

# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**EDWARD CHAPALONEY, JR.**, on behalf  
of himself and all others similarly situated,

Plaintiff,

v.

**ROSEBUD MINING COMPANY,**

Defendant.

Case No. 2:24-cv-00590

**SETTLEMENT AGREEMENT AND RELEASE**

1. This Settlement Agreement and Release (the “Settlement Agreement,” “Settlement” or “Agreement”) is entered into between Plaintiff Edward Chapaloney, Jr. (“Plaintiff”), individually and on behalf of all Settlement Class and Collective Members, and Defendant Rosebud Mining Company (“Defendant” or “Rosebud” and, together with Plaintiff, the “Parties”).

**RECITALS**

2. Plaintiff initially filed this case as a class and collective action alleging violations of the Fair Labor Standards Act (“FLSA”) and the Pennsylvania Minimum Wage Act (“PMWA”) in the United States District Court for the Western District of Pennsylvania on April 18, 2024. ECF No. 1. Defendant filed its Answer to Plaintiff’s Complaint May 20, 2024. ECF No. 14.

3. On June 27, 2024, the Court appointed former Magistrate Judge Lisa Pupo Lenihan as a mediator and referred the case to mediation. ECF No. 23.

4. Judge Lenihan held a full day mediation with the Parties on October 18, 2024. Counsel for the Parties and Rosebud representatives attended in person. Plaintiff participated via telephone. As a result of this mediation, the Parties reached a settlement. The Parties have agreed fully and finally to resolve this matter on the terms and conditions described herein.

5. In anticipation of the mediation, at Judge Lenihan’s direction, the Parties submitted mediation statements. Additionally, in the months prior to the Parties mediation, and to inform the mediation process, Defendant provided data and information concerning the underlying claims at issue, as well as its timekeeping and payroll practices, which Class Counsel analyzed. The Parties participated in several meet and confer videoconference and telephone calls regarding the data and information provided. Class Counsel performed an exposure analysis utilizing the data and information provided.

6. Class Counsel has made a thorough and independent investigation of the facts and

law relating to the allegations in the Action. In agreeing to this Settlement Agreement, Plaintiff has considered: (a) the facts developed during the Parties' information and data exchange and mediation process and the law applicable to the claims at issue; (b) the attendant risks of continued litigation and the uncertainty of the outcome of the claims alleged; and (c) the desirability of consummating this Settlement according to the terms of this Settlement Agreement. Plaintiff has concluded that the terms of this Settlement are fair, reasonable and adequate, and it is in the best interests of Plaintiff and the Settlement Class and Collective (as defined below) to settle their claims pursuant to the terms set forth herein.

7. Defendant denies any wrongdoing with respect to the claims Plaintiff asserted in this Action, including the allegations that it violated the FLSA or PMWA. Defendant asserts that Settlement Class and Collective Members were at all relevant times paid appropriately for all hours worked under the FLSA and PMWA. Defendant also believes and intended to argue that the PMWA Class should not be certified on the grounds that Plaintiff cannot meet the class requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure, and that this case should not proceed as an FLSA collective under 29 U.S.C. §216(b). Defendant nonetheless desires to resolve this lawsuit and agreed to the terms of this Settlement in order to (i) avoid the further expense and disruption of business due to the pendency of this litigation; and (ii) put the claims asserted in the Action to rest by dismissing them with prejudice.

8. This Settlement Agreement reflects a compromise of disputed claims reached after arm's-length negotiations facilitated by a neutral third-party. Nothing in this Settlement Agreement shall be deemed or used as evidence of, or as an admission or concession of, the truth or validity of any substantive or procedural allegation, claim, or defense asserted in this or any other action or proceeding; liability by Defendant or any of the Released Parties; of any fault or wrongdoing whatsoever; or as evidence that, or as an admission that, this Action could have proceeded as a class action under Rule 23 of the Federal Rules of Civil Procedure or as an FLSA collective under 29 U.S.C. §216(b); or for any purpose other than settlement. The Parties recognize that uncertainty exists in this lawsuit as to liability and damages.

9. The Parties stipulate and agree, for settlement purposes *only*, the requirements for establishing collective action certification under the FLSA pursuant to 29 U.S.C. §216(b), and class certification pursuant to Fed. R. Civ. P. 23(a) and (b)(3) are met with respect to the Settlement Class and Collective defined below. Should this Settlement not become Final, such stipulation to conditional certification and class certification shall become null and void and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not conditional certification or class certification would be appropriate in a non-settlement context.

10. The Parties also recognize that notice to the Settlement Class of the material terms of this Settlement, as well as Court approval of this Settlement, are required to effectuate the Settlement, and the Settlement will not become operative until the Court grants final approval of it, the Settlement becomes Final, and the Settlement Effective Date occurs.

11. In exchange for (i) the dismissal of the Action and claim asserted therein with prejudice; (ii) the entry of the Final Approval Order; (iii) the settlement and release of all Released Claims as defined in this Agreement; and (iv) the other terms and conditions of this Agreement, Defendant has agreed to pay up to an amount not to exceed the Gross Settlement Amount, plus the

employer's share of payroll taxes attributable to the wage portion of the settlement awards to Settlement Class and Collective Members.

12. This settlement is conditioned on the Court's entry of a Final Approval Order granting final approval of this settlement and dismissal with prejudice of this lawsuit and the claim asserted therein in accordance with the terms set forth herein.

13. In consideration of the good and valuable consideration referred to herein, the receipt and sufficiency of which is hereby acknowledged by each party to the other, IT IS HEREBY AGREED, by and between the undersigned, subject to the final approval of the Court and the other conditions set forth herein, that Plaintiff and the Settlement Class and Collective Members' (as defined below) claims as described herein and set forth in the Complaint against Defendant shall be settled, compromised and dismissed, on the merits and with prejudice, and that the Released Claims (as set forth herein) shall be finally and fully compromised, settled and dismissed as to Defendant and Released Parties, in the manner and upon the terms and conditions set forth below.

#### **DEFINITIONS**

14. The following terms used in this Settlement Agreement shall have the meanings ascribed to them below:

- a. "Action" means the above captioned Action.
- b. "Class Counsel" means Shannon Draher of Nilges Draher LLC and Sarah R. Schalman-Bergen and Krysten Cannon of Lichten & Liss-Riordan, P.C.
- c. "Court" means the United States District Court for the Western District of Pennsylvania.
- d. "Defendant" means Rosebud Mining Company.
- e. "Defendant's Counsel" means James S. Urban and Katherine J. McLay of Jones Day.
- f. "Eligible Settlement Participants" means (i) Plaintiff; (ii) Opt-In Plaintiff; (iii) Settlement Class Members who do not exclude themselves from the Settlement; and (iv) Settlement Collective Members.
- g. "Effective Date" means the latest of (1) the Court's entry of an order granting final approval of the settlement dismissing this Action and claim asserted therein with prejudice; (2) the expiration of the appeal rights of the Parties and Settlement Class Members (which, if no timely notice of appeal is filed, shall be deemed to be 30 days following entry of the order dismissing the Civil Action with prejudice; or (3) if a timely appeal is made, 5 days following the date of the final resolution of that appeal and any subsequent appeals or related proceedings resulting in final judicial approval of the settlement.
- h. "Final" shall mean, with respect to a judgment or order, that the judgment

or order is final and appealable and either (a) no appeal, motion, or petition to review or intervene has been taken with respect to the judgment or order as of the date on which all times to appeal, move, or petition to review or intervene therefrom have expired, or (b) if an appeal, motion or petition to review or intervene or other review proceeding of the judgment or order has been commenced, such appeal, motion or petition to review or intervene or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the judgment or order in its entirety.

i. “Fee and Cost Payment” means, subject to Court approval, the attorneys’ fees and costs to be paid to Class Counsel for the services they rendered Plaintiff and the Settlement Class and Collective Members in the Action, in the total amount for attorneys’ fees not to exceed one-third of the Maximum Gross Settlement Amount, plus out-of-pocket costs not to exceed \$25,000, as approved by the Court.

j. “Final Approval” or “Final Approval Order” means the Court’s Final Approval Order approving the Settlement and entering judgment.

k. “Final Approval Hearing” means the hearing to be held by the Court to consider the final approval of the Settlement.

l. “Gross Settlement Amount” means the amount of Two Million Six Hundred Thousand Dollars (\$2,600,000.00), which shall be the maximum amount Defendant shall pay to settle this Action as set forth herein, except that Defendant shall separately pay its own attorneys’ fees and costs and the employer’s share of payroll taxes attributable to the wage portion of the settlement awards to Settlement Class and Collective Members .

m. “Net Settlement Amount” means the Gross Settlement Amount less: (i) the Reserve Fund; (ii) the Service Award; (iii) the Fee and Cost Payment; and (iv) Settlement Administrator’s costs in the amount not to exceed \$12,000. These amounts are subject to the Court’s approval.

n. “Notice Deadline” means the date sixty (60) days after the Settlement Notices are initially mailed by the Settlement Administrator as provided for in this Agreement. Except as otherwise provided in this Agreement, Settlement Class Members shall have until the Notice Deadline to object to or exclude themselves from the Settlement.

o. “Parties” means the parties to this Agreement, Plaintiff and Defendant.

p. “Participating Settlement Class Members” means Plaintiff and all Settlement Class Members who do not exclude themselves from the Settlement.

q. “Plaintiff” means Edward Chapaloney, Jr..

r. “Preliminary Approval” or “Preliminary Approval Order” means the Court’s Preliminary Approval Order preliminarily approving the terms and conditions of this Agreement, authorizing notice of the settlement to the Settlement Class and Collective Members, and setting a date for a Final Approval Hearing.

s. “Qualified Settlement Fund” or “QSF” means the account established by the Settlement Administrator and funded by the Defendant for the purpose of holding the Gross Settlement Amount as well as funds paid by Defendant sufficient to enable the Settlement Administrator to pay the employer’s share of payroll taxes. The QSF will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s orders regarding approval.

t. “Released Parties” means Defendant and its predecessors, successors, present and former affiliates, parents, subsidiaries, insurers, officers, directors, agents, members, shareholders, employees, general partners, limited partners, owners, beneficiaries, representatives, heirs, attorneys, assigns (including without limitation, any investors, trusts, or other similar or affiliated entities), joint venturers, benefit plans and plan administrators, and all persons acting by, through, under, or in concert with, any of the aforementioned individuals or entities, including any person or entity that was or could have been named as a defendant in the Action.

u. “Reserve Fund” means a reserve fund of \$20,000 from the Gross Settlement Amount, held for payment of valid claims at the Parties’ agreement, with a mediator to resolve any disputes, for individuals who make late claims or disputed claims or may come forward during the notice process and claim to have been improperly excluded from the class. All unused reserve amounts are to be reallocated to Participating Class Members after Final Approval and prior to distributions to Participating Class Members.

v. “Service Award” means that portion of the Gross Settlement Amount (Ten Thousand Dollars (\$10,000.00)) to be paid to Plaintiff for his efforts in bringing and prosecuting this matter on behalf of Settlement Class and Collective Members and for his broader release of claims in favor of Defendant, as approved by the Court.

w. “Settlement Administrator” means Analytics Consulting LLC, an agreed upon settlement administrator. The Settlement Administrator has agreed to perform all services required by the Agreement for the amount not to exceed \$12,000, subject to Court approval.

x. “Settlement Award” means the payment that each Eligible Settlement Participant shall be entitled to receive pursuant to the terms of this Agreement. Eligible Settlement Participants will not be required to submit a claim form in order to receive a Settlement Award.

y. “Settlement Class” or “Settlement Class Members” means all current or former hourly employees of Defendant who engaged in underground mining in Pennsylvania at any time during the period of April 18, 2021, to October 18, 2024.

z. “Settlement Collective” or “Settlement Collective Members” means Plaintiff, Opt-in Plaintiff, and all current or former hourly employees of Defendant who engaged in underground mining at any time during the period of April 18, 2021, to October 18, 2024. Rosebud’s records reflect that there are 774 members of the Settlement Collective, and this is the number of Settlement Collective members that Class Counsel and Plaintiff relied on this number in negotiating the Settlement.

aa. “Settlement Class and Collective Members” means Settlement Class

Members and Settlement Collective Members.

bb. "Settlement Notice" means the Notice of Class Action Settlement to the Settlement Class, substantially in the form as **Exhibit A** attached hereto or as approved by the Court.

cc. "Settlement Participants" means (i) Plaintiff, (ii) all Settlement Class Members who do not exclude themselves from the Settlement, and (iii) all Settlement Collective Members who sign, cash, or deposit a Settlement Award check.

### RELEASES

15. **Plaintiff's General Release of Claims.** In exchange for the Service Award, and in addition to the Released Claims as applicable in Paragraphs 16 and 17 and upon the Effective Date of the Settlement Agreement, Plaintiff agrees to release and discharge Defendant and all other Released Parties finally, forever and with prejudice, from any and all causes of action, claims, rights, damages of any nature, penalties, liabilities, expenses, losses, and issues of any kind or nature whatsoever, whether known or unknown, that Plaintiff has or may have against Defendant and the Released Parties that arose prior to the date on which he executed this Agreement ("General Release"). This General Release includes without limitation any claims that were or could have been asserted in the Complaint, based on the facts alleged, for alleged violations of the FLSA and/or PMWA, as well as any claims for unpaid wages, overtime compensation, liquidated or other damages, retaliation, compensatory damages, unpaid costs, restitution or other compensation or relief arising under applicable wage and hour laws, as well as any claims, whether in law or equity, known or unknown, against Released Parties relating to Plaintiff's employment (or alleged employment or joint employment) or termination of employment, including but not limited to claims arising under the Americans with Disabilities Act, National Labor Relations Act, Equal Pay Act, Employee Retirement Income Security Act of 1974, the Worker Adjustment and Retraining Notification Act and its state counterparts, Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Civil Rights Act of 1866, 1871, and 1991, including Section 1981 of the Civil Rights Act, the Family and Medical Leave Act, Coronavirus Aid, Relief, and Economic Security Act, the Pennsylvania Human Relations Act, including age and sexual harassment claims, the Pennsylvania Equal Pay Law, the Pennsylvania Whistleblower Law, and/or any other federal, state, or local law, statute, regulation, constitution, ordinance, and/or public policy, contract, or tort law, or any claim of retaliation under such laws, or any claim of breach of any contract (whether express, oral, written, or implied from any source), or any claim of unjust enrichment, intentional or negligent infliction of emotional distress ("Released Claims").

Plaintiff acknowledges that he may have claims that are presently unknown based on actions that took place prior to the date he executes this Agreement and that the release of Plaintiff's Released Claims contained in this Settlement Agreement is intended to and will fully, finally, and forever discharge all claims against Defendant and the other Released Parties, whether now asserted or not asserted, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, which if known, might have affected his decision to enter this release. Plaintiff agrees that, although he may discover facts in addition to or different from those that are currently known or believed to be true with respect to Plaintiff's Released Claims, it is his intention to fully,

finally, and forever settle and release any and all Plaintiff's Released Claims, without regard to the subsequent discovery or existence of such additional or different facts.

Plaintiff, to the fullest extent allowed by law, is prohibited from asserting any claims released by them in this Settlement, and from commencing, joining in, prosecuting, or voluntarily assisting in a lawsuit or adversarial proceeding against the Released Parties, based on claims released by them in this Settlement, including as a class member. Notwithstanding this and the foregoing Paragraphs, Plaintiff does not release or waive: (i) claims arising under the Age Discrimination in Employment Act; (ii) any claim he could make for unemployment compensation or workers' compensation benefits; or (iii) any claim or right that cannot be waived as a matter of law pursuant to this Agreement and/or the Approval Order. Additionally, nothing prohibits Plaintiff from (1) filing a claim or charge with a federal, state or local administrative agency; (2) reporting, communicating directly with or providing information, including documents, not otherwise protected from disclosure by any applicable law or privilege, to the National Labor Relations Board ("NLRB"), Securities and Exchange Commission ("SEC"), the Occupational Safety and Health Administration ("OSHA"), the Equal Employment Opportunity Commission ("EEOC"), or any other federal, state or local governmental agency or commission regarding possible legal violations, without disclosure to the Defendant, subject to the condition that once this Agreement becomes effective, Plaintiff may not receive a monetary award in connection with any such charge or complaint that is filed on Plaintiff's behalf with the EEOC or state or local fair employment agency; or (3) testifying through service of a subpoena or other process.

**16. Participating Settlement Class Members' Released Claims.** Upon the Effective Date of the Settlement Agreement, all Participating Settlement Class Members shall release and discharge all Released Parties from of all known and unknown claims and, demands, and causes of action that were asserted in the lawsuit based on the facts of the Complaint for overtime compensation, straight time, and minimum wages), liquidated damages, penalties, interest, fees/costs, and any other relief otherwise available under the PMWA; any and all claims, demands, and causes of action seeking relief otherwise available under the PMWA; any and all claims, demands, and causes of action that could have been asserted in the lawsuit based upon the facts alleged in the operative complaint, including any and all state/local laws and regulations and common law theories under Pennsylvania law. The release end date is October 18, 2024.

**17. Eligible Settlement Participants' Released Claims.** Following Final Approval of this Settlement Agreement, all Eligible Settlement Participants who sign, cash, or deposit a Settlement Award check shall and hereby do release and discharge all Released Parties, finally, forever and with prejudice, from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, liabilities, expenses and losses and issues of any kind or nature whatsoever, whether known or unknown under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, as well as claims arising under any applicable state or local wage and hour laws, administrative orders, as well as common law claims and any derivative claims against Released Parties that were or could have been asserted in the Action.

Participating Settlement Class's Released Claims shall include the FLSA releases set forth in this Paragraph only when the Participating Settlement Class Member signs, cashes, or deposits a Settlement Award check. Defendant agrees that participation in the Settlement and release of the Participating Settlement Class's Released Claims may not be used to assert collateral estoppel, *res*



*judicata*, waiver or any other claim preclusion of FLSA claims or other claims not included in the Participating Settlement Class's Released Claims with respect to individuals who did not sign, cash, or deposit a Settlement Award check.

18. The Parties acknowledge and agree that, with the exception of the Plaintiff, only Eligible Settlement Participants who are issued and sign, cash, or deposit a Settlement Award check shall release their FLSA claims against Defendant and Released Parties. Eligible Settlement Participants shall consent to opt into the Action by signing, cashing, or depositing a Settlement Award check. Plaintiff shall be deemed to have released his FLSA and state law claims upon Final Approval.

19. **Opt In and Release Language on Settlement Checks.** The following language shall be included on the back of each Settlement Award Check:

By signing, cashing, or depositing this check, I am opting into the case captioned *Chapaloney v. Rosebud Mining Company*, No. 2:24-cv-00590 (W.D. Pa.), and I affirm my release of Rosebud Mining Company, and all other Released Parties of all Eligible Settlement Participant's Released Claims as defined in the Settlement Agreement approved by the Court in *Chapaloney v. Rosebud Mining Company*, No. 2:24-cv-00590 (W.D. Pa.). I affirm that I will not sue or assert any of the Eligible Settlement Participant's Released Claims, including claims arising under the Fair Labor Standards Act, against any of the Released Parties.

#### **NOTICE AND SETTLEMENT IMPLEMENTATION**

20. The Parties agree to the following procedures for obtaining Preliminary and Final Approval of the Settlement, certifying the Settlement Class and Collective, and notifying the Settlement Class and Collective Members of this Settlement:

a. **Request for Certification and Preliminary Approval Order.** Plaintiff shall prepare and file an Unopposed Motion for Preliminary Approval of Settlement Agreement, requesting that the Court certify the Settlement Class and Collective pursuant to and FED. R. CIV. P. 23(a) and (b)(3) and 29 U.S.C. § 216(b) for the sole purpose of settlement; preliminarily approve the Settlement Agreement and its terms; approve the proposed form of the Settlement Notice and find that the proposed method of disseminating the Settlement Notice meets the requirements of due process and is the best notice practicable under the circumstances; set a date for Plaintiff's motion for Final Approval of the Settlement; and set a date for the Final Approval Hearing. Plaintiff shall provide Defendant with a draft of the Unopposed Motion for Preliminary Approval of Settlement Agreement and a period of at least ten (10) days to review and comment on it prior to filing. The motion shall be subject to the prior review and approval of Defendant's Counsel and shall not be filed until such approval is obtained.

b. **Notice.** The Settlement Administrator shall be responsible for preparing, printing and mailing the Settlement Notice to Plaintiff and all Settlement Class and Collective Members.

c. Within fifteen (15) business days after the Court's Preliminary Approval of

the Settlement, Defendant shall provide to the Settlement Administrator an electronic list containing the (i) names; (ii) last known addresses; (iii) last known telephone numbers (if any); (iv) last known email addresses (if any and to the extent reasonably accessible to Defendant); (v) social security numbers or tax ID numbers; (vi) total number of workweeks when each Settlement Class or Collective Member worked for Defendant between April 18, 2021, to October 18, 2024 (“Class List”). Defendant will within fifteen (15) business days after the Court’s Preliminary Approval of the Settlement provide Class Counsel with an electronic list containing items (i) and (vi) of the Class List.

d. At least five (5) business days prior to mailing the Notice, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with estimated minimum settlement shares and estimated Settlement Award for each Settlement Class and Collective Member, assuming 100% participation in the Settlement, and utilizing the procedure outlined in Paragraph 30 below.

e. In order to provide the best notice practicable, prior to mailing the Settlement Notice, the Settlement Administrator will make reasonable efforts to identify current addresses via public and proprietary systems. Prior to sending the Notice, the Settlement Administrator shall use the National Change of Address Database to update any addresses and shall provide a copy of any updated addresses to the Parties.

f. The Settlement Administrator shall maintain a website (which shall be approved by the Parties) that has links to the notice, motions for approval and any other documents in the Matter, the date of approval hearing (if applicable), as well as the ability to submit a change of address/contact information, request to receive Settlement Award payments via PayPal or Venmo or via direct deposit for current employees, submit disputes, and/or any additional information the Parties shall mutually agree is necessary to effectuate the Settlement. Such website shall be password protected.

g. **Initial Mailing.** Within no later than fifteen (15) business days after receiving the Class List, the Settlement Administrator shall mail the Settlement Notice to Plaintiff, Opt-In Plaintiff, and Settlement Class and Collective Members by U.S. First Class Mail and by email. The Settlement Administrator shall notify Class Counsel and Defendant’s Counsel when the Settlement Notice has been mailed.

h. Any Notices returned as undeliverable shall, within three (3) business days, be skip-traced (using the person’s social security number) to attempt to obtain a new address and shall be re-mailed by U.S. First Class Mail to any new addresses that are found.

i. Any Settlement Notice returned to the Settlement Administrator with a forwarding address shall be re-mailed by the Settlement Administrator to the address indicated within three (3) business days following receipt of the returned mail. If any Settlement Notice is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall undertake reasonable efforts to search for the correct address and shall promptly re-mail the Settlement Notice to any newly found addresses. In no circumstance shall such re-mailing extend the Notice Deadline.

j. Defendant will not take any adverse action against any person on the grounds that he/she is eligible to participate or does participate in the Settlement. The Parties also will not discourage participation in this Settlement or encourage objections or opt-outs. Nothing in this Agreement shall be construed to restrict Defendant's freedom to communicate in the ordinary course of business with its employees, including Settlement Class and Collective Members.

21. **Objections.** Settlement Class Members who wish to object to the Settlement must, on or before the Notice Deadline, submit to the Settlement Administrator a signed written statement objecting to the Settlement. Such objection shall not be valid unless it includes the information specified in the Settlement Notice. The statement must be signed personally by the objector and must include the objector's name, address, telephone number, email address (if applicable), the factual and legal grounds for the objection, whether the objector intends to appear at the Final Approval Hearing, the grounds on which the objector desires to appear and be heard (if any) at the Final Approval Hearing, if the objector is represented by counsel, and the name and address of the objector's counsel (if any). The Settlement Notice shall advise Settlement Class Members that objections shall only be considered if the Settlement Class Member has not requested to be excluded from the Settlement. No Settlement Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through counsel), unless written notice of the Settlement Class Member's intention to appear at the Final Approval Hearing has been filed with the Court and served upon Class Counsel and Defendant's Counsel on or before the Notice Deadline, and the Settlement Class Member has not requested to be excluded from the Settlement. The postmark date of mailing to Class Counsel and Defendant's Counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. If postmark dates differ, the earlier of the two postmark dates will control. Persons who fail to return timely written objections in the manner specified above shall be deemed to have waived any objections and oppositions to the Settlement's fairness, reasonableness and adequacy, and they shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to object to the Settlement, or appeal from any order of the Court that is consistent with the terms of this Settlement, or discourage participation in the Settlement claims process. An objection may be withdrawn by sending written notice of withdrawal to the Settlement Administrator. The Settlement Administrator shall deliver copies of each objection and withdrawal to Class Counsel and Defense Counsel not later than five (5) business days after receipt thereof.

22. **Requests for Exclusion.** Settlement Class Members, other than Plaintiff, who do not wish to become a Participating Settlement Member may request exclusion from the Settlement ("opt out") by mailing a written request for exclusion to the Settlement Administrator. To be effective, the written request for exclusion must contain the Settlement Class Member's full name, address, telephone number, address, email address (if applicable), the Settlement Class Member's individual signature, and an unequivocal statement that the individual requests to be excluded from the settlement. A request for exclusion may be withdrawn by sending written notice of withdrawal of a request for exclusion to the Settlement Administrator. No request for exclusion may be made on behalf of a group. Any request for exclusion must be postmarked by the Notice Deadline. The Settlement Administrator shall deliver copies of each request for exclusion and withdrawal of a request to Class Counsel and Defendant's Counsel not later than five (5) business days after receipt thereof.

If a Settlement Class Member requests to be excluded from the settlement, the individual will not be (a) entitled to any payment from this settlement; (b) entitled to object to the settlement or appeal from any orders entered in the lawsuit relating to the settlement; and (c) bound by the settlement agreement, including the release of claims set forth in the agreement.

23. **Conflicting Submissions.** If the Settlement Administrator receives a timely request for exclusion from a Settlement Class Member who has objected to the Settlement, the document submitted later in time shall control. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to request exclusion from the Settlement.

24. **Weekly and Final Claim Reports.** On a weekly basis, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with an accounting of the number of Notices mailed, returned as undeliverable, and re-mailed; the number of requests for exclusion received; and any other pertinent information. Additionally, within five (5) business days after the Notice Deadline, the Settlement Administrator shall provide to Class Counsel and Defendant's Counsel notice of the total number of Settlement Class Members who filed timely and valid requests for exclusion from the Settlement, along with the complete copies of all requests for exclusion, including their postmark date. The Settlement Administrator shall work with Class Counsel to provide a declaration for filing with the Final Approval papers.

25. **Final Approval Hearing.** Plaintiff will file with the Court, in accordance with the schedule to be established in the Preliminary Approval Order, and not later than fourteen (14) calendar days before the Final Approval Hearing, an unopposed motion for entry of the Final Approval Order, seeking approval of the settlement as fair, reasonable and adequate, including approval of the Fees and Costs Payment and the Service Award. The motion shall be prepared by Class Counsel and subject to the prior review and approval of Defendant's Counsel. Defendant will not oppose this motion to the extent it conforms to the terms of this Agreement. In seeking final approval of this Agreement, Plaintiffs will request that the Court issue a Final Approval Order:

- a. finally certifying this Action and Settlement Collective as an FLSA collective action under 29 U.S.C. § 216(b) for purposes of settlement only and the Settlement Class as a class action under FED. R. CIV. P. 23(a) and (b)(3) for purposes of settlement only;
- b. finding dissemination of the Settlement Notice was accomplished as directed and met the requirements of due process;
- c. finally approving the Settlement and its terms as fair, reasonable and adequate and a fair and reasonable resolution of a *bona fide* dispute;
- d. directing that the Settlement funds be distributed in accordance with the terms of this Settlement Agreement; and
- e. directing that the Action be dismissed finally, fully, forever and without prejudice upon final approval, to be converted to a dismissal with prejudice thirty (30) days after the conclusion of the check-cashing period and in full

and final discharge of any and all Released Claims.

### **SETTLEMENT FUNDS AND AWARD CALCULATION**

#### **26. Gross Settlement Amount.**

a. **Notice of Settlement Funds.** No later than seven (7) days following the Effective Date, the Settlement Administrator shall provide a report to Class Counsel and Defendant's Counsel stating the total amount of funds required to satisfy all payment obligations pursuant to this Agreement (including the employer's share of payroll taxes), allocation of those funds, wire instructions, and any other information required to facilitate the transfer of funds necessary to satisfy all payment obligations pursuant to this Agreement.

b. **Deposit.** Within fourteen (14) days after the Effective Date and the date on which the Settlement Administrator has provided all necessary documentation and wire transfer instructions to Defendant for the settlement account, Defendant shall remit the Gross Settlement Amount to a qualified settlement fund ("QSF") set up by the Settlement Administrator. The Parties agree to the creation of a QSF and that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code and Treas. Reg. §1.468B-1, 26 CFR § 1.468B-1, *et seq.*, and will be administered by the Settlement Administrator as such. There shall be no reversion of any portion of the Gross Settlement Amount to Defendant at any time after the Effective Date.

c. **Disbursement of Settlement Funds.** Within the period(s) of time set forth below, the Settlement Administrator shall make the payments in accordance with the Agreement and the Final Approval Order. If a period is not set forth below, the Settlement Administrator shall make the payment within seven (7) days after the Settlement Administrator receives the payment from Defendants.

27. **Payments.** Subject to the Court's Final Approval Order, the following amounts shall be paid by the Settlement Administrator from the Maximum Gross Settlement Amount:

a. **Service Award to Plaintiff.** Subject to the Court's approval, Plaintiff Chapaloney shall receive the Service Award for his efforts in bringing and prosecuting this matter, as well as in exchange for his broader release of claims. This payment shall be treated as non-wage income, for which a Form 1099 shall be issued. This settlement is not contingent on the Court's approval of this extra payment. If the Court awards Plaintiff less than the amount proposed herein as a Service Award, this shall not be a basis for voiding this Agreement; rather, the difference in the amount awarded shall be re-allocated to the Settlement Participants.

#### **b. Fee and Cost Payment.**

(i) Subject to the Court's approval, Class Counsel shall be entitled to seek a attorneys' fees in an amount up to one-third (1/3) of the Gross Settlement Amount, which will compensate Class Counsel for all work performed in the Action as of the date of this Settlement Agreement as well as all of the work remaining to be performed, including but not limited to documenting the Settlement, securing Court approval of the Settlement, making sure

that the Settlement is fairly administered and implemented, and obtaining final dismissal of the Action. In addition, Class Counsel shall, subject to Court approval, receive reimbursement of their out-of-pocket costs approved by the Court. If the Court awards Class Counsel less than the amount proposed herein as a Fee and Cost Payment, this shall not be a basis for voiding this Agreement; rather, the difference in the amount awarded shall be re-allocated to the Settlement Participants. In advance of the Effective Date, Class Counsel will provide the Settlement Administrator with the tax-payer identification number(s) for Class Counsel, executed W-9 forms, and wire transfer or delivery instructions.

(ii) The attorneys' fees and costs paid on behalf of Defendant pursuant to this Agreement, out of the Gross Settlement Amount, shall constitute full satisfaction of Defendant's obligations to pay amounts to any person, attorney or law firm for attorneys' fees or costs in this Action on behalf of Plaintiff and/or any Settlement Participant, and shall relieve Defendant from any other claims or liability to any other attorney or law firm for any attorneys' fees or costs to which any of them may claim to be entitled on behalf of Plaintiff or any Settlement Participant. The outcome of any proceeding the Court makes as to Class Counsel's request for attorneys' fees and costs shall not terminate this Agreement, and shall in no instance impact the total amount of the Gross Settlement Amount.

(iii) The Settlement Administrator shall issue a Form 1099 to Class Counsel for the Fee and Cost Payment. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them.

c. **Settlement Awards to Eligible Settlement Members.** Settlement Awards to Eligible Class Members shall be calculated as set forth below. The Settlement Administrator will make the payments to Eligible Class Members by check delivered via U.S. First Class Mail. Defendant, Defense Counsel, and Class Counsel will not be liable for any checks cashed by persons other than Eligible Class Members.

28. **No Claim Based Upon Distributions or Payments in Accordance with this Settlement Agreement.** No person shall have any claim against the Settlement Administrator, Defendant, Class Counsel, or Defendant's Counsel based on distributions or payments made in accordance with this Settlement Agreement.

#### **CALCULATION AND DISTRIBUTION OF SETTLEMENT AWARDS TO ELIGIBLE SETTLEMENT PARTICIPANTS**

29. **Settlement Award Eligibility.** All Eligible Settlement Participants shall be paid a Settlement Award without the need to submit a claim form and shall have the option to elect to receive their Settlement Awards via check, PayPal, Venmo or direct deposit for current employees, provided however that the default payment method shall be check. A direct payment by check will be made to each Eligible Class Member unless the Eligible Class Member elects to receive payment by PayPal, Venmo or direct deposit by following the procedures in the Settlement Website to make such a request. The Settlement Administrator shall be responsible for determining eligibility for, and the amount of, the Settlement Awards to be paid to Eligible Settlement Participants as set forth herein. The Parties agree that the calculation set forth below is fair, just, reasonable and adequate to, and in the best interest of, the Settlement Class and Collective

members.

30. **Settlement Awards to Settlement Class and Collective Members.** All Settlement Collective Members and Settlement Class Members who do not exclude themselves from the Settlement (“Eligible Settlement Participants,” defined above) shall receive a Settlement Award calculated from the Net Settlement Amount:

a. The amount of \$50 per Eligible Settlement Participant will be deducted from the Net Settlement Amount prior to the determination of *pro rata* individual settlement shares and allocated to each Eligible Settlement Participant so that each Eligible Settlement Participant receives at least \$50 in exchange for his or her release in this Settlement Agreement.

b. In addition to the \$50 payment set out in (a) above, Eligible Settlement Participants shall receive a *pro rata* portion of the Net Settlement Amount as follows:

- i. For each workweek during which the Participating Class Member worked one or more days between April 18, 2021, to October 18, 2024, the Eligible Settlement Participant shall receive one (1) settlement share.
- ii. The Net Settlement Amount will be divided by the total number of settlement shares for all Eligible Settlement Participants to reach a per share dollar figure. That figure will then be multiplied by each Eligible Settlement Participant’s number of settlement shares to determine the Eligible Settlement Participant’s Settlement Award.

31. In addition to other information contained on the Settlement Notice, the Settlement Notice shall state the estimated minimum payment the recipient is expected to receive assuming full participation of all Settlement Class and Collective Members.

32. All Settlement Award determinations shall be based on Defendant’s data. If the Parties determine, based upon further review of available data, that a person previously identified as being a Settlement Class or Collective Member is not a Settlement Class or Collective Member, or an individual who was not previously identified as a Settlement Class or Collective Member is in fact a Settlement Class or Collective Member but was not so included, the Parties shall promptly notify the Settlement Administrator of the need to make such addition or deletion as appropriate. In no case, however, will such changes impact the Gross Settlement Amount.

33. Fifty percent (50%) of the Settlement Awards to Eligible Settlement Participants shall be considered wages subject to the withholding of all applicable local, state, and federal taxes. The Settlement Administrator shall make the required withholdings and shall issue an IRS Form W-2 to each Eligible Settlement Participant for these payments. The remaining fifty percent (50%) of the Settlement Awards to Eligible Settlement Participants shall be considered liquidated damages or non-wage recovery, which shall not be subject to withholdings or deductions. The Settlement Administrator shall issue an IRS Form 1099-MISC to each Eligible Settlement Participant for these payments.

34. Settlement Participants shall be solely responsible for the reporting and payment of any federal, state and/or local income or other taxes on payments received pursuant to this Agreement. All applicable income and any other taxes will be the responsibility of the individual Settlement Participant. Class Counsel and Defendant's Counsel do not intend for this Settlement Agreement to constitute legal advice relating to the tax liability of any Settlement Participant. To the extent that this Settlement Agreement, or any of its attachments, is interpreted to contain or constitute advice regarding any federal, state or local tax issue, such advice is not written or intended to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

35. The Settlement Administrator shall provide to Defendant's Counsel and Class Counsel with a final report of all gross Settlement Awards at least ten (10) business days before the Settlement Awards to Eligible Settlement Participants are mailed. The Settlement Administrator shall calculate appropriate tax deductions prior to mailing the Settlement Awards.

36. The Settlement Administrator shall mail all Settlement Awards to Eligible Settlement Participants within forty-five (45) days after the Effective Date or as soon as reasonably practicable after the deposit of the Gross Settlement Amount into the QSF. The Settlement Administrator shall then provide written certification of mailing to Class Counsel and Defendant's Counsel.

37. All Settlement Award checks shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance. The Settlement Administrator shall send a reminder letter via U.S. mail and email (to the extent email addresses are available) to those who have not yet cashed their settlement check after 60 days, and the Settlement Administrator may call those (to the extent phone numbers are available) who have still not cashed their check to remind them to do so within the last 60 days of the check-cashing period. The Settlement Administrator and the Parties will work cooperatively to issue replacement checks as necessary.

38. To the extent administratively feasible (specifically, in all cases unless the excess amount exceeds the cost of mailing new checks), any residual amount remaining (*e.g.*, from uncashed checks) after the first distribution and the expiration of the time period to cash settlement checks (180 days) will be reallocated and paid in a second check *pro rata* to Participating Class Members who cash their initial checks (the "Second Distribution"). Failure to cash either check shall have no impact on the enforceable nature of the Released Claims for Class Members who do not timely and properly opt out. The check cashing period for the Second Distribution shall be ninety (90) days (or such time as agreed to by the Parties so as to avoid a second tax year for administration purposes). If Participating Class Members do not cash or deposit their settlement checks within the ninety (90) day period, their settlement check will be void and a stop-payment will be placed.

39. The Settlement Administrator will be responsible for (1) any tax reporting obligations to the necessary federal, state, and local tax authorities related to payments made to Class Counsel or Participating Class Members; and (2) issuing any IRS tax forms to Class Counsel or Participating Class Members at the end of the applicable tax year.

40. **Remaining Monies.** Within twenty (20) days after the expiration of the check-



cashing period for the Second Distribution, the Settlement Administrator shall stop payments on any checks issued to Eligible Settlement Participants that have not been negotiated and shall notify counsel for all Parties the total amount of unclaimed funds. Any remaining funds shall be paid to the *cy pres* recipient agreed to by the Parties, Armstrong County Community Action of Pennsylvania, which shall be submitted to the Court for approval at the Final Approval Hearing. Participating Class members shall be bound by the terms of this Agreement even if they fail to timely negotiate their checks.

41. **Cooperation.** The Parties agree to cooperate with the Settlement Administrator and one another to the extent reasonably necessary to carry out the provisions of this Agreement. The Parties will require the Settlement Administrator to indemnify and hold harmless the Parties for and against any claims or liabilities resulting from errors or omissions in its administration of the QSF.

### **MISCELLANEOUS**

42. **No Admission of Liability.** This Agreement is the result of a compromise of disputed claims between the Parties. This Settlement Agreement and all related documents are not and shall not be construed as an admission by Defendant or any of the Released Parties of any fault or liability or wrongdoing.

43. **Defendant's Legal Fees.** Defendant's legal fees and expenses in this Action shall be borne by Defendant.

44. **Nullification of the Settlement Agreement.** In the event: (a) the Court does not preliminarily or finally approve the Settlement as provided herein; or (b) the Settlement does not become Final for any other reason; or (c) the Effective Date does not occur, the Parties agree to engage in follow up negotiations with the intent of resolving the Court's concerns that precluded approval, and if feasible, to resubmit the settlement for approval within thirty (30) days. If the Settlement is not approved as resubmitted or if the Parties are not able to reach another agreement, then any Party may void this Agreement; at that point, the Parties agree that each shall return to their respective positions as existed on October 17, 2024, and that this Agreement shall not be used in evidence or argument in any other aspect in the Action.

45. **Inadmissibility of Settlement Agreement.** Except for purposes of settling this Action, or enforcing its terms (including that claims were settled and released), resolving an alleged breach, or for resolution of other tax or legal issues arising from a payment under this Settlement Agreement, neither this Agreement, nor its terms, nor any document, statement, proceeding or conduct related to this Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in evidence as, received as, or deemed to be evidence in this or any other proceeding, for any purpose adverse to any of the Parties, including, without limitation, evidence of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage.

46. **Computation of Time.** For purposes of this Agreement, if the prescribed time period in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday, such time period shall be continued to the following business day. The term "days"

shall mean calendar days unless otherwise noted.

47. **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement. Further, without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

48. **Amendment or Modification.** Prior to the Preliminary Approval Order by the Court, this Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest. Following the Preliminary Approval Order by the Court, this Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest and must be approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto and approved by the Court.

49. **Entire Settlement Agreement.** This Agreement with exhibits hereto constitutes the entire Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized in such documents. All prior or contemporaneous negotiations, memoranda, agreements, understandings, and representations, whether written or oral are expressly superseded hereby and are of no further force and effect. Each of the Parties acknowledges that it has not relied on any promise, representation or warranty, express or implied, not contained in this Agreement. No rights hereunder may be waived except in writing.

50. **Authorization to Enter Into Settlement Agreement.** All Parties have been represented by counsel throughout all negotiations which preceded the execution of this Agreement. This Agreement is made with the consent and advice of counsel. Plaintiff and Class Counsel represent that the terms and conditions of this settlement are fair, reasonable, adequate, beneficial to and in the best interest of the Settlement Class and Collective Members. The signatories to this Agreement warrant and represent that they are authorized to enter into this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel shall cooperate with each other and use their best efforts to effect the implementation of the Agreement. In the event that the Parties are unable to reach resolution on the form or content of any document needed to implement this Agreement, or on any supplemental provisions or actions that may become necessary to effectuate the terms of this Agreement, the Parties shall seek the assistance of the mediator, Judge Lenihan, to resolve such disagreement.

51. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of Plaintiff, Opt-In Plaintiff, Defendant, the Settlement Participants and their heirs, beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any corporation or any entity with which any party may merge, consolidate or reorganize. The Parties hereto represent, covenant and warrant they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity any portion of any Released Claim, liability, claim, demand, action, cause of action or rights herein released and

discharged except as set forth herein.

52. **Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile, email, and electronic signature. All executed counterparts and each of them shall be deemed to be one and the same instrument. All executed copies of this Agreement and photocopies thereof (including copies transmitted by facsimile, email, or other electronic means) shall have the same force and effect and shall be as legally binding and enforceable as the original.

53. **Severability.** Should any provision of this Agreement be declared wholly or partially illegal, invalid, or unenforceable, the offending provision shall be stricken, and all remaining provisions shall remain in full force and effect and shall be unaffected by such declaration.

54. **No Signature Required by Settlement Class or Collective Members.** Only Plaintiff, Defendant, and the respective counsel of each of them will be required to execute this Settlement Agreement. The Settlement Notice will advise all Settlement Class and Collective Members of the binding nature of the release, and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class or Collective Member.

55. **Cooperation and Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement; hence the drafting of this Agreement shall not be construed against any of the Parties. The Parties agree the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

56. **Governing Law.** All terms of this Settlement Agreement and the exhibits hereto shall be governed by, interpreted, and enforced according to Pennsylvania law, both in its procedural and substantive aspects, and shall be subject to the continuing exclusive jurisdiction of the Court.

57. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement and all orders and judgments entered in connection therewith, and the Parties and their Counsel submit to the jurisdiction of the Court for this purpose. The applicable Settlement Participants' claims released by the provisions of this Settlement shall be dismissed with prejudice upon Final Approval.

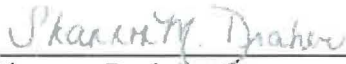
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IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereby execute this Settlement Agreement as follows:

**PLAINTIFF:**  Date: 12/17/2024, 2024  
Edward Chapaloney, Jr.


**DEFENDANT:**  Date: 12/17, 2024  
Rosebud Mining Company

**APPROVED AS TO FORM BY CLASS COUNSEL:**

 Date: 12/17, 2024  
Shannon Draher  
NILGES DRAHER PC  
7034 Braucher Street NW, Suite B  
North Canton, OH 44720

 Date: 12/17/2024, 2024  
Sarah R. Schalman-Bergen  
Krysten Connon  
LICHTEN & LISS RIORDAN, P.C.  
729 Boylston Street, Suite 2000  
Boston, MA 02116

**APPROVED AS TO FORM BY DEFENDANT'S COUNSEL:**

 Date: 12/17, 2024  
James Urban  
Katherine McLay  
JONES DAY  
500 Grant Street, Suite 4500  
Pittsburgh, PA 15219

**EXHIBIT A**  
**(Notice of Class Action  
Settlement)**

**NOTICE OF CLASS ACTION SETTLEMENT AND FINAL APPROVAL HEARING**

*Chapaloney v. Rosebud Mining Company, 24-cv-00580 (W.D. Pa.).*

TO: NAME Settlement Website: [INSERT QR CODE]  
ADDRESS  
ADDRESS

*The Court authorized this Notice of Class Action Settlement.  
This is not a solicitation. This is not a lawsuit against you, and you are not being sued.*

**PLEASE READ THIS NOTICE CAREFULLY.**

**1. Why Should You Read This Notice?**

This Notice explains your right to receive money from this Settlement, exclude yourself (“opt out”) from the Settlement, or object to the Settlement (if applicable). The United States District Court for the Western District of Pennsylvania has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on [REDACTED], 202\_\_ at [REDACTED], before the Honorable Cathy Bissoon, in Courtroom 3A of the Joseph F. Weis, Jr. Courthouse, 700 Grant Street, Pittsburgh, PA 15219. You are not required to attend the hearing and you do not need to do anything in response to this notice, as explained below.

You received this Notice of Settlement (“Notice”) because the records of Rosebud Mining Company show you performed underground coal mining work for Rosebud between April 18, 2021, and October 18, 2024.

The parties to the lawsuit agreed to a binding settlement of this action, and you may be entitled to receive money from this settlement.

**If you do nothing, you will receive a check from the settlement as explained below.  
Rosebud encourages you to deposit the check and benefit from the settlement.**

**2. What is this Lawsuit About?**

This case was brought by a former underground miner at Rosebud. He claims that he and other workers, including you, were not paid for time worked before and after the scheduled shifts and that Rosebud did not properly calculate overtime, including by including the payment of bonuses in the regular rate of pay. Plaintiff claims that Rosebud violated the Fair Labor Standards Act and Pennsylvania Law.

Rosebud denies Plaintiff’s claims and that it violated the Fair Labor Standards Act or Pennsylvania law. Rosebud asserts that it paid underground coal miners for all time worked before and after scheduled shifts; and that it accurately calculated the regular rate for purposes of paying overtime compensation.

A settlement is a compromise that allows the Parties reach resolution through compromise. The Parties participated in a mediation with the assistance of a former Magistrate Judge of the United States District Court for the Western District of Pennsylvania. As a result of that mediation, the Parties have agreed to this settlement, instead of continuing to trial.

### **3. What Are the Terms of the Settlement?**

Under the terms of the Settlement Agreement, Rosebud has agreed to pay Two Million Six Hundred Thousand Dollars (\$2,600,000.00) (the “Gross Settlement Amount”). This amount is “non-reversionary,” meaning no portion of the funds will be returned to Rosebud.

The Gross Settlement Amount includes amounts to cover (i) a \$20,000 Reserve Fund for late claims or disputes; (ii) a Service Award to the Plaintiff in the amount of up to \$10,000 in exchange for his service to the class and in addition for his broader release of claims; (iii) the Fee and Cost Payment to Class Counsel, not to exceed \$866,667 (i.e., one-third of the Gross Settlement Amount) plus costs not to exceed \$25,000; (iv) Settlement Administration costs in the amount not to exceed \$12,000; and (v) Settlement Awards. After deductions of amounts for payments in (i) – (iv) above, what remains of the Gross Settlement Amount shall be divided into monetary Settlement Awards to the Settlement Class and Collective Members calculated under the formula provided below.

*Under the terms of the proposed settlement, you do not need to do anything to receive a settlement award under the terms of the settlement, and a check will automatically be sent to you if the Court grants final approval to the settlement unless you choose to exclude yourself from the settlement as described below*

### **4. How Much Can I Expect to Receive if the Settlement is Approved?**

Your Settlement Award is calculated based on the records submitted by Defendant. Specifically, the settlement payments are calculated as follows:

The amount of \$50 is allocated to each Eligible Settlement Participant, so every person receives at least \$50 in exchange for his/her release in this Settlement Agreement. In addition to the \$50 payment, each Eligible Settlement Participant will receive *a pro rata* portion of the applicable Net Settlement Amount, calculated as follows:

- i. For each workweek during which the Eligible Settlement Participant worked one or more days between April 18, 2021, and October 18, 2024, the Eligible Settlement Participant shall receive one (1) settlement share.
- ii. The Net Settlement Amount will be divided by the total number of settlement shares for all Eligible Settlement Participants to reach a per share dollar figure. That figure will then be multiplied by each Eligible Settlement Participant’s number of settlement shares to determine the Eligible Settlement Participant’s Settlement Award.

Your total estimated settlement payment will be based on      number of workweeks for the time period between April 18, 2021, and October 18, 2024, as shown in Defendant’s records. Based on

the formula above, your minimum estimated Settlement Award would be [REDACTED]. **This amount is an estimate, and your final award may be different than this amount.**

If you have questions about the number of eligible workweeks used to calculate your Settlement Award, you may contact the Settlement Administrator at the contact information below and must submit any disputes by [DATE].

Fifty (50%) of your Settlement Award represents back wages, and 50% represents liquidated damages or other non-wage payments. The Settlement Administrator will issue you an IRS Form W-2 for 50% of your payment and an IRS Form 1099 for the other 50% of your payment. Neither the Settlement Administrator nor the Parties can provide you with any tax advice. You should contact your accountant or tax related advisors for any questions about taxes you may owe on these amounts.

**It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.**

#### 5. What are the Releases?

If the Court grants final approval of the Settlement, the lawsuit will be dismissed with prejudice against Defendant, and, upon the Effective Date, all Settlement Class Members who have not opted out of the Settlement will release Defendant and all Released Parties from all known and unknown claims and, demands, and causes of action that were asserted in the lawsuit based on the facts of the Complaint for overtime compensation, straight time, and minimum wages), liquidated damages, penalties, interest, fees/costs, and any other relief otherwise available under the PMWA; any and all claims, demands, and causes of action seeking relief otherwise available under the PMWA; any and all claims, demands, and causes of action that could have been asserted in the lawsuit based upon the facts alleged in the operative complaint, including any and all state/local laws and regulations and common law theories under Pennsylvania law, including wage payment/deduction and notice claims such as under the PWPCL between April 18, 2021, and October 18, 2024.

With the exception of the Named Plaintiff, only Participating Settlement Class Members who cash or deposit their Settlement Award check will opt into this lawsuit and will release their Fair Labor Standards Act (FLSA) claims against Defendant and all Released Parties that accrued between April 18, 2021, and October 18, 2024. The full text of the Releases is contained in the Settlement Agreement and may be obtained from [Settlement Administrator contact info].

#### 6. What Are My Rights and Options?

- **Do Nothing:** If you do nothing and the Court grants final approval to the Settlement, you will automatically receive a Settlement Award. By cashing or depositing your Settlement Award, you will opt into the Collective Action part of this case which alleges FLSA violations, and you will release your FLSA claims. If you do nothing and the Court grants final approval to the Settlement, you also will release any state law claims, if applicable, as provided for in Section 5 above.



If you wish to participate in the settlement and receive your Settlement Award via PayPal or Venmo instead of check, you may elect to do so by submitting an Election Form on the Settlement Website; [INSERT URL]. If you are a current employee of Rosebud, you may also elect to receive your Settlement Award via direct deposit by submitting an Election Form on the Settlement Website ; [INSERT URL]. If you do nothing and do not elect to receive payment via PayPal or Venmo or direct deposit, a check will be mailed to you following final approval of the Settlement.

- **Request for Exclusion/Opt-Out:** If you are a member of the Settlement Class and do not wish to be bound by the Settlement, you must submit a written exclusion from the Settlement (“opt-out”), postmarked by [INSERT]. The written request for exclusion must contain your full name, address, telephone number, email address (if applicable), must be signed individually by you, and must unequivocally state that you request to be excluded from the settlement. A request for exclusion may be withdrawn by sending written notice of withdrawal of a request for exclusion to the Settlement Administrator. No opt-out request may be made on behalf of a group. A request for exclusion must be sent by mail to the Settlement Administrator, at [INSERT ADDRESS]. Class Counsel will ensure that all exclusion letters are timely filed with the Court. You cannot exclude yourself by phone or by e-mail. **Any person who requests exclusion (opts out) of the Settlement will not be entitled to any Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.**
- **Object:** If you are a member of the Settlement Class and wish to object to the Settlement, you must submit a signed written statement objecting to the Settlement by [INSERT]. The statement must state the factual and legal grounds for your objection to the Settlement. Your objection must state your full name, address, telephone number, and email address (if applicable), whether you intend to appear at the Final Approval Hearing, the grounds on which you desire to appear and be heard (if any) at the Final Approval Hearing, if you are represented by counsel, and the name and address of your counsel (if any). Any objection must be sent by mail to the Settlement Administrator, at [INSERT ADDRESS]. If you submit a written objection, you may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the parties to the Lawsuit. Your written objection must state whether you will attend the Final Approval Hearing, the grounds on which you desire to appear and be heard (if any) at the Final Approval Hearing, whether you are represented by counsel, and the name and address of your counsel (if any). To be heard at the Final Approval Hearing you must also not have requested to be excluded from the Settlement. Class Counsel will ensure that all objection letters are timely filed with the Court. You cannot object by phone or by e-mail. If you wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you shall be deemed to have waived any objection and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The postmark date of mailing the objection to Class Counsel and Defendant’s counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. Objections shall only be considered if the Settlement Class Member has not opted out of the Settlement.

**7. Can Defendant Retaliate Against Me for Participating in this Lawsuit?**

No. Your decision as to whether or not to participate in this Lawsuit will in no way affect your work or employment with Rosebud or future work or employment with Rosebud. It is unlawful for Rosebud to take any adverse action against you as a result of your participation in this Lawsuit. Rosebud encourages you to participate in the settlement, cash your settlement award, and release your claims.

**8. What Does Rosebud Want Me To Do?**

*Rosebud wants everyone to cash their checks and benefit from the Settlement.*

**9. Who Are The Attorneys Representing Plaintiff And The Settlement Class?**

Plaintiff and the Settlement Class are represented by the following attorneys:

Shannon Draher  
**Nilges Draher PC**  
7034 Braucher Street NW, Suite B  
North Canton, OH 44720  
(330) 470-4428  
sdraher@ohlaborlaw.com

Sarah Schalman-Bergen  
Krysten Connon  
**Lichten & Liss-Riordan, P.C.**  
729 Boylston St., Suite 2000  
Boston, MA 02116  
(267) 256-9973  
ssb@llrlaw.com  
[kconnon@llrlaw.com](mailto:kconnon@llrlaw.com)

**10. How Will the Attorneys for the Settlement Class Be Paid?**

Class Counsel will be paid from the Gross Settlement Amount. You do not have to pay the attorneys who represent the Settlement Class. The Settlement Agreement provides that Class Counsel will receive attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount plus their out-of-pocket costs, not to exceed \$XXX. Class Counsel will file a motion requesting approval for this amount with the Court. The amount of attorneys' fees and costs awarded will be determined by the Court at the Final Approval Hearing.

**11. Who May I Contact If I Have Further Questions?**

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the telephone number or email address listed below or Class Counsel listed above. Please refer to the Rosebud Coal Settlement.

[INSERT]  
[INSERT]  
[INSERT]

You may also inspect the Court files at the Office of the Clerk, United States District Court for the Western District of Pennsylvania, during regular business hours (typically 8:30 a.m. to 4:30 p.m., Monday through Friday), or through the Court's Public Access to Court Electronic Records (PACER) online service.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is available through the Settlement Administrator and publicly accessible and on file with the Court.

**PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR ROSEBUD FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.**