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**FILED**  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

FEB 23 2023

By  Deputy

**Amaris Morales Eumana**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN BERNARDINO**

13 TODD WESTPHAL, JOHN MORTIMORE,  
14 MANUEL PEREZ, and CHRISTOPHER  
HIGGINS,

15 Plaintiffs,

16 v.

17 SOUTHWEST GAS CORP., SOUTHWEST GAS  
18 UTILITY GROUP, INC., SOUTHWEST GAS  
HOLDINGS, INC., and DOES 1 through 20,  
19 inclusive,

20 Defendants.

Case No. CIVDS1813554

Assigned to the Hon. David Cohn,  
Department S26

**DECLARATION OF JOSHUA F. YOUNG IN  
SUPPORT OF MOTION FOR ORDER  
GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

Hrg. Date: May 11, 2023  
Hrg. Time: 8:30 am  
Location: Dept. S26

Action Filed: June 1, 2018



# **EXHIBIT 1**

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14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SAN BERNARDINO**

17  
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**CLASS ACTION AND PAGA  
SETTLEMENT AGREEMENT AND CLASS  
NOTICE**



1 1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the  
2 amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses,  
3 respectively, incurred to prosecute the Action.

4 1.8. "Class Data" means Class Member identifying information in Defendants' possession  
5 including the Class Member's name, last-known mailing address, Social Security number, and the number  
6 of Class Period Workweeks and PAGA Pay Periods.

7 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a  
8 Participating Class Member or Non-Participating Class Member (including a Non- Participating Class  
9 Member who qualifies as an Aggrieved Employee).

10 1.10. "Class Member Address Search" means the Administrator's investigation and search for  
11 current Class Member mailing addresses using all reasonably available sources, methods, and means  
12 including, but not limited to, the National Change of Address database, skip traces, and direct contact by  
13 the Administrator with Class Members.

14 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION  
15 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class  
16 Members in English in the form, without material variation, attached as Exhibit A and incorporated by  
17 reference into this Agreement.

18 1.12. "Class Period" means the period from June 1, 2014, to November 27, 2017.

19 1.13. "Class Representative" means the named Plaintiffs in the operative complaint in the Action  
20 seeking Court approval to serve as a Class Representative.

21 1.14. "Class Representative Service Payment" means the payment to the Class Representative  
22 for initiating the Action and providing services in support of the Action.

23 1.15. "Court" means the Superior Court of California, County of San Bernardino.

24 1.16. "Defendants" means named Defendants Southwest Gas Corp., Southwest Gas Utility  
25 Group, Inc., and Southwest Gas Holdings, Inc.

26 1.17. "Defense Counsel" means Varner & Brandt LLP.  
27  
28

1           1.18. “Effective Date” means the date by which both of the following have occurred: (a) the  
2 Court enters a Judgment on its Order Granting Final Approval of the Settlement, and (b) the Judgment is  
3 final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class  
4 Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating  
5 Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the  
6 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the  
7 Judgment and issues a remittitur.

8           1.19. “Final Approval” means the Court’s Order Granting Final Approval of the Settlement.

9           1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of  
10 the Settlement.

11           1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval  
12 of the Settlement.

13           1.22. “Gross Settlement Amount” means \$3,500,000 which is the total amount Defendants agree  
14 to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will  
15 be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class  
16 Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s  
17 Expenses.

18           1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the  
19 Net Settlement Amount calculated according to the number of Workweeks worked during the Class  
20 Period.

21           1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the  
22 PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

23           1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.

24           1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency  
25 entitled, under Labor Code section 2699, subd. (i).

1 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA  
2 under Labor Code section 2699, subd. (i).

3 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following  
4 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA  
5 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation  
6 Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to  
7 Participating Class Members as Individual Class Payments.

8 1.29. "Non-Participating Class Member" means any Class Member who opts out of the  
9 Settlement by sending the Administrator a valid and timely Request for Exclusion.

10 1.30. "PAGA Workweek" means any workweek during which an Aggrieved Employee worked  
11 for Defendants for at least one day during the PAGA Period.

12 1.31. "PAGA Period" means the period from June 1, 2017, to November 27, 2017.

13 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

14 1.33. "PAGA Notice" means Plaintiffs' letter to Southwest Gas Corp. and the LWDA dated  
15 May 30, 2018, providing notice pursuant to Labor Code section 2699.3, subd. (a).

16 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the  
17 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,250) and the 75% to LWDA  
18 (\$3,750) in settlement of PAGA claims.

19 1.35. "Participating Class Member" means a Class Member who does not submit a valid and  
20 timely Request for Exclusion from the Settlement.

21 1.36. "Plaintiffs" means Todd Westphal, John Mortimore, Manuel Perez, and Christopher  
22 Higgins, the named plaintiffs in the Action.

23 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the  
24 Settlement.

25 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval  
26 and Approval of PAGA Settlement.

1 1.39. “Released Class Claims” means the claims being released as described in Paragraph 6.2  
2 below.

3 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 6.2  
4 below.

5 1.41. “Released Parties” means Defendants and each of their former and present directors,  
6 officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns,  
7 subsidiaries, parent companies, sister companies, managers, employees, agents, and affiliates.

8 1.42.

9 1.43. “Request for Exclusion” means a Class Member’s submission of a written request to be  
10 excluded from the Class Settlement signed by the Class Member.

11 1.44. “Response Deadline” means 30 days after the Administrator mails Notice to Class  
12 Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax,  
13 email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection  
14 to the Settlement. Class Members to whom Notice Packets are resent after having been returned  
15 undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the  
16 Response Deadline has expired.

17 1.45. “Settlement” means the disposition of the Action effected by this Agreement and the  
18 Judgment.

19 1.46. “Workweek” means any week during which a Class Member worked for Defendants for at  
20 least one day, during the Class Period.

21  
22 **2. RECITALS.**

23 2.1. On June 1, 2018, Plaintiffs commenced this Action by filing a Complaint alleging causes  
24 of action against Defendants for (1) Failure to Pay for Each Hour Worked; (2) Failure to Provide  
25 Accurate Itemized Wage Statements; (3) Violation of California’s Unfair Competition Law, Business and  
26 Prof. Code § 17200, et seq.; and (4) Private Attorneys General Act (“PAGA”), Labor Code § 2698, et  
27 seq. On September 1, 2020, Plaintiffs filed a Second Amended Complaint against Defendants, removing  
28



1 all other named plaintiffs. The Second Amended Complaint is the operative complaint in the Action (the  
2 “Operative Complaint”). Defendants deny the allegations in the Operative Complaint, deny any failure to  
3 comply with the laws identified in the Operative Complaint, and deny any and all liability for the causes  
4 of action alleged.

5 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiffs gave timely written notice to  
6 Southwest Gas Corp. and the LWDA by sending the PAGA Notice.

7 2.3. On Jun 30, 2022, the Parties participated in an all-day mediation presided over by the  
8 Honorable Carla M. Woehrle (retired), which led to this Agreement to settle the Action (describe  
9 alternative means of negotiation).

10 2.4. Prior to mediation, Plaintiffs obtained documents, including policies, schedules,  
11 timekeeping, and payroll records, through formal and informal discovery. Plaintiffs’ investigation was  
12 sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48  
13 Cal.App.4<sup>th</sup> 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4<sup>th</sup> 116, 129-130  
14 (“*Dunk/Kullar*”).

15 2.5. The Court has not granted class certification.

16 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any  
17 other pending matter or action asserting claims that will be extinguished or affected by the Settlement.  
18

19 **3. MONETARY TERMS.**

20 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,  
21 Defendants promise to pay \$3,500,000 and no more as the Gross Settlement Amount and to separately  
22 pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.  
23 Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the  
24 deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross  
25 Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to  
26 submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to  
27 Defendants.  
28

1           3.2.    Payments from the Gross Settlement Amount. The Administrator will make and deduct the  
2 following payments from the Gross Settlement Amount, in the amounts specified by the Court in the  
3 Final Approval.

4                   3.2.1.    To Plaintiffs: Class Representative Service Payments to the Class  
5 Representatives of not more than \$10,000 (in addition to any Individual Class Payment and any  
6 Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class  
7 Member). Defendants will not oppose each Plaintiff’s request for a Class Representative Service  
8 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and  
9 Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative  
10 Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court  
11 approves a Class Representative Service Payment less than the amount requested, the Administrator will  
12 retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative  
13 Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee  
14 taxes owed on the Class Representative Service Payments.

15                   3.2.2.    To Class Counsel: A Class Counsel Fees Payment of not more than 33%, which  
16 is currently estimated to be \$1,155,000, and a Class Counsel Litigation Expenses Payment of not more  
17 than \$30,000. Defendants will not oppose requests for these payments provided that do not exceed these  
18 amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class  
19 Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If  
20 the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment  
21 less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement  
22 Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs’ Counsel arising  
23 from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation  
24 Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel  
25 Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and  
26 liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses  
27  
28

1 Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy  
2 regarding any division or sharing of any of these Payments.

3 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed  
4 \$25,000 except for a showing of good cause and as approved by the Court. To the extent the  
5 Administration Expenses are less, or the Court approves payment less than \$25,000 the Administrator  
6 will retain the remainder in the Net Settlement Amount.

7 3.2.4. To Each Participating Class Member: An Individual Class Payment is calculated  
8 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating  
9 Class Members during the Class Period and (b) multiplying the result by each Participating Class  
10 Member's Workweeks.

11 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating  
12 Class Member's Individual Class Payment will be allocated to the settlement of wage claims (the "Wage  
13 Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form.  
14 80% of each Participating Class Member's Individual Class Payment will be allocated to the settlement of  
15 claims for (40% as non-taxable penalties and 40% as interest) (the "Non-Wage Portion"). The Non-Wage  
16 Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating  
17 Class Members assume full responsibility and liability for any employee taxes owed on their Individual  
18 Class Payment.

19 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual  
20 Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The  
21 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount  
22 for distribution to Participating Class Members on a pro-rata basis.

23 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of  
24 \$5,000 to be paid from the Gross Settlement Amount, with 75% (\$3,750) allocated to the LWDA PAGA  
25 Payment and 25% (\$1,250) allocated to the Individual PAGA Payments.

26 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)  
27 dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$1,250) by the total  
28

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

5 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested,  
6 the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will  
7 report the Individual PAGA Payments on IRS 1099 Forms.

#### 8 9 **4. SETTLEMENT FUNDING AND PAYMENTS.**

10 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records  
11 to date, Defendants estimate there are 107 Class Members who collectively worked a total of 12,960  
12 Workweeks and 71 Aggrieved Employees who worked a total of 27 PAGA Workweeks.

13 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the  
14 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator and to Class  
15 Counsel, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the  
16 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this  
17 Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees  
18 who need access to the Class Data to effect and perform under this Agreement. Defendants have a  
19 continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class  
20 member identifying information and to provide corrected or updated Class Data as soon as reasonably  
21 feasible. Without any extension of the deadline by which Defendants must send the Class Data to the  
22 Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to  
23 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

24 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement  
25 Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by  
26 transmitting the funds to the Administrator no later than 60 days after the Effective Date.

1           4.4.    Payments from the Gross Settlement Amount. Within 30 days after Defendants fund the  
2 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all  
3 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the  
4 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class  
5 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel  
6 Litigation Expenses Payment, and the Class Representative Service Payment shall not precede  
7 disbursement of Individual Class Payments and Individual PAGA Payments.

8           4.4.1.   The Administrator will issue checks for the Individual Class Payments and/or  
9 Individual PAGA Payments and send them to the Class Members *via* First Class U.S. Mail, postage  
10 prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of  
11 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void  
12 date. The Administrator will send checks for Individual Settlement Payments to all Participating Class  
13 Members (including those for whom Class Notice was returned undelivered). The Administrator will  
14 send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating  
15 Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was  
16 returned undelivered). The Administrator may send Participating Class Members a single check  
17 combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks,  
18 the Settlement Administrator must update the recipients' mailing addresses using the National Change of  
19 Address Database.

20           4.4.2.   The Administrator must conduct a Class Member Address Search for all other  
21 Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days  
22 of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address  
23 provided or to an address ascertained through the Class Member Address Search. The Administrator  
24 need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as  
25 undelivered. The Administrator shall promptly send a replacement check to any Class Member whose  
26 original check was lost or misplaced, requested by the Class Member prior to the void date.  
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1           4.4.3. For any Class Member whose Individual Class Payment check or Individual  
2 PAGA Payment check is uncashed and canceled after the void date, the Administrator shall transmit the  
3 funds represented by such checks to a Court-approved nonprofit organization or foundation consistent  
4 with Code of Civil Procedure Section 384, subd. (b) (“Cy Pres Recipient”), the Legal Aid Society of San  
5 Bernardino. The Parties, Class Counsel and Defense Counsel represent that they have no interest or  
6 relationship, financial or otherwise, with the intended Cy Pres Recipient.

7           4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall  
8 not obligate Defendants to confer any additional benefits or make any additional payments to Class  
9 Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

10  
11 **5. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire Gross  
12 Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual  
13 Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released  
14 Parties as follows:

15 **6. Plaintiffs’ Release.** Each of Plaintiffs and his respective former and present spouses,  
16 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and  
17 discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class  
18 Period, including, but not limited to: any and all claims, debts, liabilities, demands, actions, or causes of  
19 actions of every nature and description that were either alleged, or that reasonably could have been  
20 alleged based on the factual allegations contained in the Lawsuits, including, but not limited to, claims  
21 pursuant to Labor Code sections, 201, 202, 203, 204, 210, 226(a), 226.2, 226.3, 226.7, 510, 512, 1174(d),  
22 1182.5, 1194, 1194.2, 1197, 1197.1, 2800, 2802, 2810.5, 2699, et seq, and the Industrial Welfare  
23 Commission Wage Orders, and also any claim for unpaid wages, including under any theory of piece-rate  
24 law, unpaid minimum wage, off-the-clock work, on-call or standby time, meal and rest period violations,  
25 waiting time penalties, itemized wage statement penalties, expense reimbursements, safety equipment  
26 reimbursements, wages for unpaid time, other related wages, restitution, disgorgement, civil or statutory  
27 penalties, attorneys’ fees, and/or costs and all claims under the Private Attorneys General Act of 2004,  
28

1 under the Unfair Competition Law, Business & Professions Code section 17200, et seq., and/or all claims  
2 that were, or reasonably could have been, alleged, based on the facts contained, in the Operative  
3 Complaint or Plaintiffs' PAGA Notice ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any  
4 claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits,  
5 disability benefits, social security benefits, workers' compensation benefits that arose at any time or  
6 based on occurrences outside the Class Period. Plaintiffs acknowledge that each Plaintiff may discover  
7 facts or law different from or in addition to, the facts or law that each Plaintiff now knows or believes to  
8 be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects,  
9 notwithstanding such different or additional facts or Plaintiffs' discovery of them.

10 1.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For  
11 purposes of Plaintiffs' Release, each Plaintiff expressly waives and relinquishes the provisions, rights,  
12 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

20 1.2. Release by Participating Class Members Who Are Not Aggrieved Employees: All  
21 Participating Class Members, on behalf of themselves and their respective former and present  
22 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties  
23 from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period  
24 facts stated in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement,  
25 Participating Class Members do not release any other claims, including claims for vested benefits,  
26 wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,  
27 disability, social security, workers' compensation, or claims based on facts occurring outside the Class  
28 Period.

1.3. Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-  
Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of

1 themselves and their respective former and present representatives, agents, attorneys, heirs,  
2 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that  
3 were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the  
4 Operative Complaint, and the PAGA Notice.

5  
6 **2. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and  
7 file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the  
8 Court’s current checklist for Preliminary Approval.

9 2.1. Defendants’ Declaration in Support of Preliminary Approval. Within 30 days of the full  
10 execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration  
11 from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of  
12 interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and  
13 Defendants shall aver that they are not aware of any other pending matter or action asserting claims that  
14 will be extinguished or adversely affected by the Settlement.

15 2.2. Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all  
16 documents necessary for obtaining Preliminary Approval, including (i) a draft of the notice, and  
17 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the  
18 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code  
19 Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of  
20 PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator  
21 attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve;  
22 competency; operative procedures for protecting the security of Class Data; amounts of insurance  
23 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or  
24 potential conflicts of interest with Class Members [and/or the proposed Cy Pres]; and the nature and  
25 extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed  
26 declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts  
27 relevant to any actual or potential conflicts of interest with Class Members, and the Administrator and the  
28



1 proposed Cy Pres; (v) a signed declaration from each Class Counsel firm attesting to its competency to  
2 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents  
3 (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code  
4 section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); (vi) a redlined version  
5 of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with  
6 the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members,  
7 the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiffs and Class Counsel  
8 Declaration shall aver that they are not aware of any other pending matter or action asserting claims that  
9 will be extinguished or adversely affected by the Settlement.

10 2.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible  
11 for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the  
12 full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary  
13 Approval, and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class  
14 Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

15 2.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for  
16 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense  
17 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone,  
18 and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or  
19 conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense  
20 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone,  
21 and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

### 22 23 **3. SETTLEMENT ADMINISTRATION.**

24 3.1. Selection of Administrator. The Parties have jointly selected CAC Services Group to serve  
25 as the Administrator and verified that, as a condition of appointment, CAC Services Group agrees to be  
26 bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in  
27 exchange for payment of Administration Expenses. The Parties and their Counsel represent that they  
28

1 have no interest or relationship, financial or otherwise, with the Administrator other than a professional  
2 relationship arising out of prior experiences administering settlements.

3 3.2. Employer Identification Number. The Administrator shall have and use its own Employer  
4 Identification Number for purposes of calculating payroll tax withholdings and providing reports to state  
5 and federal tax authorities.

6 3.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets  
7 the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

8 3.4. Notice to Class Members.

9 3.4.1. No later than three (3) business days after receipt of the Class Data, the  
10 Administrator shall notify Class Counsel that the list has been received and state the number of Class  
11 Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

12 3.4.2. Using best efforts to perform as soon as possible, and in no event later than 14  
13 days after receiving the Class Data, the Administrator will send to all Class Members identified in the  
14 Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in  
15 the form attached to this Agreement as ExhibitA\_. The first page of the Class Notice shall prominently  
16 estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to  
17 the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate  
18 these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using  
19 the National Change of Address database.

20 3.4.3. Not later than three (3) business days after the Administrator’s receipt of any  
21 Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using  
22 any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the  
23 Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most  
24 current address obtained. The Administrator has no obligation to make further attempts to locate or send  
25 Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

26 3.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks  
27 and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 30  
28

1 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The  
2 Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

3 3.4.5. If the Administrator, Defendants, or Class Counsel is contacted by or otherwise  
4 discovers any persons who believe they should have been included in the Class Data and should have  
5 received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in  
6 good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such  
7 persons will be Class Members entitled to the same rights as other Class Members, and the Administrator  
8 will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this  
9 Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice,  
10 whichever are later.

11 3.5. Requests for Exclusion (Opt-Outs).

12 3.5.1. Class Members who wish to exclude themselves (opt-out of) the Class  
13 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion  
14 not later than 30 days after the Administrator mails the Class Notice (plus an additional 14 days for Class  
15 Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or  
16 his/her representative that reasonably communicates the Class Member's election to be excluded from the  
17 Settlement and includes the Class Member's name, address, and email address or telephone number. To  
18 be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response  
19 Deadline.

20 3.5.2. Defendants and Plaintiffs, and their respective counsel, agree that none of them  
21 will take any steps to encourage Class Members to opt out of the settlement. If any of the Class Members  
22 opt-out of this settlement through Requests for Exclusion, Defendants will have the option to cancel the  
23 settlement under Section 5.

24 3.5.3. The Administrator may not reject a Request for Exclusion as invalid because it  
25 fails to contain all the information specified in the Class Notice. The Administrator shall accept any  
26 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a  
27 Class Member and the Class Member's desire to be excluded. The Administrator's determination shall  
28

1 be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to  
2 question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of  
3 the Class Member's identity. The Administrator's determination of authenticity shall be final and not  
4 appealable or otherwise susceptible to challenge.

5           3.5.4. Every Class Member who does not submit a timely and valid Request for  
6 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits,  
7 and bound by all terms and conditions of the Settlement, including the Participating Class Members'  
8 Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class  
9 Member actually receives the Class Notice or objects to the Settlement.

10           3.5.5. Every Class Member who submits a valid and timely Request for Exclusion is a  
11 Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to  
12 object to the class action components of the Settlement. Because future PAGA claims are subject to  
13 claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved  
14 Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are  
15 eligible for an Individual PAGA Payment.

16           3.6. Challenges to Calculation of Workweeks. Each Class Member shall have 30 days after the  
17 Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice  
18 is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to  
19 the Class Member in the Class Notice. The Class Member may challenge the allocation by  
20 communicating with the Administrator via fax, email, or mail. The Administrator must encourage the  
21 challenging Class Member to submit supporting documentation. In the absence of any contrary  
22 documentation, the Administrator is entitled to presume that the Workweeks contained in the Class  
23 Notice are correct so long as they are consistent with the Class Data. The Administrator's determination  
24 of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or  
25 otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to  
26 the calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the  
27 Administrator's determination of the challenges.  
28

1           3.7.    Objections to Settlement.

2           3.7.1.    Only Participating Class Members may object to the class action components of  
3 the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts  
4 requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class  
5 Representative Service Payment.

6           3.7.2.    Participating Class Members may send written objections to the Administrator,  
7 by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an  
8 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating  
9 Class Member who elects to send a written objection to the Administrator must do so not later than 30  
10 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose  
11 Class Notice was re-mailed).

12           3.7.3.    Non-Participating Class Members have no right to object to any of the class  
13 action components of the Settlement.

14           3.8.    Administrator Duties. The Administrator has a duty to perform or observe all tasks to be  
15 performed or observed by the Administrator contained in this Agreement or otherwise.

16           3.8.1.    Website, Email Address, and Toll-Free Number. The Administrator will  
17 establish and maintain and use an internet website to post information of interest to Class Members  
18 including the date, time, and location for the Final Approval Hearing and copies of the Settlement  
19 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion  
20 for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses  
21 Payment and Class Representative Service Payment, the Final Approval and the Judgment. The  
22 Administrator will also maintain and monitor an email address and a toll-free telephone number to  
23 receive Class Member calls, faxes, and emails.

24           3.8.2.    Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will  
25 promptly review Requests for Exclusion on a rolling basis to ascertain their validity. Not later than 5  
26 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall  
27 email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying  
28

1 information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion  
2 List”); (b) the names and other identifying information of Class Members who have submitted invalid  
3 Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether  
4 valid or invalid).

5           3.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written  
6 reports to Class Counsel and Defense Counsel that, among other things, tally the number of Class  
7 Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid  
8 or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or  
9 resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly  
10 Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests  
11 for Exclusion and attach copies of all Requests for Exclusion and objections received.

12           3.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to  
13 address and make final decisions consistent with the terms of this Agreement on all Class Member  
14 challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be  
15 final and not appealable or otherwise susceptible to challenge.

16           3.8.5. Administrator’s Declaration. Not later than 14 days before the date by which  
17 Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will  
18 provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting  
19 to its due diligence and compliance with all of its obligations under this Agreement, including, but not  
20 limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class  
21 Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it  
22 received (both valid or invalid), the number of written objections and attach the Exclusion List. The  
23 Administrator will supplement its declaration as needed or requested by the Parties and/or the Court.  
24 Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

25           3.8.6. Final Report by Settlement Administrator. Within 30 days after the  
26 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class  
27 Counsel and Defense Counsel with a final report detailing its disbursements by employee identification  
28

1 number only of all payments made under this Agreement. At least 15 days before any deadline set by the  
2 Court, the Administrator will prepare and submit to Class Counsel and Defense Counsel, a signed  
3 declaration suitable for filing in Court attesting to its disbursement of all payments required under this  
4 Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.  
5

6 **4. CLASS SIZE ESTIMATES.** Based on their records, Defendants estimate that, as of the date of  
7 this Settlement Agreement, (1) there are 107 Class Members and 12,960 Total Workweeks during the  
8 Class period and (2) there were 71 Aggrieved Employees who worked 27 Workweeks during the PAGA  
9 Period.  
10

11 **5. DEFENDANTS' RIGHT TO WITHDRAW.** If there are valid Requests for Exclusion,  
12 Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree that, if  
13 Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that  
14 neither Party will have any further obligation to perform under this Agreement; provided, however,  
15 Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that  
16 point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than  
17 seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will  
18 have no effect.  
19

20 **6. MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the  
21 calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the  
22 Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699,  
23 subd. (I), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final  
24 Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven  
25 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously  
26 meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the  
27 Motion for Final Approval.  
28

1           6.1.    Response to Objections. Each Party retains the right to respond to any objection raised by  
2 a Participating Class Member, including the right to file responsive documents in Court no later than five  
3 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

4           6.2.    Duty to Cooperate. If the Court does not grant Final Approval or conditions Final  
5 Approval on any material change to the Settlement (including, but not limited to, the scope of release to  
6 be granted by Class Members), the Parties will expeditiously work together in good faith to address the  
7 Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision  
8 to award less than the amounts requested for the Class Representative Service Payment, Class Counsel  
9 Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator Expenses Payment  
10 shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11           6.3.    Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the  
12 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i)  
13 enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii)  
14 addressing such post-Judgment matters as are permitted by law.

15           6.4.    Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and  
16 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel  
17 Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel,  
18 and all Participating Class Members who did not object to the Settlement as provided in this Agreement,  
19 waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate  
20 proceedings, the right to file motions to vacate judgment, motions for a new trial, extraordinary writs, and  
21 appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or  
22 appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement  
23 will be suspended until such time as the appeal is finally resolved and the Judgment becomes final,  
24 except as to matters that do not affect the amount of the Net Settlement Amount.

25           6.5.    Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the  
26 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material  
27 modification of this Agreement (including, but not limited to, the scope of release to be granted by Class  
28



1 Members), this Agreement shall be null, and void. The Parties shall nevertheless expeditiously work  
2 together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of  
3 Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after  
4 remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class  
5 Representative Service Payment or any payments to Class Counsel shall not constitute a material  
6 modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement  
7 Amount remains unchanged.

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

11 **8. ADDITIONAL PROVISIONS.**

12 8.1. No Admission of Liability, Class Certification, or Representative Manageability for Other  
13 Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in  
14 this Agreement is intended or should be construed as an admission by Defendants that any of the  
15 allegations in the Operative Complaint have merit or that Defendants have any liability for any claims  
16 asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in  
17 the Action have merit. The Parties agree that class certification and representative treatment are for  
18 purposes of this Settlement only. If, for any reason, the Court does grant Preliminary Approval, Final  
19 Approval, or enter Judgment, Defendants reserve the right to contest certification of any class for any  
20 reason, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve  
21 the right to move for class certification on any grounds available and to contest Defendants' defenses.  
22 The Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing on, and  
23 will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate  
24 the Settlement and this Agreement).

25 8.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants, and  
26 Defense Counsel separately agree that until the Motion for Preliminary Approval of Settlement is filed,  
27 they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person  
28

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

14 8.3. No Solicitation. The Parties separately agree that they and their respective counsel and  
15 employees will not solicit any Class Member to opt-out of or object to the Settlement, or appeal from the  
16 Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to  
17 communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class  
18 Members.

19 8.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement  
20 together with its attached exhibits shall constitute the entire agreement between the Parties relating to the  
21 Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to  
22 or by any Party.

23 8.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
24 represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action  
25 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to  
26 execute any other documents reasonably required to effectuate the terms of this Agreement including any  
27 amendments to this Agreement.  
28

1           8.6.    Cooperation. The Parties and their counsel will cooperate with each other and use their  
2 best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement  
3 Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by  
4 the Court. In the event, the Parties are unable to agree upon the form or content of any document  
5 necessary to implement the Settlement, or on any modification of the Agreement that may become  
6 necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court  
7 for resolution.

8           8.7.    No Prior Assignments. The Parties separately represent and warrant that they have not  
9 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
10 any person or entity and a portion of any liability, claim, demand, action, cause of action, or right  
11 released and discharged by the Party in this Settlement.

12           8.8.    No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defense Counsel is  
13 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as  
14 such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as  
15 amended) or otherwise.

16           8.9.    Modification of Agreement. This Agreement, and all parts of it, may be amended,  
17 modified, changed, or waived only by an express written instrument signed by all Parties or their  
18 representatives, and approved by the Court.

19           8.10. Agreement Binding on Successors. This Agreement will be binding upon and inure to the  
20 benefit of, the successors of each of the Parties.

21           8.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be  
22 governed by and interpreted according to the internal laws of the state of California, without regard to  
23 conflict of law principles.

24           8.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of  
25 this Agreement. This Agreement will not be construed against any Party on the basis that the Party was  
26 the drafter or participated in the drafting.

1           8.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered  
2 during Action and in this Agreement relating to the confidentiality of information shall survive the  
3 execution of this Agreement.

4           8.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.  
5 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by  
6 Defendants in connection with the mediation, other settlement negotiations, or in connection with the  
7 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used  
8 in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90  
9 days after the date when the Court discharges the Administrator’s obligation to provide a Declaration  
10 confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic  
11 versions of Class Data received from Defendants unless, prior to the Court’s discharge of the  
12 Administrator’s obligation, Defendants make a written request to Class Counsel for the return, rather than  
13 the destructions, of Class Data.

14           8.15. Headings. The descriptive heading of any section or paragraph of this Agreement is  
15 inserted for convenience of reference only and does not constitute a part of this Agreement.

16           8.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be  
17 to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or  
18 federal legal holiday, such date or deadline shall be on the first business day thereafter.

19           8.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts  
20 by facsimile, electronically (i.e., DocuSign), or by email which for purposes of this Agreement shall be  
21 accepted as an original. All executed counterparts and each of them will be deemed to be one and the  
22 same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any  
23 executed counterpart will be admissible in evidence to prove the existence and contents of this  
24 Agreement.

25           8.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the  
26 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that  
27  
28

1 upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a  
2 case to trial under CCP section 583.310 for the entire period of this settlement process.

3  
4  
5

6 Dated: February \_\_, 2023 By:

By:  
Its:  
For: Defendant SOUTHWEST GAS CORP.

9 Dated: February \_\_, 2023 By:

By:  
Its:  
For: Defendant SOUTHWEST GAS UTILITY GROUP  
12 INC.

13 Dated: February \_\_, 2023 By:

By:  
Its:  
For: SOUTHWEST GAS HOLDINGS, INC.,

16 Dated: February \_\_, 2023  
17 2/21/2023

By:

DocuSigned by:  
*Todd Westphal*  
315638033CB04B2...

Plaintiff, TODD WESTPHAL, on behalf of himself  
and others similarly situated

19 Dated: February \_\_, 2023  
20 2/21/2023

By:

DocuSigned by:  
*John Mortimore*  
E21220973C964FA...

Plaintiff, JOHN MORTIMORE, on behalf of himself  
and others similarly situated

22 Dated: February \_\_, 2023  
23 2/21/2023

By:

DocuSigned by:  
*Manuel Perez*  
4BE509C729984CD...

Plaintiff, MANUEL PEREZ, on behalf of himself and  
others similarly situated

26 Dated: February \_\_, 2023  
27 2/22/2023

By:

DocuSigned by:  
*Christopher Higgins*  
D4F0ECEAB5364E4...

Plaintiff, CHRISTOPHER HIGGINS, on behalf of  
himself and others similarly situated

28

1 upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a  
2 case to trial under CCP section 583.310 for the entire period of this settlement process.

3  
4  
5 Dated: February 21, 2023

By:

6  
7 

8 By: Catherine M. Mazzeo

9 Its: Vice President/General Counsel & Compliance  
10 Officer

For: Defendant SOUTHWEST GAS CORP.

11 Dated: February \_\_, 2023

By:

12 By:

13 Its:

14 For: Defendant SOUTHWEST GAS UTILITY GROUP,  
INC.

15 Dated: February \_\_, 2023

By:

16 By:

17 Its:

18 For: SOUTHWEST GAS HOLDINGS, INC.,

19 Dated: February \_\_, 2023

20 By:

21 Plaintiff, TODD WESTPHAL, on behalf of himself  
and others similarly situated

22 Dated: February \_\_, 2023

23 By:

24 Plaintiff, JOHN MORTIMORE, on behalf of himself  
and others similarly situated

25 Dated: February \_\_, 2023

26 By:

27 Plaintiff, MANUEL PEREZ, on behalf of himself and  
28 others similarly situated

1 upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a  
2 case to trial under CCP section 583.310 for the entire period of this settlement process.

3  
4  
5 Dated: February \_\_, 2023

By:

By: \_\_\_\_\_

Its:

For: Defendant SOUTHWEST GAS CORP.

6  
7  
8  
9 Dated: February 21, 2023

By:



By: Thomas E. Moran

Its: VP/General Counsel/Corporate Secretary

For: Defendant SOUTHWEST GAS UTILITY GROUP  
INC.

10  
11  
12  
13 Dated: February 21, 2023

By:



By: Thomas E. Moran

Its: VP/General Counsel/Corporate Secretary

For: SOUTHWEST GAS HOLDINGS, INC.

14  
15  
16 Dated: February \_\_, 2023

By:

\_\_\_\_\_  
Plaintiff, TODD WESTPHAL, on behalf of himself  
and others similarly situated

17  
18  
19 Dated: February \_\_, 2023

By:

\_\_\_\_\_  
Plaintiff, JOHN MORTIMORE, on behalf of himself  
and others similarly situated

20  
21  
22 Dated: February \_\_, 2023

By:

\_\_\_\_\_  
Plaintiff, MANUEL PEREZ, on behalf of himself and  
others similarly situated

23  
24  
25 Dated: February \_\_, 2023

By:

\_\_\_\_\_  
Plaintiff, CHRISTOPHER HIGGINS, on behalf of  
himself and others similarly situated

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Approved as to form (and confidentiality provisions as defined herein) by:

Dated: February 23, 2023

VARNER & BRANDT LLP



By:

\_\_\_\_\_  
RICHARD D. MARCA  
CHRISTOPHER S. MILLIGAN  
Attorneys for Defendants

Dated: February 23, 2023

GILBERT & SACKMAN,  
A LAW CORPORATION



By:

\_\_\_\_\_  
JOSHUA F. YOUNG  
JOSHUA ADAMS  
MITZI MARQUEZ-AVILA  
Attorneys for Plaintiff Westphal, Plaintiff Mortimore,  
Plaintiff Perez, and Plaintiff Higgins, on behalf of  
themselves and others similarly situated



1 **EXHIBIT “A”**

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

4 \_\_\_\_\_  
5 *Westphal, et. al. v. Southwest Gas Corp., et al.* (San Bernardino Superior Court Case No.  
6 CIVDS1813554)

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

9 **You may be eligible to receive money** from an employee class action lawsuit (“Action”) against  
10 defendants Southwest Gas Corp., Southwest Gas Utility Group, Inc., and Southwest Gas Holdings, Inc.  
11 (collectively, “Defendants”) (“Defendants” is used herein as a placeholder) for alleged wage and hour  
12 violations. The Action was filed by Defendants’ employees Todd Westphal, John Mortimore, Manuel  
13 Perez, and Christopher Higgins (collectively, “Plaintiffs”) and seeks payment of (1) back wages and  
14 other relief for a class of hourly employees (“Class Members”) who worked for Defendants during the  
15 Class Period (June 1, 2014, to November 27, 2017); and (2) penalties under the California Private  
16 Attorney General Act (“PAGA”) for all hourly employees who worked for Defendants during the  
17 PAGA Period (June 1, 2017, to November 1, 2017) (“Aggrieved Employees”).

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

22  
23 Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class**  
24 **Payment is estimated to be \$\_\_\_\_\_ (less withholding) and your Individual PAGA Payment is**  
25 **estimated to be \$\_\_\_\_\_.** The actual amount you may receive likely will be different and will depend  
26 on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to  
27  
28

1 Defendants' records you are not eligible for an Individual PAGA Payment under the Settlement because  
2 you didn't work during the PAGA Period.)

3  
4 The above estimates are based on Defendants' records showing that **you worked** \_\_\_\_\_  
5 **workweeks** during the Class Period and **you worked** \_\_\_\_\_ **workweeks** during the PAGA  
6 Period. If you believe that you worked more workweeks during either period, you can submit a  
7 challenge by the deadline date. See Section 4 of this Notice.

8  
9 The Court has already preliminarily approved the proposed Settlement and approved this Notice.  
10 The Court has not yet decided whether to grant final approval. Your legal rights are affected whether  
11 you act or not act. Read this Notice carefully. You will be deemed to have carefully read and  
12 understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the  
13 Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiffs' attorneys ("Class  
14 Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to make  
15 payments under the Settlement and requires Class Members and Aggrieved Employees to give up their  
16 rights to assert certain claims against Defendants.

17  
18 If you worked for Defendants during the Class Period and/or the PAGA Period, you have two  
19 basic options under the Settlement:

- 20  
21 (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and  
22 be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a  
23 Participating Class Member, though, you will give up your right to assert Class Period  
24 wage claims and PAGA Period penalty claims against Defendants.
- 25 (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement  
26 (opt-out) by submitting the written Request for Exclusion or otherwise notifying the  
27 Administrator in writing. If you opt out of the Settlement, you will not receive an  
28 Individual Class Payment. You will, however, preserve your right to personally pursue  
Class Period wage claims against Defendants, and, if you are an Aggrieved Employee,  
remain eligible for an Individual PAGA Payment. You cannot opt out of the PAGA  
portion of the proposed Settlement.

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

3  
4           **SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>You Don't Have to Do Anything to Participate in the Settlement</b>	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
<b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b>  <b>The Opt-out Deadline is _____</b>	If you don't want to fully participate in the proposed Settlement, you can opt out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.  You cannot opt out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
<b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b>  <b>Written Objections Must be Submitted by _____</b>	All Class Members who do not opt out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision on whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
<b>You Can Participate in the _____ Final Approval Hearing</b>	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone, or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

**You Can Challenge the Calculation of Your Workweeks/Pay Periods**

**Written Challenges Must be Submitted by**

\_\_\_\_\_

The amount of your Individual Class Payment and PAGA Payment (if any) depends on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to XYZ’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by \_\_\_\_\_. See Section 4 of this Notice.

**1. WHAT IS THE ACTION ABOUT?**

Plaintiffs are current and former employees of Defendants. The Action accuses Defendants of violating California labor laws by failing to pay wages during times when current or former hourly employees were “on call” at any time during the Class Period. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”) during the PAGA Period. Plaintiffs are represented by attorneys in the Action: Joshua F. Young, Gilbert & Sackman, A Law Corporation (“Class Counsel”).

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

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

So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendants hired a retired judge, Carla M. Woehrlé, in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the

1 proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit  
2 any violations or concede the merit of any claims.

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

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

10  
11 1. Defendants Will Pay \$3,500,000 as the Gross Settlement Amount (Gross Settlement).

12 Defendants have agreed to deposit the Gross Settlement into an account controlled by the  
13 Administrator of the Settlement. The Administrator will use the Gross Settlement to pay  
14 the Individual Class Payments, Individual PAGA Payments, Class Representative Service  
15 Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and  
16 penalties to be paid to the California Labor and Workforce Development Agency  
17 (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross  
18 Settlement not more than 14 days after the Judgment entered by the Court become final.  
19 The Judgment will be final on the date the Court enters Judgment, or a later date if  
20 Participating Class Members object to the proposed Settlement or the Judgment is  
21 appealed.

22  
23 2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing,  
24 Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from  
25 the Gross Settlement, the amounts of which will be decided by the Court at the Final  
26 Approval Hearing:

- 1 A. Up to \$1,155,000 (33% of the Gross Settlement] to Class Counsel for attorneys’  
2 fees and up to \$25,000 for their litigation expenses. To date, Class Counsel has  
3 worked and incurred expenses on the Action without payment.  
4
- 5 B. Up to \$10,000 as a Class Representative Award for filing the Action, working with  
6 Class Counsel, and representing the Class. A Class Representative Award will be  
7 the only monies Plaintiffs will receive other than Plaintiffs’\ Individual Class  
8 Payment and any Individual PAGA Payment.  
9
- 10 C. Up to \$25,000 to the Administrator for services administering the Settlement.  
11
- 12 D. Up to \$5,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment  
13 and 25% in Individual PAGA Payments to the Aggrieved Employees based on  
14 their PAGA Period Pay Periods.  
15

16 Participating Class Members have the right to object to any of these deductions. The  
17 Court will consider all objections.  
18

- 19 3. Net Settlement Distributed to Class Members. After making the above deductions in  
20 amounts approved by the Court, the Administrator will distribute the rest of the Gross  
21 Settlement (the “Net Settlement”) by making Individual Class Payments to Participating  
22 Class Members based on their Class Period Workweeks.  
23
- 24 4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the  
25 Court to approve an allocation of 20% of each Individual Class Payment to taxable wages  
26 (“Wage Portion”), 40% as non-taxable penalties, and 40% as interest (“Non-Wage  
27 Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2  
28

1 Forms. Defendants will separately pay employer payroll taxes it owes on the Wage  
2 Portion. The Individual PAGA Payments are counted as penalties rather than wages for  
3 tax purposes. The Administrator will report the Individual PAGA Payments and the Non-  
4 Wage Portions of the Individual Class Payments on IRS 1099 Forms.

5  
6 Although Plaintiffs and Defendants have agreed to these allocations, neither side is giving  
7 you any advice on whether your Payments are taxable or how much you might owe in  
8 taxes. You are responsible for paying all taxes (including penalties and interest on back  
9 taxes) on any Payments received from the proposed Settlement. You should consult a tax  
10 advisor if you have any questions about the tax consequences of the proposed Settlement.  
11

12 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual  
13 Class Payments and Individual PAGA Payments will show the date when the check  
14 expires (the void date). If you don't cash it by the void date, your check will be  
15 automatically canceled, and the monies will irrevocably be lost to you because they will be  
16 paid to a non-profit organization or foundation ("Cy Pres").  
17

18 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a  
19 Participating Class Member, participating fully in the Class Settlement, unless you notify  
20 the Administrator in writing, not later than \_\_\_\_\_, that you wish to opt-out.  
21 The easiest way to notify the Administrator is to send a written and signed Request for  
22 Exclusion by the \_\_\_\_\_ Response Deadline. The Request for Exclusion  
23 should be a letter from a Class Member or his/her representative setting forth a Class  
24 Member's name, present address, telephone number, and a simple statement electing to be  
25 excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class  
26 Members) will not receive Individual Class Payments but will preserve their rights to  
27 personally pursue wage and hour claims against Defendants.  
28

1  
2 You cannot opt out of the PAGA portion of the Settlement. Class Members who exclude  
3 themselves from the Class Settlement (Non-Participating Class Members) remain eligible  
4 for Individual PAGA Payments and are required to give up their right to assert PAGA  
5 claims against Defendants based on the PAGA Period facts alleged in the Action.  
6

7 7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible  
8 the Court will decline to grant Final Approval of the Settlement or decline to enter a  
9 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal.  
10 Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void  
11 Defendants will not pay any money and Class Members will not release any claims  
12 against Defendants.  
13

14 8. Administrator. The Court has appointed a neutral company, CAC Services Group (the  
15 “Administrator”) to send this Notice, calculate and make payments, and process Class  
16 Members’ Requests for Exclusion. The Administrator will also decide Class Member  
17 Challenges over Workweeks, mail, and re- mail settlement checks and tax forms, and  
18 perform other tasks necessary to administer the Settlement. The Administrator’s contact  
19 information is contained in Section 9 of this Notice.  
20

21 9. Participating Class Members’ Release. After the Judgment is final and Defendants have  
22 fully funded the Gross Settlement and separately paid all employer payroll taxes,  
23 Participating Class Members will be legally barred from asserting any of the claims  
24 released under the Settlement. This means that unless you opted out by validly excluding  
25 yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other  
26 lawsuit against Defendants or related entities for wages based on the Class Period facts  
27  
28



1 and PAGA penalties based on PAGA Period facts, as alleged in the Action, and resolved  
2 by this Settlement.

3  
4 The Participating Class Members will be bound by the following release:

5  
6 All Participating Class Members, on behalf of themselves and their respective  
7 former and present representatives, agents, attorneys, heirs, administrators,  
8 successors, and assigns, release Released Parties from (i) all claims that were  
9 alleged, or reasonably could have been alleged, based on the Class Period facts  
10 stated in the Operative Complaint including, e.g., alleged violations of California  
11 labor laws that Defendants failed to pay wages during times when current or  
12 former hourly employee were “on call” at any time during the Class Period.  
13 Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class  
14 Members do not release any other claims, including claims for vested benefits,  
15 wrongful termination, violation of the Fair Employment and Housing Act,  
16 unemployment insurance, disability, social security, workers’ compensation, or  
17 claims based on facts occurring outside the Class Period.

- 18  
19 10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and  
20 Defendants have paid the Gross Settlement (and separately paid the employer-side payroll  
21 taxes), all Aggrieved Employees will be barred from asserting PAGA claims against  
22 Defendants, whether or not they exclude themselves from the Settlement. This means that  
23 all Aggrieved Employees, including those who are Participating Class Members and those  
24 who opt out of the Class Settlement, cannot sue, continue to sue, or participate in any  
25 other PAGA claim against Defendants or its related entities based on the PAGA Period  
26 facts alleged in the Action and resolved by this Settlement.

27  
28 The Aggrieved Employees’ Releases for Participating and Non-Participating Class  
Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved  
Employees are deemed to release, on behalf of themselves and their respective  
former and present representatives, agents, attorneys, heirs, administrators,  
successors, and assigns, the Released Parties, from all claims for PAGA penalties  
that were alleged, or reasonably could have been alleged, based on the PAGA  
Period facts stated in the Operative Complaint, and the PAGA Notice including,  
e.g., allegations that Defendants violated California labor laws by failing to pay

wages during times when current or former hourly employee were “on call” at any time during the Class Period.

**4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$1,250 by the total number of PAGA Workweeks worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants’ records, are stated in the first page of this Notice. You have until \_\_\_\_\_ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email, or fax. Section 9 of this Notice has the Administrator’s contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants’ calculation of Workweeks and/or Pay Periods based on Defendants’ records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period

1 challenges based on your submission and on input from Class Counsel (who will advocate  
2 on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's  
3 decision is final. You can't appeal or otherwise challenge its final decision.  
4

5 **5. HOW WILL I GET PAID?**

6 1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to  
7 every Participating Class Member (i.e., every Class Member who doesn't opt out)  
8 including those who also qualify as Aggrieved Employees. The single check will combine  
9 the Individual Class Payment and the Individual PAGA Payment.  
10

11 2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single  
12 Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class  
13 Settlement (i.e., every Non-Participating Class Member).  
14

15 **Your check will be sent to the same address as this Notice. If you change your**  
16 **address, be sure to notify the Administrator as soon as possible. Section 9 of this**  
17 **Notice has the Administrator's contact information.**  
18

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

20 Submit a written and signed letter with your name, present address, telephone number, and a  
21 simple statement that you do not want to participate in the Settlement. The Administrator will  
22 exclude you based on any writing communicating your request be excluded. Be sure to personally  
23 sign your request, identify the Action as *Westphal, et. al. v. Southwest Gas Corp., et al.* (San  
24 Bernardino Superior Court Case No. CIVDS1813554), and include your identifying information  
25 (full name, address, telephone number, approximate dates of employment, and social security  
26 number for verification purposes). You must make the request yourself. If someone else makes  
27 the request for you, it will not be valid. **The Administrator must be sent your request to be**  
28

1 excluded by \_\_\_\_\_, or it will be invalid. Section 9 of the Notice has the  
2 Administrator's contact information.

3  
4 **7. HOW DO I OBJECT TO THE SETTLEMENT?**

5  
6 Only Participating Class Members have the right to object to the Settlement. Before deciding  
7 whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to  
8 approve. At least 16 court days before the \_\_\_\_\_ Final Approval Hearing, Class Counsel  
9 and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other  
10 things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation  
11 Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees  
12 and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative  
13 Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section  
14 9 of this Notice) will send you copies of these documents at no cost to you. You can also view  
15 them on the Administrator's Website

16 \_\_\_\_\_ (url) \_\_\_\_\_ or the Court's website \_\_\_\_\_ (url) \_\_\_\_\_.

17  
18 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for  
19 Final Approval and/or Motion for Fees, Litigation Expenses, and Service Award may wish to  
20 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class  
21 Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the  
22 Administrator is \_\_\_\_\_.** Be sure to tell the Administrator what you object to, why  
23 you object, and any facts that support your objection. Make sure you identify the Action  
24 \_\_\_\_\_ and include your name, current address, telephone number, and  
25 approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice  
26 has the Administrator's contact information.

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

6  
7 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

8  
9 You can, but don't have to, attend the Final Approval Hearing on \_\_\_\_\_ at ( time) \_\_\_\_\_  
10 in Department S26 of the San Bernardino Superior Court, located at Superior Court of California  
11 County of San Bernardino San Bernardino District – Civil Division, 247 West Third Street, San  
12 Bernardino, CA 92415-0210. At the Hearing, the judge will decide whether to grant Final  
13 Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel,  
14 Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel,  
15 and Defense Counsel before making a decision.

16  
17 It's possible the Court will reschedule the Final Approval Hearing. You should check the  
18 Administrator's website \_\_\_\_\_ beforehand or contact Class Counsel to verify the  
19 date and time of the Final Approval Hearing.

20  
21 **9. HOW CAN I GET MORE INFORMATION?**

22  
23 The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the  
24 proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other  
25 Settlement documents is to go to San Bernardino Courthouse. You can also telephone or send an  
26 email to Class Counsel or the Administrator using the contact information listed below and  
27 entering the Case Number for the Action, Case No. *Westphal, et. al. v. Southwest Gas Corp., et*  
28

1 *al.* (San Bernardino Superior Court Case No. CIVDS1813554). You can also make an  
2 appointment to personally review court documents in the Clerk's Office at the San Bernardino  
3 Courthouse by calling 909-708-8678.  
4

5 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE**  
6 **SETTLEMENT.**  
7

8 Class Counsel:

9 Joshua F. Young  
10 Gilbert & Sackman, A Law Corporation  
11 3699 Wilshire Blvd., Suite 1200  
12 Los Angeles, CA 90010  
13 Phone: 323-938-3000

14 Settlement Administrator:

15 CPT Group  
16 Email Address:  
17 Mailing Address:  
18 Telephone:  
19 Fax Number:

20 **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

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

24 **11. WHAT IF I CHANGE MY ADDRESS?**

25 To receive your check, you should immediately notify the Administrator if you move or otherwise  
26 change your mailing address.  
27  
28