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23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA

25 ANED LOPEZ, CRISTIAN ALAS, on Behalf
26 of Themselves and Others Similarly Situated,

27 Plaintiffs,

28 v.

29 P.W. STEPHENS ENVIRONMENTAL, INC.,
30 a Delaware Corporation, and DOES 1-10
31 inclusive,

32 Defendants.

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34 Aaron F. Olsen (SBN 224947)
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42 *Attorneys for Defendant*
43 *P.W. Stephens Environmental, Inc.*

44 Case No. 3:15-cv-03579-JD

45 **STIPULATION AND CLASS ACTION**
46 **SETTLEMENT AGREEMENT**

47 Complaint Filed: August 4, 2015
48 Trial Date: June 5, 2017

1 IT IS HEREBY STIPULATED and agreed, by and between Plaintiffs Aned Lopez and
2 Cristian Alas (collectively "Plaintiffs"), on behalf of themselves and all others similarly situated,
3 on the one hand, and Defendant P.W. Stephens Environmental, Inc. ("P.W. Stephens"), on the
4 other hand, that this Stipulation and Class Action Settlement Agreement ("Agreement") is
5 subject to approval by the Court, hereby agree as follows:

6 **I. THE ACTION.**

7 On August 4, 2015, Plaintiff Aned Lopez filed a Collective and Class Action Complaint
8 in this matter in U.S. District Court for the Northern District of California ("Action"). The
9 operative First Amended Complaint ("Complaint") was filed on April 8, 2016. The claims
10 alleged in the Complaint arise from the alleged state and federal wage and hour law violations by
11 P.W. Stephens with respect to the putative class of laborers employed by P.W. Stephens in
12 California during the liability period commencing April 29, 2011. The Complaint asserts a
13 putative class action under Federal Rule of Civil Procedure Rule 23 for California state law
14 claims and a collective action under the Fair Labor Standards Act (FLSA), alleging: (i) failure to
15 pay minimum wage under the federal FLSA; (ii) underpayment of overtime compensation under
16 the federal FLSA; (iii) failure to pay minimum wage under California law; (iv) fail to pay for all
17 hours worked in violation of California law; (v) underpayment of overtime compensation under
18 California law; (vi) failure to pay for reporting time in violation of California law; (vii) failure to
19 provide off-duty meal periods under California law; (viii) reimbursement for business expenses
20 (for a subclass of laborers who were assigned company vehicles) under California law, (ix)
21 waiting time penalties under the California Labor Code; (x) failure to furnish accurate wage
22 statements and maintain accurate records; (xi) civil penalties under the California Labor Code
23 Private Attorney General Act (PAGA), Labor Code section 2698 *et seq.*; and (xii) violation of
24 California Business & Professions Code § 17200. Based on these claims, Plaintiffs seek back
25 wages, liquidated damages, penalties, restitution, interest, attorneys' fees and litigation-related
26 costs and expenses.

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1 **II. NO ADMISSION OF LIABILITY.**

2 This Agreement represents a compromise and settlement of the Action. Nothing in this
3 Agreement is intended to or will be construed as an admission by P.W. Stephens that Plaintiffs'
4 claims in the Action have merit or that they have any liability to Plaintiffs or to the members of
5 the putative class on those claims, or an admission by Plaintiffs that P.W. Stephens's defenses in
6 the Action have merit.

7 This Agreement is made for the sole purpose of consummating the settlement of all
8 claims contained in the Complaint in the Action. By entering into this Agreement, none of the
9 Parties admits the allegations or contentions of any other Party, and each Party is entering into
10 this Agreement for the sole purpose of resolving this matter and avoiding the time and expense
11 incident to protracted litigation.

12 **III. PARTIES TO THIS AGREEMENT.**

13 As set forth above, the Parties to this Agreement are the Plaintiffs and P.W. Stephens.
14 On the Date of Finality, as that term is defined in Section V, below, the Parties to this Agreement
15 also shall include each Class Member, as that term is defined below, excluding those who timely
16 and validly opt out, as provided below.

17 **IV. FAIRNESS OF SETTLEMENT.**

18 The Parties stipulate and agree that the settlement set forth in this Agreement, and its
19 terms, are fair, just, reasonable, adequate and equitable to the Class Members, are the product of
20 good faith, arms-length negotiations between the Parties, are consistent with public policy, and
21 fully comply with applicable provisions of law.

22 **V. DEFINITIONS.**

23 The following definitions apply with respect to this Agreement and all related documents:

24 **A.** The "Class" consists of all individuals who have performed asbestos abatement,
25 lead removal, mold remediation and other services ("Laborers") while employed by P.W.
26 Stephens in California during the Class Period. The Class does not include individuals working
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1 for P.W. Stephens through a third party, including but not limited to subcontractors and staffing
2 agencies.

3 **B.** "Class Period" means April 29, 2011 to August 21, 2015.

4 **C.** "Class Representatives" means Plaintiffs Aned Lopez and Cristian Alas.

5 **D.** "Class Counsel" means the Legal Aid Society – Employment Law Center and
6 Leonard Carder LLP, and all attorneys employed by that organization or firm, respectively.

7 **E.** "Settlement Administrator" means Settlement Services, Inc. ("SSI"), which the
8 Parties have agreed to retain to assist them in the administration of the settlement and the claims
9 process, following preliminary approval of this proposed settlement.

10 **F.** "Date of Finality" means the later of (i) the date the Court both enters an order
11 granting Final Approval of the settlement reflected in this Agreement, and dismisses the Action
12 with prejudice, or (ii) the date the Order Granting Final Approval of Class Settlement and/or
13 other Judgment (collectively the "Judgment") becomes Final, as defined below.

14 **G.** "Final" means the later of (a) the date of final approval by the Court; or (b) if
15 there are objections to the settlement which are not withdrawn, and if an appeal, review or writ is
16 not sought from the Judgment, the thirty-first (31st) day after service of notice of entry of
17 judgment; or (c) if an appeal, review or writ is sought from the Judgment, the day after the
18 Judgment is affirmed or the appeal, review or writ is dismissed or denied, and the Judgment is no
19 longer subject to further judicial review.

20 **H.** "FLSA Collective Action Member" means the Named Plaintiffs and all Class
21 Members who (i) cash a Settlement Check as defined herein and/or (ii) have formally opted in to
22 this Action by filing a Consent to Join, all of whom are thereby deemed under this Agreement to
23 have "Opted-In" to this action pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*

24 **I.** "Individual Settlement Payment" means payment to be made to Class Members
25 via a "Settlement Check" mailed to each such Class Member pursuant to the terms of this
26 Agreement.

27 **J.** "Lawsuit" means the Action.
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K. "Person(s)" means people and all types of entities and organizations.

L. "Release Period" means April 29, 2011 through the date of preliminary approval or June 9, 2016, whichever is earlier.

M. "Final Approval Hearing" means the date set forth by the Court in the Order for Preliminary Approval and Notice of Class Settlement, subject to the Court's approval, on which a Final Fairness and Approval Hearing shall be held before the Court in order (1) to review this Agreement and determine whether the Court should give it final approval; and (2) to consider any timely objections made pursuant to the Agreement and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class Action and Dismissal, which the Parties shall jointly agree upon in advance and which shall be entered in the Lawsuit.

N. "Week of Employment" means any workweek in which the claimant was paid for 24 or more hours.

O. "Releases" means any class member who signed an English or Spanish form titled "Agreement and Release of Claims Alleged by an Employee against P.W. Stephens Environmental, Inc. ("Company")." P.W. Stephens represents that there are 414 Class Members who executed a Release in exchange for payment of \$500 prior to the Parties negotiating this Settlement.

P. "Release Amount" shall mean the aggregate amount P.W. Stephens paid to Class Members in exchange for executing a Release prior to the negotiation and consummation of this Agreement.

VI. CONDITIONAL CLASS CERTIFICATION.

A. Solely for the purposes of the settlement reflected in this Agreement, the Class of persons to be conditionally certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure shall be defined as set forth in Section V.A of this Agreement; upon the Date of Finality, the certification of the Class shall become final, not conditional.

1 **B.** Because the Parties have stipulated to the certification of the Class for settlement
2 purposes only, to be effective this Agreement must receive preliminary and final approval by the
3 Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This
4 Agreement is contingent upon the approval and certification by the Court of the Class as a non-
5 mandatory (i.e. "opt-out") class for settlement purposes only, except solely as to the claims
6 asserted under the FLSA which are an opt-in class for settlement purposes only as to FLSA
7 Collective Action Members. If the Date of Finality does not occur, the fact that the Parties were
8 willing to stipulate to class certification for the purposes of this Agreement shall have no bearing
9 on, or be admissible in connection with, the issue of whether any class should be certified in a
10 non-settlement context. If the Date of Finality does not occur, this Agreement shall be deemed
11 null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for
12 any purpose whatsoever.

13 **C.** The Parties agree that the Lawsuit shall be stayed in all respects pending the
14 settlement approval process.

15 **VII. FINANCIAL TERMS OF SETTLEMENT.**

16 **A. Maximum Settlement Amount.**

17 Subject to court approval, in consideration for the release described in this Agreement,
18 P.W. Stephens shall pay One Million Five Hundred Thousand Dollars (\$1,500,000.00) ("Total
19 Settlement Amount" or "TSA") to resolve the Lawsuit. The TSA shall include payments for: (1)
20 a release of all California law claims asserted in the Action on behalf of Class Members; (2) a
21 release of all FLSA claims asserted in this Action on behalf of the FLSA Collective Action
22 Members; (3) all claims for reimbursement by the Settlement Administrator for expenses
23 associated with administering or effectuating the Settlement; (4) all claims for an award of Class
24 Counsel's attorneys' fees in an amount of up to 25% of the TSA plus reimbursement of all
25 reasonable out-of-pocket expenses directly related to the litigation; (6) \$10,000 shall be paid in
26 settlement of PAGA claims, seventy-five percent (75%) of which will be paid to the LWDA, and
27 twenty-five percent (25%) of which shall be payable to the Class; and (7) Incentive Class
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1 Representative Service Awards in an amount not to exceed \$10,000 to each Plaintiff. The Total
2 Settlement Amount shall be distributed automatically and without the necessity of Class
3 Members filing claims in accordance with the terms of this Agreement.

4 The Net Settlement Fund (“NSF”) is the TSA portion to be distributed to the Class. P.W.
5 Stephens will be required to increase the TSA if the number of workweeks actually accrued
6 during the Class Period should exceed 40,000 (the amount certified by P.W. Stephens) by more
7 than five percent (5%). P.W. Stephens shall pay the percentage difference between the certified
8 amount of workweeks and the actual number of workweeks during the Class Period. Class
9 members who previously executed Releases and received payment for settlement of their claims
10 shall have their payments under this settlement reduced by the amount of money previously
11 received from P.W. Stephens as consideration for the Release they signed, and such amount shall
12 be reallocated and distributed to the Class Members who did not sign Releases.

13 All costs and expenses arising out of or in connection with the performance of this
14 Agreement shall be paid from the TSA. In the event that this Agreement is canceled, rescinded,
15 terminated, voided, or nullified, however that may occur, or the settlement of the Lawsuit is
16 barred by operation of law, or invalidated, or ordered not to be carried out by a court of
17 competent jurisdiction, P.W. Stephens will cease to have any obligation to pay any portion of the
18 TSA to anyone under the terms of this Agreement, and if the TSA has already been tendered to
19 the Settlement Administrator, it will immediately be paid back to P.W. Stephens, including any
20 and all interest earned on the TSA, except that P.W. Stephens shall pay the costs of any
21 settlement administration fees already paid.

22 **B. Class Representative Service Awards.**

23 P.W. Stephens will not object to a request to the Court for approval of payments of
24 Service Awards to the Class Representatives in an aggregate amount not to exceed ten thousand
25 dollars (\$10,000.00). The amount of the Service Awards approved by the Court shall be paid
26 from the TSA to the Class Representatives for their services and risks in connection with serving
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1 as Class Representatives and being named as Plaintiffs. Any reduction by the Court of these
2 requests will revert to the Class Members who do not opt out.

3 The individual Service Awards to each of the Class Representatives will be reported by
4 IRS Form W-2. The Service Awards shall be in addition to any Individual Settlement Payment
5 to the Class Representatives for their claims as Class Members. Should the Internal Revenue
6 Service, the California Franchise Tax Board, or some other taxing authority take the position that
7 some or all of the Service Awards constitute taxable income and/or wages for income tax and
8 withholding purposes, the Class Representatives and P.W. Stephens shall bear his or its own
9 respective tax liability, if any, and agree to hold the other harmless from any and all tax liability
10 arising out of that party's respective tax obligations with respect to the Service Awards
11 including, without limitation, any personal, employee, business, corporate, and/or employer tax
12 obligations.

13 **C. Class Counsel's Attorneys' Fees, Costs and Litigation Expenses.**

14 Class Counsel shall submit an application for an award of attorneys' fees in an amount up
15 to twenty-five percent (25%) of the TSA and for reimbursement of expenses incurred in
16 litigating and settling the Action. Such application shall be heard by the Court at the Final
17 Approval Hearing. P.W. Stephens shall not object to, oppose or otherwise discourage the Court
18 from approving any such fee and cost application in this amount.

19 Any fees and costs awarded by the Court shall be paid from the TSA and shall not
20 constitute payment to any Class Member(s). The attorneys' fees, expenses and costs for Class
21 Counsel approved by the Court shall encompass: (a) all work performed, costs and expenses
22 related to the investigation, prosecution and settlement of the Action incurred through the date of
23 this Agreement; (b) all work to be performed, expenses and costs to be incurred in connection
24 with approval by the Court of the Class Settlement; and (c) all work, costs and expenses incurred
25 in connection with administering the Class Settlement through dismissal of the Action with
26 prejudice.

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1 Class Counsel attorneys' fees, expenses, and costs as awarded by the Court shall be paid
2 not later than ten (10) days following the Date of Finality. The attorneys' fees, expenses and
3 costs will be reported by IRS Form 1099.

4 **D. Charges of the Settlement Administrator.**

5 The Settlement Administrator shall be SSI, Inc. (hereinafter referred to as the
6 "Settlement Administrator"). The charges of the Settlement Administrator for administration of
7 the settlement, computation and mailing of Individual Settlement Payments, administration of
8 the qualified settlement fund and otherwise administering the claims process, and all costs and
9 expenses incurred related thereto, shall be a part of, and paid from, the TSA, and shall not exceed
10 Nineteen Thousand Dollars (\$19,00.00). The claims administration costs will be reported by IRS
11 Form 1099.

12 **E. Net Settlement Fund (NSF).**

13 The NSF is defined as the TSA less all of the following: the Class Representatives'
14 Service Awards, Class Counsel's attorneys' fees and litigation costs and reasonably related
15 expenses (all in the amounts awarded by the Court pursuant to the above provisions of this
16 Agreement), and the charges and expenses of the Settlement Administrator, based on the
17 specified formula as set forth in Section VII.F below.

18 **F. Calculation of Payments to Class Members.**

19 The Settlement Administrator shall determine each Settlement Class Member's estimated
20 and each Eligible Settlement Class Member's final pro rata portion of the Net Settlement Fund as
21 follows:

- 22 1. First, the Settlement Administrator will divide the NSF into two pools of money: (1)
23 \$667,000.00 to be paid to the ___ Class Members who have previously signed a P.W.
24 Stephens waiver in exchange for \$500; (2) \$433,000.00 to the approximately ___
25 Class Members who have not signed such waiver. The amounts for the two pools of
26 money are based upon (1) the proportionate number of Class Members who signed
27 waivers and who did not sign waivers; and (2) subtracting the Release Amount of
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1 \$213,000 from the first pool of money, and adding that amount to the second pool of
2 money. P.W. Stephens shall provide a list of all Class Members who signed a waiver
3 based upon the signed waivers it has in its possession. Should a Class Member listed
4 as signing a waiver wish to challenge that designation, he/she may do so as described
5 below.

- 6 2. Second, the Settlement Administrator shall calculate each Class Member's weighted
7 workweek value by multiplying the Class Member's last known hourly rate and
8 number of workweeks (in no instance will a Class Member's workweeks be less than
9 one (1)), as defined in Section V.N., worked for each Class Member.
- 10 3. Third, to compensate members of the Driver Subclass for releasing their expense
11 reimbursement claims under Labor Code § 2802, the Settlement Administrator will
12 apply a 1.1 multiplier in determining the Weeks of Employment for each Driver
13 Subclass Member. The Settlement Administrator shall determine the Members of the
14 Driver Subclass, according to P.W. Stephens's records of authorized drivers. This
15 determination may be subject to challenge, as described below. This resulting
16 amount will be the Class Member's pro rata Settlement Share Rate.
- 17 4. Fourth, the total number of weighted workweeks for all Class Members, including the
18 1.1 multiplier for Drivers, will be aggregated.
- 19 5. Fifth, for those paid from the first pool, the Settlement Administrator will divide the
20 \$677,000.00 by the aggregate Settlement Share Rates of all Class Members who
21 signed a release. The resulting per week payout amount will then be multiplied the
22 individual Class Member's Settlement Share Rate to determine that Class Member's
23 estimated share of the NSF. This amount shall constitute the Settlement Class
24 Member's Final Estimated Settlement Share of the Net Settlement Fund, and shall be
25 included in the Notice sent to each Settlement Class Member.
- 26 6. Sixth, for those paid from the second pool, each Class Member will be first credited
27 with \$500 to guarantee a minimum payment of \$500 to all who did not previously
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1 sign a release in exchange for a \$500 payment. What then remains of the
2 \$433,000.00 -- approximately \$386,500 -- will be divided by the aggregate Settlement
3 Share Rates of all Class Members who did not sign a release. The resulting per week
4 payout amount will then be multiplied by the individual Class Member's Settlement
5 Share Rate and the \$500 credit will be added thereto to arrive at that Class Member's
6 estimated share of the NSF. This amount shall constitute the Settlement Class
7 Member's Final Estimated Settlement Share of the Net Settlement Fund, and shall be
8 included in the Notice sent to each Settlement Class Member.

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- 10 7. Seventh, the Settlement Administrator shall consider and finally resolve any
11 challenges to the information used to calculate the estimated or final amounts due to
12 any eligible Settlement Class Member who makes such a challenge, according to
13 procedures determined by the Settlement Administrator. Any challenges to pay rates
14 or Weeks of Employment must be supported by reliable documentation. For those
15 not listed as an authorized driver in P.W. Stephens's records and who wish to qualify
16 as a Driver Class Member or who wish to contest his/her listing as a Class Member
17 that signed a release, such Class Member must submit a signed form declaration to be
18 provided by the Settlement Administrator upon request of the Class Member. Such
19 declaration will create a rebuttable presumption that the Class Member is a Member
20 of the Driver Subclass and/or did not sign a release; P.W. Stephens can submit
21 evidence—in the form of documentation or rebuttal declaration—to rebut the
22 presumption. The Settlement Administrator will make the final decision as to
23 whether that individual will be treated as a Member of the Driver Subclass or as a
24 Class Member who signed a release.
- 25 8. Eighth, after resolving any challenges, the Settlement Administrator shall determine
26 each Eligible Settlement Class Member's "Individual Payment Amount" (his/her final
27 pro rata portion of the Net Settlement Fund) by repeating the steps above using the
28 values resulting from the challenge process.

- 1 9. Ninth, the Settlement Administrator will pay to each Class Member his or her
2 Individual Payment Amount, and shall cut and mail checks to Class Members (*i.e.*,
3 those who have not opted out of the settlement) after Final Approval without the
4 necessity of a formal claim being filed.
- 5 10. Tenth, to the extent that Settlement Checks remain uncashed 90 days after mailing,
6 the amount represented by the uncashed Settlement Checks will be distributed to any
7 Class Members who demonstrate that he/she did not receive an Individual Payment
8 Amount in the First Distribution and who qualifies as a Class Member. If the Class
9 Member was not identified at the time of the First Distribution, payment shall be
10 calculated to approximate -- as best possible and as funds permit -- what the Class
11 Member should have received had his/her information was included in the settlement
12 share calculations discussed above. Any remainder will then be part of a Second
13 Distribution, paid proportionally among Class Members who cashed their Settlement
14 Checks or who are receiving payment under this section. Any tax refunds resulting
15 from uncashed checks shall be paid to a third party *cy pres* beneficiary nominated
16 herein and subject to the Court's approval.

17 **G. Nature of Individual Settlement Payments to Class Members.**

18 The settlement payments described herein cover and resolve all claims for wages,
19 liquidated damages, penalties, and interest that were asserted in the Complaint. For purposes of
20 administering the settlement, P.W. Stephens and Plaintiffs agree that the Individual Settlement
21 Payments to Class Members will be characterized and reported as follows:

- 22 1. 40% interest reported on a form 1099-INT (not subject to withholdings or payroll
23 taxes).
- 24 2. 40% penalties and liquidated damages, reported on a form 1099-MISC (not subject to
25 withholdings or payroll taxes).
- 26 3. 20% wages, subject to required state and federal withholdings and deductions, reported
27 on a form W-2).
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1 All Class Members will receive a distribution paid on the wage portion of that
2 distribution according to the formula set forth in Section VII.F. P.W. Stephens shall bear its own
3 respective employer tax liability for settlement funds characterized as wages; i.e, employer's
4 share of payroll taxes are not included in the TSA.

5 **VIII. PROCEDURES FOR PRELIMINARY APPROVAL AND NOTICE TO CLASS.**

6 **A. Request for Preliminary Approval.**

7 The Parties shall cooperate fully in requesting preliminary and final approval of this
8 Agreement by the Court, including determination by the Court that the settlement is fair,
9 reasonable, and adequate, and approval of the proposed Notice of Class Action Settlement,
10 orders, and other documents necessary to implement this Agreement. Plaintiffs and P.W.
11 Stephens shall also request the entry of an order for conditional certification of the Class for
12 settlement purposes only. In conjunction with such request for approval, Plaintiffs and P.W.
13 Stephens will submit this Agreement to the Court, and will include a proposed form of notice
14 and other documents necessary to implement this Agreement.

15 **B. Class Member Identifying Information ("Class List") to be Provided by**
16 **P.W. Stephens.**

17 No later than ten (10) business days after Preliminary Approval of the proposed
18 settlement by the Court, P.W. Stephens shall provide the Settlement Administrator a list showing
19 the name, social security number or taxpayer identification number (except that in the class list
20 provided to Class Counsel only the last four digits of the social security number shall appear),
21 last known address, telephone numbers (including cellular phone numbers if available), e-mail
22 addresses, if available, dates of employment, number of workweeks worked, last known hourly
23 rate, whether the Class Member was assigned a company vehicle to drive during his
24 employment, and whether the Class Member signed a release or not during the Class Period
25 ("Class List"). P.W. Stephens will also provide the Class List to Class Counsel at such time,
26 except that the list shall not contain social security numbers. Class Counsel shall not use the
27 information on the Class List provided by P.W. Stephens for any purpose other than to assist in
28 the administration of the settlement and shall not circulate that information to anyone outside of

1 Leonard Carder, LLP or the Legal Aid Society – Employment Law Center. The Class List shall
2 be provided in a format acceptable to the Settlement Administrator and shall be derived from
3 records maintained by P.W. Stephens in the ordinary course of business.

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5 **C. Mailing of Preliminary Notice by Settlement Administrator to Class**
6 **Members.**

7 Promptly upon receipt of the Class List, the Settlement Administrator shall obtain
8 updated forwarding addresses from the U.S. Postal Service through a National Change of
9 Address search and perform subsequent computer searches to confirm the most recent address
10 available and any other reasonable investigation efforts to locate current addresses for Class
11 Members.

12 No later than fifteen (15) days after the Settlement Administrator receives the Class List,
13 the Settlement Administrator shall mail to each Class Member the approved Notice of Class
14 Action Settlement ("Notice to the Class"), in a form substantially similar to Exhibit "A" attached
15 hereto, and a Settlement Share Form, in a form substantially similar to Exhibit "B" attached
16 hereto, along with a pre-posted envelope addressed to the Settlement Administrator (collectively
17 "Notice Packet"). The addresses to which these documents are to be mailed shall be determined
18 by the Settlement Administrator from the Class List, subsequent searches it and/or Class Counsel
19 performs, and by such other means as the Settlement Administrator customarily uses to locate
20 Class Members in administration of class action settlements. The Parties agree that compliance
21 with the procedures described in this paragraph shall constitute due and sufficient notice to Class
22 Members of this proposed settlement and the Final Fairness and Approval Hearing, and shall
23 satisfy the requirement of due process.

24 The Notice to the Class shall be in English and Spanish and shall fairly inform the Class
25 Members of the general nature of this action, the financial and other terms of this Agreement
26 particularly significant to the Class Members, and the general procedures and deadlines for
27 submitting a request to be excluded from the settlement and/or objecting to the settlement, in
28 simple and easily understood language. The Notice shall be individualized, identifying the
respective Class Member by his or her name and current mailing address, the total workweeks

1 worked by the Class Member during the Class Period, last known hourly rate, whether the Class
2 Member shall have \$500 deducted from his/her share because he/she signed a Release, and the
3 estimated Individual Settlement Payment. Any Class Member who fails to submit a Request for
4 Exclusion from the Class shall automatically be deemed a Class Member whose rights and
5 claims with respect to the Non-FLSA Released Claims (as defined herein below) are determined
6 by the Court's Final Order Approving Settlement of Class Action, and by the other rulings in the
7 Lawsuit, and said Class Member's rights to pursue any Non-FLSA Released Claims will be
8 extinguished. Unless modified by the Court, the Notice to the Class and Settlement Share Forms
9 shall read substantially as set forth in Exhibits "A" and "B" hereto.

10 If a Notice Packet is returned because of an incorrect address, the Settlement
11 Administrator will promptly search for a more current address for the Class Member and re-mail
12 the Notice Packet to the Class Member. The Settlement Administrator will work with Class
13 Counsel to locate a current address. Counsel for P.W. Stephens will review a list of
14 undeliverable Notice Packets to determine whether any belong to a currently employed Class
15 Member, and if so will provide the Settlement Administrator with a current address for re-
16 mailing of the Notice Packet and/or delivery to the Class Member. If the Notice is re-mailed, the
17 Settlement Administrator will note for its own records and notify Class Counsel and P.W.
18 Stephens's Counsel of the date of each such re-mailing.

19 The Settlement Administrator shall provide the Court, at least five (5) days prior to the
20 Final Approval hearing, a declaration of due diligence and proof of mailing with regard to (i) the
21 mailing of the Notice to the Class, (ii) attempts to locate Class Members, and (iii) the number of
22 Class Members whose Notice Packets were returned as undeliverable after all attempts to locate
23 a correct address.

24 **D. Request for Exclusion ("Opt-Out") Statement.**

25 In order for a Class Member to validly exclude himself or herself from the Class and this
26 settlement (i.e., to validly opt-out), a written Request for Exclusion must be signed by the Class
27 Member and sent to the Settlement Administrator, postmarked by no later than sixty (60) days
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1 after the date the Settlement Administrator initially mails the Notice Packet to the respective
2 Class Member or fourteen (14) days before the Final Fairness and Approval Hearing, whichever
3 date is earlier. The Notice Packet shall contain instructions on how to opt out, including the
4 language to be used in a Request for Exclusion. The date of mailing of the Notice Packet, and
5 the date the signed Request for Exclusion was postmarked, shall be conclusively determined
6 according to the records of the Settlement Administrator. Any Class Member who timely and
7 validly requests exclusion from the Class and this settlement will not be entitled to any recovery
8 from the NSF, will not be bound by the terms and conditions of this Agreement, and will not
9 have any right to object, appeal or comment thereon. The Settlement Administrator shall provide
10 Class Counsel and P.W. Stephens's counsel with a complete list of all Class Members who
11 requested exclusion (i.e., opted-out). Those meeting the definition of Class Member and who
12 fail to timely and validly request exclusion shall be "Class Members" and bound by the
13 settlement herein.

14 **E. Objections to Settlement.**

15 In order to object to this Settlement, or any term of it, the person making the objection
16 must not have submitted a request for exclusion (i.e. must not opt-out), and must, by no later
17 than sixty (60) days after the Notice Packet was initially mailed to the objecting Class Member,
18 file with the District Court in which the Lawsuit is pending, and serve on Class Counsel and
19 P.W. Stephens's counsel, a written statement of the grounds of objection, signed by the objecting
20 Class Member or his or her attorney, along with all supporting papers. The date of mailing of the
21 Notice Packet to the objecting Class Member shall be conclusively determined according to the
22 records of the Settlement Administrator. The Court retains final authority with respect to the
23 consideration and admissibility of any of Class Member objections. Counsel for the Parties shall
24 file any response to the objections submitted by Objecting Class Members at least seven (7) days
25 before the date of the Final Fairness and Approval Hearing. If any objecting Class Member
26 wishes to speak at the Final Fairness and Approval Hearing, that Class Member's written
27 submission shall include a request for permission to be heard at the hearing. The Parties will
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1 request that the Court determine whether Class Members who submit timely objections will be
2 permitted to speak.

3 **IX. PROCEDURES FOR FINAL APPROVAL AND DISTRIBUTION OF**
4 **SETTLEMENT PROCEEDS.**

5 **A. Final Approval Of Settlement.**

6 At least twenty-eight (28) calendar days prior to the date set forth the Court's Order for
7 Preliminary Approval of the Settlement for the Final Fairness and Approval Hearing, or if
8 different, on the deadline set by the Court, the Plaintiffs shall file a Motion for Final Approval of
9 the Settlement, including supporting declarations and a Proposed Final Order Approving
10 Settlement of Class Action and Dismissal with Prejudice ("Final Order and Dismissal"). These
11 documents shall be prepared by Class Counsel, who shall submit them to the Court after review
12 and input by Counsel for P.W. Stephens.

13 On the date ordered by the Court, a Final Fairness and Approval Hearing shall be held (1)
14 to review this Agreement and determine whether the Court should give it final approval; (2) to
15 consider any timely objections made pursuant to Section VII.E above and all responses by the
16 Parties to such objections; and (3) to consider Class Counsel's applications for an award of
17 Attorneys' Fees and Expenses and for Service Awards to the Class Representatives, if any. At
18 the Final Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to
19 this Agreement and to enter the Final Order and Dismissal.

20 **B. Qualified Settlement Fund.**

21 Within ten (10) days of the Date of Finality, P.W. Stephens shall forward to the
22 Settlement Administrator an amount equal to the TSA, with which the Settlement Administrator
23 shall establish a qualified settlement fund to cover payment of: (i) Individual Settlement
24 Payments to Class Members; (ii) the amount awarded by the Court as Service Payments to the
25 Class Representatives, if any; (iii) the Court-approved attorneys' fees, costs and other litigation
26 expenses of Class Counsel; and (iv) the costs and fees of the Settlement Administrator. The
27 Settlement Administrator assumes all responsibility for tax reporting requirements for and
28 payments of contributions and withholdings from the TSA, as well as for any and all obligations

1 regarding notice, tax reporting, and escheat requirements (which the Parties do not intend)
2 through the qualified settlement fund.

3 **C. Date and Method of Payments; First Distribution.**

4 If one or more Class Member has validly and timely opted out of the settlement, the
5 Settlement Administrator shall recalculate Individual Settlement Payments of Class Members
6 using the calculation formula set forth in Section VII.F above. Within ten (10) days after receipt
7 of the TSA funds from P.W. Stephens described in the foregoing provision, the Settlement
8 Administrator shall calculate and mail the Individual Settlement Payments to each Class Member
9 at the address shown on the Notice Forms or any later corrected address. The filing of a claim
10 shall not be required for the mailing of Individual Settlement Payments. Also within ten (10)
11 days after the Date of Finality, any court-approved Service Awards to be paid to the Class
12 Representatives shall be transmitted by the Settlement Administrator to Class Counsel via
13 separate checks made payable to each individual Class Representative. Also within ten (10) days
14 after the Date of Finality, the attorneys' fees and expenses shall be paid by the Settlement
15 Administrator by checks or wire transfers, one made payable to Leonard Carder, LLP and the
16 other to Legal Aid Society – Employment Law Center. Proof of all of these payments by the
17 Settlement Administrator will be provided to Class Counsel and P.W. Stephens by the Settlement
18 Administrator within seven (7) business days after the last payment is made. Class Counsel shall
19 file such proof of payment with the Court if so ordered.

20 **D. Payments to Settlement Administrator.**

21 The Settlement Administrator shall submit a monthly invoice to Class Counsel and
22 counsel for P.W. Stephens and, if approved by both counsel, such invoices shall be paid out of
23 the TSA. The Settlement Administrator shall submit a Final Invoice to Class Counsel and P.W.
24 Stephen's Counsel, including a reasonable estimate of any remaining claims administration work
25 to be done in order to complete the claims administration process, within five days after Final
26 Approval, which if approved by both counsel, will be paid from the TSA. In no event shall
27 monies paid to the Settlement Administrator exceed \$19,000.00.
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1 **E. Second Distribution and Cy Pres Distribution.**

2 Class Members shall have ninety (90) days from the date of the original mailing of the
3 Individual Settlement Checks to cash them. Any checks that remain uncashed upon the
4 expiration of the 90-day period will be void. The Settlement Administrator will give written
5 notice to Class Counsel and Counsel for P.W. Stephens of the total amount of funds represented
6 by the uncashed checks, plus any interest earned on such amounts and remaining in the NSF,
7 within five (5) business days after the expiration of the 90-day period. The amount represented
8 by uncashed checks shall be paid via a Second Distribution to Class Members as described above
9 in section VII.F.10.

10 There shall be no Second Distribution if the aggregate amount remaining from the
11 uncashed checks, including any resulting tax refunds, is less than \$10,000 in the aggregate.
12 Should such remaining funds total less than \$10,000, they shall be paid to the California Rural
13 Legal Assistance, Inc. as a *cy pres* beneficiary, and will pay any amounts represented by checks
14 from the Second Distribution that remain uncashed 90 days after mailing.

15 **X. RELEASES AND BARS.**

16 **A. Released Parties.**

17 The Released Parties for purposes of this Agreement include P.W. Stephens and all of its
18 former or present parents, subsidiaries, affiliates, owners, partners, related organizations,
19 predecessors or successors, agents, officers, directors, agents, employees and attorneys thereof.

20 **B. Class Members' Release of Non-FLSA Claims.**

21 On the Date of Finality, the Plaintiffs and each Class Member who has not validly opted
22 out shall be bound by this Agreement. In exchange for the consideration recited in this
23 Agreement, each such Class Member and each Plaintiff, on behalf of themselves, and on behalf
24 of all who claim by and through them, or in their stead, do hereby and forever release, acquit and
25 discharge, and covenant not to sue any of the Released Parties from all causes of action, claims,
26 liens, demands, damages, penalties, fines, wages, liquidated damages, restitutionary amounts,
27 attorneys' fees and costs, punitive damages, controversies and liabilities which were or could
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1 have been raised based on the facts, conduct, and/or omissions alleged in the operative
2 Complaint, including but not limited to claims for: unpaid wages, including minimum wages,
3 regular wages, overtime and double time wages; wages at promised rate of pay under California
4 state law; liquidated damages under California state law; missed meal breaks; meal breaks
5 premiums; reporting time pay; failure to reimburse business expenses waiting time penalties;
6 failure to maintain accurate records, failure to provide accurate wage statements; PAGA
7 penalties; and claims under the California Unfair Competition Law, Bus. & Prof. Code §17200 et
8 seq., and predicated on the foregoing wage and hour violations as well as on any FLSA violation,
9 during the Release Period.

10 **C. Release of FLSA Claims.**

11 Each FLSA Collective Action Member who cashes a Settlement Check has effectively
12 "Opted-In" to this action pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*, thereby agreeing to
13 become a party to the Action and this Agreement and bound by this Agreement. Thus, each
14 FLSA Collective Action Member, on behalf of themselves, and on behalf of all who claim by
15 and through them, or in their stead, do hereby and forever release, acquit and discharge, and
16 covenant not to sue the Released Parties from all causes of action, claims, liens, demands,
17 damages, penalties, fines, wages, liquidated damages, restitutionary amounts, attorneys' fees and
18 costs, punitive damages, controversies and liabilities which were alleged in the Lawsuit,
19 including claims for (1) failure to pay minimum wage under the federal FLSA and (2)
20 underpayment of overtime under the federal FLSA, during the Release Period against any
21 Released Party based on and related to the facts alleged in the Complaint (referred to collectively
22 as the "FLSA Released Claims"). The Settlement Checks shall contain simple FLSA opt-in and
23 release language which can be easily understood by all Class Members, but no broader than the
24 release described herein.

25 **D. General Release By Named Plaintiffs Only**

26 In addition to the releases made by the Plaintiffs and Class Members set forth in
27 Paragraphs X(B)-(C) hereof and in consideration for the Service Awards, Plaintiffs, as of the
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1 Date of Finality, in their individual capacities for themselves, their heirs, executors,
2 administrators, successors and assigns and with respect to their individual claims only, agree to
3 release the Released Parties from all claims, demands, rights, liabilities and causes of action of
4 every nature and description whatsoever, known or unknown, asserted or that might have been
5 asserted, whether in tort, contract, or for violation of any state or federal statute, rule or
6 regulation arising out of, relating to, or in connection with their employment by and termination
7 from Released Parties and any act or omission by or on the part of any of the Released Parties
8 committed or omitted prior to the Date of Finality (the "General Release"). This total release
9 includes, but is not limited to, all claims arising directly or indirectly from Plaintiffs'
10 employment with Released Parties and the termination of that employment; claims or demands
11 related to wages, bonuses, vacation pay, benefits and expense reimbursements pursuant to any
12 federal, state or local law or cause of action, including, but not limited to, breach of contract,
13 breach of the implied covenant of good faith and fair dealing, infliction of emotional harm,
14 wrongful discharge, violation of public policy, defamation and impairment of economic
15 opportunity; violation of the California Fair Employment and Housing Act, the California Labor
16 Code, the California Constitution; and any claims for violation of the Civil Rights Act of 1866,
17 Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act of 1990 and any
18 private attorney general action under the California Business & Professions Code §17200.

19 The General Release includes any unknown claims that Plaintiffs do not know or suspect
20 to exist in their favor at the time of the General Release, which, if known by them, might have
21 affected their settlement with, and release of, the Released Parties or might have affected their
22 decision not to object to this Settlement or the General Release. With respect to the General
23 Release, Plaintiffs stipulate and agree that, upon the Date of Finality, they shall be deemed to
24 have, and by operation of the Court's Final Approval Order, shall have, expressly waived and
25 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
26 1542 of the California Civil Code, or any other similar provision under federal or state law,
27 which provides:
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A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the General Release, but upon the Date of Finality, shall be deemed to have, and by operation of the Court’s Final Approval Order, shall have, fully, finally, and forever settled and released any and all of the claims released pursuant to the General Release whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

Notwithstanding the above, the scope of the General Release provided to Released Parties by Plaintiffs does include any claims for disability, workers compensation or other workplace injury claims arising from exposure to asbestos or other contaminants, or unemployment benefits, or any claims that cannot be released as a matter of law.

XI. ENFORCEMENT, DISMISSAL AND CONTINUING JURISDICTION OF THE COURT.

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to Rule 23. The Action shall be dismissed with prejudice within seven days after the Date of Finality as part of the consideration for this Settlement, with the sole exception that the FLSA Claims of Class Members who are not also FLSA Collective Action Members are dismissed without prejudice. Notwithstanding the dismissal of the Action with prejudice, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

1 **XII. MUTUAL FULL COOPERATION.**

2 The Parties agree to fully cooperate with each other to accomplish the terms of this
3 Agreement, including but not limited to executing such documents and taking such other action
4 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this
5 Agreement shall use their best efforts, including all efforts contemplated by this Agreement, and
6 any other efforts that may become necessary by order of the Court or otherwise to effectuate this
7 Agreement, and the terms set forth herein. In the event the Parties are unable to reach agreement
8 on the form or content of any document needed to implement the settlement, or on any
9 supplemental provisions that may become necessary to effectuate the terms of the settlement, the
10 Parties agree to seek the assistance of the Court.

11 **XIII. AGREEMENT NOT ADMISSIBLE.**

12 This Agreement is a settlement document and shall, pursuant to the Federal Rules of
13 Evidence, be inadmissible in evidence in any proceeding, except an action or proceeding to
14 approve, interpret, or enforce this Agreement.

15 **XIV. RIGHT TO NULLIFY THE SETTLEMENT.**

16 P.W. Stephens shall retain the right, in the exercise of its sole discretion, to nullify the
17 settlement if class members representing more than an aggregate total of ten percent (10%) of the
18 verified workweeks opt out of the class.

19 **XV. GENERAL PROVISIONS.**

20 **A. Entire Agreement.**

21 This Agreement constitutes the entire agreement between the Parties relating to the
22 settlement of this Action, and is the final, complete and exclusive expression of the terms and
23 conditions of their agreement. Any and all prior agreements, representations, negotiations and
24 understandings, oral or written, express or implied, are hereby suspended and merged herein.

25 **B. Authorization to Act.**

26 Class Counsel warrants and represents that it is authorized by each Plaintiff and counsel
27 for P.W. Stephens warrants that it is authorized by P.W. Stephens, to take all appropriate action
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1 required to effectuate the terms of this Agreement, except for signing any documents, including
2 but not limited to this Agreement, that are required to be signed by the Parties.

3 **C. Modification Only in Writing.**

4 This Agreement may be amended or modified only by a written instrument signed by all
5 Parties (or their successors in interest) and their counsel.

6 **D. Binding on Successors.**

7 This Agreement shall be binding upon, and inure to the benefit of, the successors of the
8 Parties.

9 **E. No Reliance on Representations.**

10 The Parties have made such investigation of the facts and the law pertaining to the
11 matters described herein and this Agreement as they deem necessary, and have not relied, and do
12 not rely, on any statement, promise, or representation of fact or law, made by any of the other
13 parties, or any of their agents, employees, attorneys, or representatives, with regard to any of
14 their rights or asserted rights, or with regard to the advisability of making and executing this
15 Agreement, or with respect to any such matters. No representations, warranties or inducements
16 have been made to any party concerning this Agreement.

17 **F. Representations and Warranty.**

18 Class Counsel, the Plaintiffs, and the Class Members jointly and severally represent and
19 warrant to P.W. Stephens that there are no attorneys beyond those named as Class Counsel who
20 have claims for fees arising out of the Lawsuit or the settlement contemplated hereby. -

21 **G. Assignment.**

22 None of the rights, commitments, or obligations recognized under this Agreement may be
23 assigned by any Party, Class Member, Class Counsel, or Counsel for P.W. Stephens without the
24 express written consent of each other Party and their respective counsel hereto. The
25 representations, warranties, covenants, and agreements contained in this Agreement are for the
26 sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or
27 to avail any remedy to any other person.
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H. Governing Law.

All terms of this Agreement shall be governed by and interpreted according to the laws of the State of California, without giving effect to conflict of laws principles.

I. Counterparts and Fax Signatures.

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties shall exchange original signed counterparts. A fax signature on this Agreement shall be as valid as an original signature.

J. Headings For Convenience Only.

The headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only, and shall not be considered in interpreting this Agreement.

K. Construction of This Agreement.

The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length negotiations between them, and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Agreement.

L. Entity Signatories.

Any individual executing this Agreement, or any related document, on behalf of a corporation, entity or organization who, as shown by the signature blocks below, is to execute this Agreement, hereby warrants and promises for the benefit of all Parties hereto that he or she has been duly authorized by such corporation, entity or organization to execute this Agreement on behalf of such corporation, entity or organization.

PLEASE READ CAREFULLY, THIS AGREEMENT CONTAINS A RELEASE OF ALL KNOWN AND/OR UNKNOWN CLAIMS

IT IS SO AGREED:

Dated: _____

Aned Lopez
Plaintiff/Class Representative

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Dated: _____

Cristian Alas
Plaintiff/Class Representative

P.W. Stephens Environmental, Inc.

Dated: _____

By: Scott Johnson

Dated: _____

LEONARD CARDER LLP

By: _____
Aaron Kaufmann
David Pogrel
Giselle Olmedo
Plaintiffs'/Class Counsel

Dated: _____

LEGAL AID SOCIETY –
EMPLOYMENT LAW CENTER

By: _____
Diane Webb
Carole Vigne
Plaintiffs'/Class Counsel

Dated: _____

FISHER & PHILLIPS, LLP

By: _____
John E. Lattin
Aaron Olsen
Attorneys for Defendant