to Court approval. Defendant will not oppose such application. Any unawarded amount
24 shall become part of the Net Settlement Amount for distribution to Settlement Class Members. Class
25 Counsel will specify the amount sought for such costs, up to the foregoing maximum, in Plaintiffs'
26 motion for final approval of the Settlement.

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1 **e. Incentive Awards to Named Plaintiffs**

2 Class Counsel will apply to the Court for approval of an enhancement award in an amount
3 not to exceed Twenty Thousand Dollars (\$20,000.00) to Plaintiffs—Ten Thousand Dollars
4 (\$10,000.00) for each of the plaintiffs—to be paid and deducted from the Gross Settlement Amount,
5 subject to Court approval, for their services in this litigation and in consideration for the Individual
6 Release by Named Plaintiffs (i.e., the Service Payment). Defendant will not oppose such
7 applications. Any unawarded amount shall become part of the Net Settlement Amount for
8 distribution to Settlement Class Members. Any reduction by the Court shall not constitute grounds
9 for revocation or cancellation of this Agreement by Named Plaintiffs.

10 **f. PAGA Allocation and Individual PAGA Payments**

11 Pursuant to California Labor Code Section 2698, *et seq.*, the Parties designate Forty Thousand
12 Dollars (\$40,000.00) of the Gross Settlement Amount to resolve the Settled PAGA Claims (i.e., the
13 PAGA Allocation). Pursuant to the California Labor Code, seventy-five percent (75%) of the PAGA
14 Allocation, which is Thirty Thousand Dollars (\$30,000.00), will be paid to the LWDA (i.e., the
15 LWDA Payment). The remaining twenty-five percent (25%) of the PAGA Allocation, which is Ten
16 Thousand Dollars (\$10,000.00) (“Net PAGA Distribution Amount”), shall be paid to PAGA
17 Members on a *pro rata* basis based on the number of Workweeks worked by the PAGA Member
18 during the PAGA Period as follows:

19 i. The Settlement Administrator will use the number of Workweeks worked by
20 PAGA Members during the PAGA Period (“Qualifying PAGA Workweek(s)”) as reflected in the
21 Class List to be provided by Defendant to the Settlement Administrator;

22 ii. Each of the PAGA Members is eligible to receive a *pro rata* share of the Net
23 PAGA Distribution Amount based on his or her share of the total number of Qualifying PAGA
24 Workweeks worked.

25 iii. The value of a single Qualifying PAGA Workweek shall be determined by
26 dividing the Net PAGA Distribution Amount by the total number of Qualifying PAGA Workweeks
27 by all PAGA Members. Each PAGA Member shall receive an Individual PAGA Payment equal to
28 his or her individual Qualifying PAGA Workweeks multiplied by the value of a single Qualifying

1 PAGA Workweek. PAGA Members shall receive their respective PAGA Payments regardless of
2 whether they opt out with respect to their class claims.

3 g. **Net Settlement Amount and Individual Settlement Payments to Settlement Class**
4 **Members**

5 Individual Settlement Payments to the Settlement Class Members will be calculated as
6 follows:

7 i. The Settlement Administrator will use the number of Workweeks worked by
8 Class Members during the Class Period (“Qualifying Workweek(s)”) as reflected in the Class List
9 to be provided by Defendant to the Settlement Administrator;

10 ii. Each of the Class Members is eligible to receive a *pro rata* share of the Net
11 Settlement Amount based on his or her share of the total number of Qualifying Workweeks worked.

12 iii. The value of a single Qualifying Workweeks shall be determined by dividing
13 the Net Settlement Amount by the total number Qualifying Workweeks by all Settlement Class
14 Members. Each Settlement Class Member shall receive a gross Individual Settlement Payment equal
15 to his or her Qualifying Workweeks multiplied by the value of a single Qualifying Workweek.

16 a) **Satisfaction of Defendant’s Payment Obligations**

17 The Parties agree that, except as discussed in Section 4.06(a), under no circumstances shall
18 Defendant be obligated to pay any amounts under this Agreement to any Class Member other than
19 the Individual Settlement Payment to Settlement Class Members and Individual PAGA Payment to
20 PAGA Members that is provided for under this Agreement. The Parties also acknowledge and agree
21 that the formula used to calculate Individual Settlement Payments and Individual PAGA Payments
22 does not imply that all of the elements of damages covered by the release are not being taken into
23 account.

24 b) **Payment of Settlement**

25 i. Defendant will deposit the Gross Settlement Amount into an account
26 established by the Settlement Administrator within ten (10) business days of the Date of Finality.

27 ii. The Parties agree that the account in which Defendant will deposit the
28 gross Settlement Amount will qualify as a settlement fund pursuant to the requirements of Section

1 468(B)(g) of the Internal Revenue Code of 1986, as amended, and Section 1.468B-1 *et seq.* of the
2 income tax regulations. Furthermore, the Settlement Administrator is hereby designated as the
3 “administrator” of the qualified settlement funds for purposes of Section 1.468B-2(k) of the income
4 tax regulations. As such, all employee taxes imposed on the gross income of that settlement fund
5 and any tax-related expenses arising from any income tax returns or other reporting documents that
6 may be required by the Internal Revenue Service or any state or local taxing body will be paid from
7 the Net Settlement Amount by the Settlement Administrator.

8 iii. The Settlement Administrator shall be deemed to have timely distributed
9 Individual Settlement Payments and Individual PAGA Payments if it places said payments in the
10 mail (First-Class U.S.). If, within forty-five (45) days of the initial mailing of the payment(s), the
11 Settlement Administrator receives notice from Settlement Class Members or PAGA Members that
12 they have not received their settlement check due to changes of address or other circumstances, the
13 Settlement Administrator shall make reasonable efforts to ensure the initial payment is cancelled and
14 re-issue the payment to the Settlement Class Member or PAGA Member. The Settlement
15 administrator shall take steps to promptly obtain a valid mailing address, as necessary, by performing
16 a skip trace and/or through a search of the National Change of Address database or other appropriate
17 database. The Settlement Administrator shall only undertake one re-issuance of a payment upon
18 request of a Settlement Class Member.

19 iv. The distribution of Attorneys’ Fees, Attorneys’ Costs, LWDA Payment,
20 and the Service Payments shall occur no later than the Settlement Proceeds Distribution Deadline.
21 Under no circumstances shall the foregoing payments be made prior to the distribution of payments
22 to Settlement Class Members and PAGA Members.

23 v. Individual Settlement Payment and Individual PAGA Payment checks will
24 be valid for one hundred eighty (180) days after mailing by the Settlement Administrator.

25 vi. After the one hundred eighty (180) day check validity period, unclaimed
26 or uncashed settlement checks will become cancelled and funds associated with the cancelled checks
27 will be transmitted to Katherine and George Alexander Community Law Center, a jointly-selected
28 non-profit organization in compliance with California Code of Civil Procedure section 384.

1 Settlement Class Members and PAGA Members who fail to deposit or negotiate their check(s) in a
2 timely fashion shall, nevertheless, remain subject to the terms of the Agreement and the Final
3 Approval Order and Judgment.

4 vii. Upon completion of administration of the Settlement, the Settlement
5 Administrator shall provide written certification of such completion to the Court, Class Counsel, and
6 Defendant's counsel.

7 viii. In the event of a timely appeal from the Final Approval Order and
8 Judgment, the Final Approval Order and Judgment shall be stayed and the Gross Settlement Amount
9 shall not be distributed pending the completion of the appeal.

10 **c) Default on Payment**

11 Defendant's failure to timely fund the Gross Settlement Amount shall be considered a default.
12 In the event Defendant fails to timely fund the Gross Settlement Amount, the Settlement
13 Administrator will provide notice to Class Counsel and Defendant's counsel within three (3) business
14 days of the missed payment. Thereafter, Defendant will have seven (7) days to cure the default and
15 tender payment to the Settlement Administrator.

16 **d) No Credit Toward Benefit Plans**

17 The Individual Settlement Payments made to Settlement Class Members and Individual
18 PAGA Payments made to PAGA Members under this Agreement shall not be utilized to calculate
19 any additional benefits under any benefit plans to which any Settlement Class Members or PAGA
20 Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k)
21 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
22 Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or
23 amounts to which any Settlement Class Members and/or PAGA Members may be entitled under any
24 benefit plans.

25 **e) Taxation of Settlement Proceeds**

26 i. The Parties agree that the Individual Settlement Payments shall be
27 allocated as follows: one third of each Participating Class Member's Individual Class Payment will
28 be allocated to settlement of wage claims (the "Wage Portions"). The Wage Portions are subject to

1 tax withholding and will be reported on an IRS W-2 Form. The remaining two-thirds of each
2 Participating Class Member's Individual Class Payment will be allocated to settlement of claims for
3 non-wages as follows: one third allocated to penalties and one third allocated to interest (the "Non-
4 Wage Portions"). The Non-Wage Portions are not subject to wage withholdings and will be reported
5 on IRS 1099 Forms (if required). Participating Class Members assume full responsibility and
6 liability for any employee taxes owed on their Individual Class Payment.

7 ii. The Individual PAGA Payments to PAGA Members will be designated
8 one hundred percent (100%) as penalties and will be report on an IRS Form 1099 (if required).

9 iii. The Settlement Administrator shall calculate, withhold from the
10 Individual Settlement Payments, and remit to applicable governmental agencies sufficient amounts,
11 if any, as may be owed by Settlement Class Members for applicable employee taxes. The Settlement
12 Administrator will issue appropriate tax forms, as required, to each such Settlement Class Member
13 and PAGA Member consistent with the above allocations.

14 iv. All Parties represent that they have not received, and shall not rely on,
15 advice or representations from other Parties or their agents regarding the tax treatment of payments
16 under federal, state, or local law. In this regard, Defendant makes no representations regarding the
17 taxability of the Individual Settlement Payments, Individual PAGA Payments, or any other payments
18 made under this Agreement.

19 v. Class Counsel will be issued an IRS Form 1099 for the Attorneys' Fees
20 and Attorneys' Costs awarded by the Court.

21 vi. Named Plaintiffs will be issued IRS Form 1099s for any Service Payment
22 approved by the Court. The Service Payment payable to Named Plaintiffs shall be in addition to the
23 Individual Settlement Payment and, if applicable, Individual PAGA Payment that they will receive.

24 **Section 4.07: Notice to the LWDA**

25 Class Counsel is responsible for complying with all requirements of the PAGA governing
26 notice to the LWDA of settlement and/or judgment. Specifically, Class Counsel will provide a copy
27 of this Agreement to the LWDA at the same time that it is submitted to the Court and will further
28 provide a copy of the Court's Preliminary Approval Order and Final Approval Order and Judgment

1 to the LWDA within ten (10) calendar days after entry of said judgment or order as required by Labor
2 Code sections 2699(1)(2)-(3).

3 **ARTICLE V**

4 **RELEASES**

5 **Section 5.01: Release of Settled Class Claims**

6 As of the Date of Finality and full funding of the Gross Settlement Amount, Named Plaintiffs
7 and all Settlement Class Members shall be deemed to have fully, finally, and forever released, settled,
8 compromised, relinquished, and discharged any and all Settled Class Claims against any and all
9 Released Parties. The Settlement includes a release of all Settled Class Claims during the Class
10 Period by Settlement Class Members. The Parties agree for settlement purposes only that, because
11 the Class Members are so numerous, it is impossible or impracticable to have each Class Member
12 execute this Agreement. Accordingly, the Class Notice will advise all Class Members of the binding
13 nature of the Class Settlement as to Settlement Class Members and the binding nature of the PAGA
14 Settlement as to the State of California and all PAGA Members, and such notice shall have the same
15 force and effect as if the Agreement were executed by each Class Member. The Parties agree that
16 this is a settlement of disputed claims not involving undisputed wages, and that Labor Code Section
17 206.5 is therefore inapplicable.

18 **Section 5.02: Released of Settled PAGA Claims**

19 As of the Date of Finality and full funding of the Gross Settlement Amount, the State of
20 California, with respect to Named Plaintiffs and all PAGA Members, shall be deemed to have fully,
21 finally, and forever released, settled, compromised, relinquished, and discharged any and all of the
22 Released Parties of and from any and all Settled PAGA Claims. The Parties agree that it is their
23 intent that the terms set forth in this Agreement will release any further attempt, by lawsuit,
24 administrative claim or action, arbitration, demand, or other action of any kind, by each and every
25 PAGA Member to obtain any recovery based on the Settled PAGA Claims.

26 **Section 5.03: Individual Release of Claims by Plaintiffs**

27 The releases set forth in this Section 5.03 shall collectively be referred to as the "Individual
28 Release."

1 As of the Date of Finality and full funding of the Gross Settlement Amount, in addition to all
2 other releases set forth in this Agreement, and except as to claims specifically excluded, Named
3 Plaintiffs make the additional following general release of all claims, known or unknown:

4 Plaintiff Westfall and Defendant separately entered into an individual settlement agreement
5 relating to Plaintiff Westfall's employment with Defendant, entitled Confidential Settlement
6 Agreement and Release of Claims ("Westfall Agreement"). Plaintiff Westfall's individual general
7 release of any and all claims with respect to all released parties (as they are defined in the Westfall
8 Agreement), as well as his waiver and relinquishment of any provisions, rights and benefits of
9 Section 1542 of the California Civil Code, are contained the Westfall Agreement.

10 Plaintiff Atwell releases the Released Parties from all claims, demands, rights, liabilities, and
11 causes of action of every nature and description whatsoever, known or unknown, asserted or that
12 might have been asserted, whether in tort, contract, or for violation of any state or federal statute,
13 rule, or regulation arising out of, relating to, or in connection with any act or omission by or on the
14 part of any of the Released Parties committed or omitted through the execution of this Agreement.
15 Plaintiff Atwell also specifically agrees and acknowledges that he is waiving all claims under Title
16 VII of the Civil Rights Act of 1964, the Equal Pay Act, the Americans with Disabilities Act, the
17 California Fair Employment and Housing Act, the Family and Medical Leave Act, the Employee
18 Retirement Income Security Act, the California Labor Code, California Government Code, and
19 California Business and Professions Code. Plaintiff Atwell agrees not to sue or otherwise make a
20 claim against any of the Released Parties that is in any way related to his Individual Release to the
21 maximum extent permitted by law. The Individual Release includes any unknown claims Plaintiff
22 Atwell does not know or suspect to exist in his favor at the time of entering into this Agreement,
23 which, if known by either, might have affected his settlement with, and release of, the Released
24 Parties or might have affected his decision not to object to this Settlement. Plaintiff Atwell stipulates
25 and agrees that he shall be deemed to have, and by operation of the Final Approval Order and
26 Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the
27 provisions, rights and benefits of Section 1542 of the California Civil Code, which states:
28

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

7 This Individual Release shall not affect or bar any claims that Plaintiff Atwell may have for
8 Unemployment Insurance, claims under the National Labor Relations Act, and the right to receive
9 benefits under any retirement plan or to elect COBRA continuation of health insurance benefits. Nor
10 shall the Individual Release preclude Plaintiff Atwell from filing a charge with any applicable
11 administrative agency. Plaintiff Atwell understands and agrees, however, that by way of the
12 Individual Release, he individually is releasing any right to recover monetary damages in an action
13 brought by an administrative agency.

14 **ARTICLE VI**

15 **LIMITATIONS ON USE OF THIS SETTLEMENT**

16 **Section 6.01: No Admission**

17 The Parties enter into this Agreement to resolve the Action and to avoid the burden, expense,
18 and risk of continued litigation. In entering into this Agreement, Defendant does not admit, and
19 specifically denies, that Defendant has: violated any federal, state, or local law; violated any
20 regulations or guidelines promulgated pursuant to any statute or any other applicable laws,
21 regulations, or legal requirements; breached any contract; or engaged in any other culpable, wrongful
22 or unlawful conduct with respect to its employees or any other person or entity. Neither this
23 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or
24 proceedings, payouts, or other events associated with it, shall be construed as an admission or
25 concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law by
26 Defendant or any Released Parties.

27 **Section 6.02: Non-Evidentiary Use**

28 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,

1 including but not limited to, evidence of a presumption, concession, indication, or admission by any
2 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
3 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
4 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
5 Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims
6 released through this Agreement.

7 **Section 6.03: Nullification**

8 If for any reason the Date of Finality does not occur and/or the Settlement does not become
9 final for any reason, the Settlement shall be null and void and the orders and judgment to be entered
10 pursuant to this Agreement shall be vacated; and the Parties will be returned to the status quo prior
11 to entering this Agreement with respect to the Action, as if the Parties had never entered into this
12 Agreement. In addition, in such event, the Agreement and all negotiations, court orders and
13 proceedings relating thereto shall be without prejudice to the rights of any and all Parties hereto, and
14 evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the
15 Action or otherwise in any other proceeding.

16 **ARTICLE VII**

17 **MISCELLANEOUS PROVISIONS**

18 **Section 7.01: Amendments or Modification**

19 Prior to the Court granting preliminary approval this Agreement, this Agreement may be
20 altered, amended, modified or waived, in whole or in part, only in a writing signed by counsel for
21 the Parties; after the Court has entered the Preliminary Approval Order, the Agreement may be
22 altered, amended, modified or waived, in whole or in part, only in a writing signed by counsel for
23 the Parties, subject to approval by the Court. Any waiver of any provision of this Agreement shall
24 not constitute a waiver of any other provision of this Agreement unless expressly so indicated.

25 **Section 7.02: Assignment**

26 The Parties and their counsel represent, covenant, and warrant that they have not directly or
27 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
28

1 person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein
2 released and discharged or herein establish and/or created, except as set forth herein.

3 **Section 7.03: Governing Law**

4 This Agreement shall be enforced, construed, administered and interpreted, and the rights of
5 the Parties shall be determined, in accordance with the laws of the State of California, without regard
6 to conflicts of laws.

7 **Section 7.04: Entire Agreement**

8 The Parties warrant that no promise or inducement has been offered or made to any of the
9 Parties except as set forth herein. This Agreement constitutes the full, complete and entire
10 understanding, agreement and arrangement between Plaintiffs on behalf of themselves, Class
11 Members, PAGA Members, and the State of California pursuant to the Private Attorneys General
12 Act, on the one hand, and Defendant and Released Parties on the other hand, with respect to the
13 Settlement of the Action and the Settled Claims and Settled PAGA Claims against the Released
14 Parties. This Agreement supersedes any and all prior oral or written understandings, agreements and
15 arrangements, express or implied, between the Parties with respect to the Settlement of the Action
16 and the Settled Claims and Settled PAGA Claims against the Released Parties. The Parties
17 explicitly recognize California Civil Code Section 1625 and California Code of Civil Procedure
18 Section 1856(a), which provide that a written agreement is to be construed according to its terms,
19 and may not be varied or contradicted by extrinsic evidence, and agree that no such extrinsic oral or
20 written representations or terms shall modify, vary, or contradict the terms of this Agreement. This
21 Agreement does not in any way impact any agreement to arbitration non-released claims that may
22 exist between Defendant and an individual Class Member.

23 **Section 7.05: Waiver of Compliance**

24 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
25 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
26 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
27 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
28 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or

1 condition in this Agreement shall not operate as a waiver of, or estoppel with respect to, any
2 subsequent or other failure.

3 **Section 7.06: Counterparts and Fax/PDF Signatures**

4 This Agreement, and any amendments hereto, may be executed in any number of counterparts
5 and any Party and/or their respective counsel may execute any such counterpart, each of which when
6 executed and delivered shall be deemed to be an original. All counterparts taken together shall
7 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
8 signature.

9 **Section 7.07: Meet and Confer Regarding Disputes**

10 The Parties agree to refer any disputes related to the drafting of the Agreement and attached
11 documents to mediator, Jill R. Sperber (Ret.) prior to seeking any relief from a Court.

12 **Section 7.08: Agreement Binding on Successors**

13 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
14 of each of the Parties. Specifically, Subject to final Court approval, all Settlement Class Members,
15 the State of California, and PAGA Members shall be bound by this Agreement and Final Approval
16 Order and Judgment shall be entered in the Action.

17 **Section 7.09: Cooperation in Drafting**

18 The Parties have had a full opportunity to negotiate the terms and conditions of this
19 Agreement. Accordingly, this Agreement shall not be construed more strictly against one Party than
20 another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties,
21 it being recognized that all Parties have contributed to the preparation of this Agreement.

22 **Section 7.10: Fair and Reasonable Settlement**

23 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
24 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
25 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
26 further believe that the Settlement is and is consistent with public policy, and fully complies with
27 applicable law.

28

1 **Section 7.11: Headings**

2 The descriptive heading of any section or paragraph of this Agreement is inserted for
3 convenience of reference only and does not constitute a part of this Agreement and shall not be
4 considered in interpreting this Agreement.

5 **Section 7.12: Notice**

6 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
7 communications under this Agreement must be in writing and addressed as follows:

8 *To Named Plaintiffs and the Class:*

9 Kashif Haque
10 Samuel A. Wong
11 Jessica L. Campbell
12 Alexander G.L. Davies
13 Daniel E. Ishu
14 **AEGIS LAW FIRM, PC**
15 9811 Irvine Center Drive, Suite 100
16 Irvine, California 92618
17 Telephone: (949) 379-6250
18 Facsimile: (949) 379-6251

19 And

20 *To Defendant:*

21 Karin M. Cogbill
22 Elaisha Nandrajog
23 **HOPKINS & CARLEY, ALC**
24 70 South First Street
25 San Jose, CA 95113
26 Telephone: (408) 286-9600
27 Facsimile: (408) 998-4790

28 **Section 7.13: Enforcement of Settlement and Continuing Court Jurisdiction**

 To the extent consistent with class action procedure, this Agreement shall be enforceable by
the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
3.769(h). The Final Approval Order and Judgment entered by the Court will not adjudicate the merits
of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose
is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end,
the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members,

1 to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that
2 one or more of the Parties institutes any legal action or other proceeding against any other Party or
3 Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to
4 recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert
5 witness fees incurred in connection with any enforcement actions.

6 **Section 7.14: Mutual Full Cooperation**

7 Named Plaintiffs and Defendant, and each of their respective counsel, shall cooperate in good
8 faith to execute all documents and perform all acts necessary and proper to implement the terms of
9 this Agreement, including but not limited to drafting and submitting the Motion for Preliminary
10 Approval and Motion for Final Approval, and defending the Agreement and Final Approval Order
11 and Judgment against objections and appeals. The Parties to this Agreement shall use their best
12 efforts, including all efforts contemplated by this Agreement and any other efforts that may become
13 necessary by order of the Court or otherwise, to effectuate this Agreement and the terms set forth
14 herein.

15 **Section 7.15: Publicity, Confidentiality, Non-Disparagement**

16 No public comment, communications to media, or any form of advertising or public
17 announcement (including social media) regarding the Action shall be made by the Named Plaintiffs
18 or Class Counsel at any time.

19 Class Counsel agrees not to solicit any Class Members to exclude themselves from the terms
20 of this Agreement, and further agrees not to initiate, contact, or have any communications with Class
21 Members during the settlement approval process. Nothing will prevent Class Counsel from
22 responding to inquiries from Class Members. Defendant agrees that it shall not discourage any Class
23 Members from participating in the settlement and shall refer any questions to the Settlement
24 Administrator.

25 Prior to the Motion for Preliminary Approval and submission of this Agreement to the Court,
26 Class Counsel shall not discuss the terms of the Agreement with any person other than Named
27 Plaintiffs, Defendant's counsel, and the Settlement Administrator, and that they will not discuss the
28 negotiations leading to Agreement with any person other than Named Plaintiffs and Defendant's

1 counsel. Class Counsel will, however, undertake any and all submissions of information and/or
2 materials relating to the Action and this Settlement to the LWDA to the extent required under the
3 PAGA statute (e.g., submitting this Agreement to the LWDA at the same time as submitting it to the
4 Court for preliminary approval).

5 Named Plaintiffs acknowledge that they have not, and will not, discuss the terms of the
6 Settlement with any persons other than Class Counsel, their spouse(s), if any, their tax
7 preparer/accountant, and any other legal representative of Named Plaintiffs, prior to filing the Motion
8 for Preliminary Approval and submission of this Agreement to the Court. Named Plaintiffs further
9 acknowledge that at no time will they disclose details of the negotiations leading to this Settlement,
10 including information learned during or after mediation.

11 To the extent permitted by applicable law and in order to implement the Settlement, Named
12 Plaintiffs agree that they will not make any defamatory or disparaging statements about Defendant
13 or any Released Party. However, Named Plaintiffs are not precluded from submitting, and are
14 contemplated to submit, declarations in support of certification of the Class for purposes of this
15 Settlement and to support their receipt of a Service Payment.

16 To the extent documents produced, formally or informally, by Defendant during the course
17 of the Action are confidential or otherwise subject to confidentiality, Named Plaintiffs and Class
18 Counsel agree to maintain the confidentiality of such materials.

19 Notwithstanding the above, Plaintiff's counsel may reference publicly-available information
20 about the settlement in their declarations establishing their qualifications as counsel in other cases.

21 **Section 7.16: Authorization to Act**

22 The signatories hereby represent that they are fully authorized to enter into this Agreement
23 and bind the Parties hereto to the terms and conditions hereof.

24 **Section 7.17: No Reliance on Representations**

25 The Parties have made such investigation of the facts and the law pertaining to the matters
26 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
27 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
28 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted

1 rights, or with regard to the advisability of entering into and executing this Agreement, or with respect
2 to any other matters. No representations, warranties, or inducements, except as expressly set forth
3 herein, have been made to any party concerning this Agreement.

4 **EXECUTION BY PARTIES AND COUNSEL**

5 The Parties and their counsel hereby execute this Agreement.

6
7
8 Dated: 5/12/2023 | 10:56 AM PDT _____ ROGER WESTFALL

9
10 
11 By: _____
12 Named Plaintiff

13
14 Dated: _____ JOSEPH ATWELL

15
16 By: _____
17 Named Plaintiff

18
19
20 Dated: 5/15/2023 _____ NAES CORPORATION

21 By: Escover, Norm _____
22 (Signature)

23 _____
24 **David W. Miner**
25 **Norman C. Escover**
26 ~~Vice President, Legal~~
27 **President and CEO**

28 **[continued on next page]**

1 rights, or with regard to the advisability of entering into and executing this Agreement, or with respect
2 to any other matters. No representations, warranties, or inducements, except as expressly set forth
3 herein, have been made to any party concerning this Agreement.

4 **EXECUTION BY PARTIES AND COUNSEL**

5 The Parties and their counsel hereby execute this Agreement.

6
7
8 Dated: _____

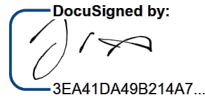
ROGER WESTFALL

9
10 By: _____
11 Named Plaintiff

12
13 5/9/2023 | 10:13 PM PDT

14 Dated: _____

JOSEPH ATWELL



17 By: _____
18 Named Plaintiff

19
20 Dated: _____

NAES CORPORATION

21
22 By: _____
(Signature)

23 _____
David W. Miner

24 _____
25 Vice President, Legal

26 **[continued on next page]**

EXHIBIT A

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Westfall et al., v. NAES Corporation et al.,
Kern County Superior Court, Case No. BCV-20-101796

PLEASE READ THIS NOTICE

The Court has preliminarily approved the settlement in class action and representative action under the Private Attorneys General Act, California Labor Code sections 2699, *et seq.* (“PAGA”), against Defendant NAES Corporation (“Defendant”). In the lawsuit, plaintiffs Roger Westfall and Joseph Atwell (“Plaintiffs”) alleged that Defendant failed to properly compensate Class Members for all hours worked, failed to pay for sick time, failed to provide Class Members with compliant meal periods and/or rest breaks or compensation in lieu thereof, failed to provide accurate wage statements, failed to timely pay all wages owed during employment and upon termination, failed to maintain accurate payroll records, failed to reimburse Class Members for necessary business expenses, and violated section 17200, *et seq.* of California’s Business and Professions Code. Defendant denies Plaintiffs’ allegations and contends that it complies with applicable law.

Class Member(s) are defined as: all persons who are employed or have been employed by Defendant in the State of California as hourly-paid or non-exempt employees at any time during the period from April 6, 2016 to [insert preliminary approval date] (“Class Period”) (collectively, the Class Members are referred to as the “Class”).

You have been identified by Defendant’s records as a Class Member in the above-entitled action, and as such, you are subject to the terms of the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) preliminarily approved by the Court. Please read this notice carefully. It may affect your legal rights.

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO SETTLEMENT	
<u>PARTICIPATE IN THE SETTLEMENT – NO ACTION REQUIRED</u>	If you want to remain in the Class, be bound by the Settlement and receive your Individual Settlement Payment, and if eligible, PAGA Payment , then you need not do anything.
OBJECT TO THE SETTLEMENT	If you want to object to the Settlement, you must follow the instructions in Section 7. If you object, you will still be bound by the terms of the Settlement, if approved by the Court.

<p align="center">EXCLUDE YOURSELF FROM THE SETTLEMENT</p>	<p>If you do not want to be bound by the Class Settlement, you must follow the instructions in Section 6 to exclude yourself from the Class Settlement. If you exclude yourself from the Class Settlement, you will not be issued an Individual Settlement Payment, and you will not release the Settled Class Claims against Released Parties defined in Section 4. If the Settlement is approved by the Court, and you are a PAGA Member, you will release the Settled PAGA Claims and be issued an Individual PAGA Payment even if you exclude yourself from the Class Settlement.</p>
<p align="center">PARTICIPATE IN THE PAGA SETTLEMENT</p>	<p>If you are a PAGA Member (defined below), you will automatically be bound to the PAGA Settlement and be issued an Individual PAGA Payment.</p>

BASIC INFORMATION

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Defendant’s records reflect that you are a Class Member as defined above. This Notice provides you with information about (1) the terms of the Settlement, including the claims that are being released, (2) the total monetary amount of the Settlement, (3) your estimated Individual Settlement Payment provided you remain a Settlement Class Member, and (4) where to find additional information regarding the case and the Settlement.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT:
If you do nothing, then you will be automatically included in the Settlement and do not need to take any further action to receive a payment.

2. WHAT IS THIS LAWSUIT ABOUT?

In the operative complaint, Plaintiffs allege that Defendant: (1) failed to pay minimum wages; (2) failed to provide meal periods; (3) failed to permit rest breaks; (4) failed to provide accurate itemized wage statements; (5) failed to pay all wages due upon separation of employment; (6) failed to reimburse necessary business expenses; (7) violated Business and Professions Code §§ 17200, *et seq.*; and (8) violated California’s Private Attorneys General Act (Labor Code § 2698, *et. seq.* (PAGA).)

The resolution of the PAGA claims (“PAGA Settlement”) includes any Class Members who are employed or have been employed by Defendant in the State of California during the time period from August 3, 2019 through [insert date of preliminary approval] (“PAGA Members”).

Defendant denies any liability or wrongdoing of any kind. Defendant contends, among other things, that it complied at all times with the California Labor Code and the Business and Professions Code, and that employees were correctly and timely paid all wages, and that meal

periods and rest breaks are provided as required by applicable law.

The Court has not ruled on the merits of Plaintiffs' claims. By preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine on a preliminary basis that the proposed Settlement is fair, adequate, and reasonable and any final determination of those issues will be made at the final approval hearing. Defendant reserves the right, if for any reason the Settlement fails, to contest any factual or legal allegations and to contest whether the lawsuit should proceed as a class or representative action.

3. THE SETTLEMENT TERMS AND CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENTS AND PAGA PAYMENTS

Without admitting any wrongdoing, and to avoid the business disruptions caused by litigating the lawsuit, Defendant has agreed to pay a Gross Settlement Amount of Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00) to settle the lawsuit.

The following amounts will be paid from the Gross Settlement Amount, subject to Court approval:

- Incentive Awards to the two Plaintiffs for their service as Class Representatives in the amount of Ten Thousand and Zero Cents (\$10,000.00) each (i.e., collectively Twenty Thousand Dollars (\$20,000));
- Attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount (which is currently equal to \$266,667.00) to Class Counsel ("Attorneys' Fees");
- Reimbursement of litigation costs and expenses in an amount up to Thirty Thousand Dollars and Zero Cents (\$30,000) to Class Counsel ("Attorneys' Costs");
- The amount of Forty Thousand Dollars and Zero Cents (\$40,000.00) allocated to the payment of civil penalties under PAGA (the "PAGA Allocation"), of which seventy-five percent (75%) (i.e., \$30,000.00) will be paid to the Labor and Workforce Development Agency ("LWDA Payment") and the remaining twenty-five percent (25%) (i.e., \$10,000.00) shall be paid to PAGA Members ("Net PAGA Distribution Amount");
- The costs associated with administration of the Settlement, estimated to be Ten Thousand Dollars and Zero Cents (\$10,000.00) ("Settlement Administration Costs"); and
- Employer side of taxes for the wage portion of any Individual Settlement Payments.

The amount remaining from the Gross Settlement Amount after deducting the PAGA Allocation; Attorneys' Fees; Attorneys' Costs; Settlement Administration Costs; Incentive Awards; and employer taxes for the wage portion of any Individual Settlement Payments is called the "Net Settlement Amount."

The **Net Settlement Amount** will be allocated to all Class Members who do not submit a timely and valid Opt Out Request ("Settlement Class Members") on a *pro rata* basis, based on their number of Qualifying Workweeks worked during the Class Period. The Settlement Administrator will determine the value of a single Qualifying Workweek by dividing the Net Settlement Amount by the total number of Qualifying Workweeks worked by all Settlement Class Members. Each Settlement Class Member is eligible to receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment") equal to his or her Qualifying Workweeks multiplied by the value of a single Qualifying Workweek.

The **Net PAGA Distribution Amount** will be allocated to PAGA Members on a *pro rata* basis, based on their number of Workweeks worked by PAGA Members during the PAGA Period (“Qualifying PAGA Workweeks”). The Settlement Administrator will determine the value of a single Qualifying PAGA Workweek by dividing the Net PAGA Distribution Amount by the total number of Qualifying PAGA Workweeks worked by all PAGA Members. Each PAGA Member shall receive a PAGA Payment equal to his or her Qualifying PAGA Workweeks multiplied by the value of a single Qualifying PAGA Workweek.

You have been credited with [redacted] Qualifying Workweeks. Based on these Qualifying Workweeks, your gross Individual Settlement Payment, prior to any applicable withholdings, is estimated to be \$ [redacted].

You [are / are not] considered to be a PAGA Member, and have been credited with [redacted] Qualifying PAGA Workweeks. Based on these Qualifying PAGA Workweeks, the PAGA Payment you will receive under the Settlement is estimated to be \$ [redacted].

You may submit a written dispute to the number of Qualifying Workweeks and/or PAGA Workweeks allocated to you (“Workweeks Dispute”) to the Settlement Administrator. Your Workweeks Dispute must: (1) contain your full name, address, and telephone number and the case name and number of the lawsuit (i.e., *Westfall, et al. v. NAES Corporation, et al.*, filed in the Superior Court of California, Kern County, Case No. BCV-20-101796); (2) be signed by you; (3) be postmarked or fax stamped on or before [Response Deadline] and returned to the Settlement Administrator at the address or fax number listed below; (4) clearly state the number of Qualifying Workweeks and/or Qualifying PAGA Workweeks you believe is correct; and (5) attach any documents you have to support your dispute.

Phoenix Settlement Administrators, Inc.

[mailing address]

[fax number]

One third (1/3) of each Individual Settlement Payment will be allocated to wages (“wage portions”) and subject to all applicable employee state and federal tax withholdings, and the remaining two thirds (2/3) will be allocated as non-wages (e.g. penalties, restitution and interest) (“non-wage portions”). The wage portions will be reported on an IRS form W-2, and the non-wage portions will be reported on an IRS form 1099 (if required).

One hundred percent (100%) of each Individual PAGA Payment will be allocated as penalties and be reported on an IRS form 1099 (if required).

Class Members are responsible for accurate payment of taxes on any amounts received. This Notice is not tax advice and you should consult your tax advisor. Checks will be valid and negotiable for one hundred eighty (180) days; after that, checks will be cancelled and the funds associated with cancelled checks will be transmitted to the Katherine and George Alexander Community Law Center.

Settlement Class Members and PAGA Members who fail to deposit or negotiate their check(s) in a timely fashion shall, nevertheless, remain subject to the terms of the Agreement and the Final Approval Order and Judgment

4. WHAT AM I RELEASING UNDER THE CLASS SETTLEMENT?

If and when the Court grants final approval of the Settlement, as of the Effective Date and full funding of the Gross Settlement Amount, all Class Members who do not submit a timely and valid Opt Out Request (i.e., Settlement Class Members) shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all Settled Class Claims against any and all Released Parties.

“Released Parties” means Defendant NAES Corporation and each of its officers, directors, members, partners, owners, shareholders, employees, former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations, insurers, and any and all other persons, firms and corporations in which Defendant may have an interest.

“Settled Class Claims” means all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, whether known or unknown, that arise during the Class Period that each Settlement Class Member had, now has, or may hereafter claim to have against the Released Parties and that were asserted in the Complaint, or that could have been asserted in the Complaint based on any of the facts or allegations in the Complaint or PAGA Notice, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Settled Class Claims specifically include, but are not limited to claims for unpaid wages, claims for unpaid sick pay, the alleged failure to provide meal periods or compensation in lieu thereof, the alleged failure to provide paid rest periods, failure to timely furnish accurate itemized wage statements, record keeping violations, failure to timely pay wages, failure to reimburse business expenses, unfair business practices, and violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including and not limited to, for violations of California Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and Industrial Welfare Commission Wage Orders.

5. WHAT AM I RELEASING UNDER THE PAGA SETTLEMENT?

As of the Effective Date and full funding of the Gross Settlement Amount, the State of California, with respect to employment of Plaintiffs and all PAGA Members, shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims. The Settlement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and every PAGA Member to obtain any recovery based on the Settled PAGA Claims.

“Settled PAGA Claims” means all claims for civil penalties that were asserted, or could have been asserted, or that arise, whether known or unknown, during the PAGA Period, based for any of the alleged violations of the California Labor Code and/or Industrial Welfare Commission Wage Orders that were asserted, or could have been asserted, within the Complaint and PAGA Notice based on any facts or allegations therein, including, but not limited to, violations of California Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and Industrial Welfare Commission Wage Orders. Released Parties is defined in Section 4 of this Notice, above.

PAGA MEMBERS CANNOT OPT-OUT OR EXCLUDE THEMSELVES FROM THE PAGA SETTLEMENT OR THE RELEASE OF SETTLED PAGA CLAIMS, AND WILL BE ISSUED

AN INDIVIDUAL PAGA PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.

6. WHAT IF I DON'T WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

As a Class Member, you have the right to request exclusion from the settlement and resolution of the Settled Class Claims (the "Class Settlement"), but, if you are a PAGA Member, you are not able to exclude yourself from the settlement and resolution of the Settled PAGA Claims (the "PAGA Settlement").

To exclude yourself from the Class Settlement, you must submit a written request for exclusion to the Settlement Administrator ("Opt Out Request") at the address or fax number listed in Section 3 of this Notice, above.

A valid and complete Opt Out Request must: (1) contain the full name, address, and telephone number of the Class Member requesting exclusion from the Class Settlement and the case name and number of the Action (i.e., *Westfall, et al. v. NAES Corporation, et al.*, filed in the Superior Court of California, Kern County, Case No. BCV-20-101796); (2) be signed by the Class Member; (3) be postmarked or fax stamped on or before **Response Deadline** and returned to the Settlement Administrator at the specified address or fax number listed in Section 3 of this Notice, above; and (4) contain a statement substantially similar to:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN THE WESTFALL, ET AL. V. NAES CORPORATION, ET AL. LAWSUIT, AND UNDERSTAND THAT IF I ASK TO BE EXCLUDED, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT. I UNDERSTAND THAT, NEVERTHELESS, SETTLED PAGA CLAIMS WILL BE RELEASED AND SETTLED."

It is your responsibility to ensure that the Settlement Administrator timely receives your Opt Out Request. Unless you timely request to be excluded from the Class Settlement, you will be bound by the judgment and Class Settlement upon final approval of the Settlement.

Class Members who request to be excluded from the Class Settlement will NOT be issued an Individual Settlement Payment, and will not release any of the Settled Class Claims. However, Class Members who are also PAGA Members will be issued their Individual PAGA Payment and bound to the PAGA Settlement regardless of whether they submit an Opt Out Request.

7. WHAT IF I WANT TO OBJECT TO THE CLASS SETTLEMENT?

Any Class Member who does not opt out of the Class Settlement may object to the Class Settlement. If the Court denies approval of the Settlement, no payments will be sent out and the Action will continue to be litigated in Court.

If you wish to object, you must submit your objection in writing to the Settlement Administrator ("Objection"). A valid and complete Objection must: (1) contain the full name, address, and telephone number of the objecting Settlement Class Member and the case name and number of the Action (i.e., *Westfall, et al. v. NAES Corporation, et al.*, filed in the Superior Court of California, Kern County, Case No. BCV-20-101796); (2) be signed by the Settlement Class Member; (3) be postmarked or fax stamped

on or before [Response Deadline] and returned to the Settlement Administrator at the specified address or fax number listed in Section 3 of this Notice, above; and (4) give the legal and factual basis for objection to the Class Settlement.

Submitting an objection will *not* exclude you from the Class Settlement. If the Court grants final approval of the Settlement, you will still be issued an Individual Settlement Payment and will be barred from pursuing the Settled Class Claims. **Do not submit both an Objection and Opt Out Request.** If you submit both an Objection and an Opt Out Request, you will be excluded from the Class Settlement and the Objection will not be considered.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on _____, at _____ a.m. in Department _____ of the Superior Court of the State of California, County of Kern, located at _____. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to (please visit the Court’s website for more information regarding how you can appear).

9. WHO ARE THE ATTORNEYS?

Attorneys for Plaintiff and the Class are:

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Alexander G.L. Davies
Daniel E. Ishu
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Tel: (949) 379-6250
Fax: (949) 379-6251

Attorneys for Defendants are:

Karin Cogbill, Esq.
Elaisha Nandrajog, Esq.
HOPKINS & CARLEY, ALC
70 South First Street
San Jose, CA 95113-2406
Tel: (408) 286-9800
Fax: (408) 998-4790

The Court has decided that the Attorneys for Plaintiffs and the Class are qualified to represent the Class (“Class Counsel”). Other than the Attorneys’ Fees and Attorneys’ Costs approved by the Court, which will be paid out of the Gross Settlement Amount, you will not be charged for the services of Class Counsel.

10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one. If you retain the services of your own attorney in connection with the lawsuit, you will be responsible for paying for those services and related expenses.

11. FURTHER INFORMATION

The foregoing is only a summary of the Settlement. For the precise terms and conditions of the Settlement, please see the settlement agreement available at www._____.com, by contacting Class Counsel at the address or telephone number provided in Section 9. WHO ARE THE ATTORNEYS?, or by visiting the office of the Clerk of the Superior Court for the State of California County of Kern, located at _____.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO
INQUIRE ABOUT THIS SETTLEMENT.**