

**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 the class 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 August 24, 2023 (“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.**

<b>YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO SETTLEMENT</b>	
<b>PARTICIPATE IN THE SETTLEMENT <u>NO ACTION REQUIRED</u></b>	If you want to remain in the Class, be bound by the Settlement and <b>receive your Individual Settlement Payment, and if eligible, PAGA Payment</b> , then you need not do anything.
<b>OBJECT TO THE SETTLEMENT</b>	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.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	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.
<b>PARTICIPATE IN THE PAGA SETTLEMENT</b>	If you are a PAGA Member (defined below), you will automatically be bound to the PAGA Settlement and be issued an Individual PAGA Payment.

**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 August 24, 2023 (“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 «Total\_Weeks» Qualifying Workweeks. Based on these Qualifying Workweeks, your gross Individual Settlement Payment, prior to any applicable withholdings, is estimated to be «ESA\_Before\_Paga».**

**You «ARE\_\_ARE\_NOT» considered to be a PAGA Member, and have been credited with «PAGA\_Work\_Weeks» Qualifying PAGA Workweeks. Based on these Qualifying PAGA Workweeks, the PAGA Payment you will receive under the Settlement is estimated to be «PAGA\_Amount».**

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 November 16, 2023, 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  
P.O. Box 7208  
Orange, CA 92863  
Telephone: (800) 523-5773  
Facsimile: (949) 209-2503

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 November 16, 2023, 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 November 16, 2023, 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 January 30, 2024, at 8:30 a.m., in Department 17 of the Superior Court of the State of California, County of Kern, located at Floor 3, 1415 Truxtun Avenue, Bakersfield, California 93301. 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  
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**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 <https://www.phoenixclassaction.com/naes-corporation/>, 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 Floor 3, 1415 Truxtun Avenue, Bakersfield, California 93301.

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