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Attorney for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF RIVERSIDE

JAVIER PEREZ as an individual and on
behalf of all employees similarly situated

Plaintiff,

v.

WEST COAST DRYWALL, INC., a
California corporation;
and DOES 1 through 50, inclusive

Defendants.

Case No.: RIC1401694

Assigned to: Hon. Craig G. Riemer
Department: 5

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE**

Complaint Filed: February 21, 2014
Trial Date: None Set

1 This Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement”
2 or “Settlement”) is made and entered into by and between Plaintiff Javier Perez (“Plaintiff”),
3 on the one hand, and Defendants West Coast Drywall, Inc. as well as Paul Diguisseppi, Denise
4 Diguisseppi, and Royal West Drywall, Inc., on the other hand. West Coast Drywall, Inc., Paul
5 Diguisseppi, Denise Diguisseppi, and Royal West Drywall, Inc. are collectively referred to
6 herein as “the Defendants.” Plaintiff and the Defendants are collectively referred to herein as
7 “the Parties”. This Settlement Agreement supersedes and replaces any and all settlement
8 agreements/joint stipulation(s) relating in any way to the above-captioned litigation that were
9 previously entered into by the Parties and putative class members referenced therein.

10 **RECITALS**

11 **1.** WHEREAS, on February 21 2014, Plaintiff, on behalf of himself and all employees
12 similarly situated, filed the Complaint herein alleging: 1.) Failure to Pay All Wages; 2.) Failure
13 to Provide Meal Periods; 3.) Failure to Provide Rest Periods; 4.) Failure to Pay Wages upon
14 Ending Employment; 5.) Failure to Keep Accurate Payroll Records (Labor Code Section 1174
15 and Section 226); 6.) Unfair Competition (Business and Professions Code Section 17200 et
16 seq.); and 7.) Violation of the California Labor Code Private Attorney’s General Act (Cal.
17 Labor Code Sections 2698-2699); and

18 **2.** WHEREAS, Pursuant to a Stipulation between Plaintiff and the Defendants, Plaintiff
19 filed a First Amended Complaint alleging two (2) new causes of action under Labor Code
20 section 2802, Labor Code 558, and adding three (3) new Defendants, including Paul
21 Diguisseppi, Denise Diguisseppi, and Royal West Drywall, Inc.; and

22 **3.** WHEREAS, the matter has settled as more fully described below, and by this
23 Settlement, the Parties intend to settle and resolve all claims alleged on behalf of Plaintiff and
24 the putative class members he represents (referred to as the Settlement Class herein) against the
25 Defendants in the instant case (the “Lawsuit”); and

26 **4.** WHEREAS counsel for Plaintiff, Kevin Mahoney of the Mahoney Law Group, APC
27 (“Class Counsel”) diligently pursued an investigation of the proposed Settlement Class’ claims
28 against the Defendants, including any and all applicable defenses and the applicable law. The

1 investigation included, *inter alia*, several rounds of discovery, including but not limited to
2 Form Interrogatories-General, Form Interrogatories-Employment, Special Interrogatories,
3 Request for Admissions, and Request for Production of Documents, informal exchange of
4 information, and numerous discussions between Class Counsel and the Defendants' counsel.
5 Based on the foregoing investigation and evaluation, as well as a mediation that the Parties
6 participated in with Honorable Peter D. Lichtman, on April 10, 2015, Class Counsel is of the
7 opinion that the terms set forth in the Settlement Agreement are fair, reasonable, and adequate,
8 and are in the best interests of the Settlement Class. This Settlement Agreement was reached
9 after extensive arm's-length negotiations, and was negotiated in light of all known facts and
10 circumstances, including the risks of significant delay and uncertainty associated with
11 litigation, various defenses asserted by the Defendants, and numerous potential appellate
12 issues; and

13 **5.** WHEREAS the Defendants adamantly deny any liability or wrongdoing of any kind
14 associated with the claims alleged in the Lawsuit and further deny that the Lawsuit is appropriate
15 for class treatment for any purpose other than this Settlement, and the Defendants enter into this
16 Settlement only to buy their peace from expensive and time-consuming litigation; and

17 **6.** WHEREAS Plaintiff and the Defendants stipulate that the Lawsuit will
18 be compromised and settled pursuant to the terms and conditions set forth in this Settlement
19 Agreement and that after, and subject to, the Court's final approval of this Settlement, judgment
20 shall be entered in this Lawsuit. Any such forthcoming final approval by the Court shall be
21 subject to its continued jurisdiction as set forth below, subject to the recitals set forth above
22 which by this reference become an integral part of this Settlement Agreement, and subject to the
23 following definitions, terms, and conditions:

24 **DEFINITIONS**

25 **7.** The following definitions are applicable to this Settlement Agreement. Definitions
26 contained elsewhere in this Settlement Agreement, however, shall also be effective as defined
27 herein.

28 **8.** "Claims Administrator" means the third-party class action settlement claims

1 administrator selected by the Parties and approved by the Court for the purposes of administering
2 this Settlement. The Parties each represent that they do not have any financial interest in the
3 Claims Administrator or otherwise have a relationship with the Claims Administrator that could
4 create a conflict of interest. Class Counsel proposes Phoenix Settlement Administrators act as the
5 Claims Administrator for this Settlement, subject to the Court's approval.

6 **9.** "Claims Administration Costs" means the costs payable to the Claims Administrator for
7 administering this Settlement, including, but not limited to, printing, tracking and distributing
8 documents for this Settlement, tax reporting, distributing the Net Settlement Amount and Class
9 Counsel Award, and providing necessary reports and declarations, as requested by the Parties.
10 The Claims Administration Costs shall not exceed Nineteen Thousand Dollars (\$19,000.00) and
11 shall be paid from the Class Settlement Amount.

12 **10** "Class Counsel Award" means all attorneys' fees and costs which are approved by the
13 Court for the litigation and resolution of the Lawsuit, including, but not limited to, costs
14 associated with documenting the Settlement, securing the Court's approval of the Settlement,
15 administering the Settlement, obtaining entry of the Judgment terminating the Lawsuit, and
16 expenses for any experts. The Parties agree that Class Counsel shall request the Court's approval
17 of attorneys' fees and costs on behalf of Class Counsel not in excess of Two Hundred Sixty Six
18 Thousand Six Hundred Sixty Six Dollars (\$266,666.00) and costs not to exceed Fifteen
19 Thousand Dollars (\$15,000.00). The Defendants have agreed not to oppose Class Counsel's
20 request for fees and reimbursement of costs as set forth above. Any portion of the Class Counsel
21 Award not awarded to Class Counsel shall be added to the Net Settlement Amount for
22 distribution to the Class.

23 **11.** "Class List" means a list of Class Members that West Coast Drywall, Inc. and Royal
24 West Drywall, Inc. will diligently and in good faith compile from their records and provide to the
25 Claims Administrator and to Class Counsel within twenty (20) days after preliminary approval of
26 this Settlement. The Class List shall be formatted in Microsoft Office Excel and shall include
27 each Class Member's full name; most recent mailing address and telephone number; Social
28 Security number; dates of employment in California; and status of employment.

1 **12.** “Class Members” include: those individuals among approximately 1600 current and
2 former Californian on-exempt employees of Defendants, West Coast Drywall, Inc. and Royal
3 West Drywall, Inc. who work or worked for said Defendants during the Class Period who do not
4 submit valid and timely Requests for Exclusion from the class membership pursuant to the
5 Request for Exclusion procedures outlined herein.

6 **13.** “Class Period” means the period of February 21, 2010 through the date of preliminary
7 approval of Class Action Settlement by the Court.

8 **14.** “Class Representative” means Plaintiff Javier Perez.

9 **15.** “Class Representative Enhancement Payment” means the amount to be paid to the Class
10 Representative in recognition of his efforts and work in prosecuting the Lawsuit on behalf of
11 Class Members. The Parties agree that the enhancement payment to the Class Representative
12 shall not exceed Seven Thousand Five Hundred Dollars (\$7,500.00). Defendants have agreed
13 not to object to or otherwise oppose this request. Any portion of the Class Representative
14 Enhancement Payments not awarded to the Class Representative will be added to the Net
15 Settlement Amount for distribution to the Class.

16 **16.** “Class Settlement Amount” means the total amount of Eight Hundred Thousand Dollars
17 (\$800,000.00) inclusive of payments to the Settlement Class, attorneys’ fees, litigation costs,
18 Claims Administration Costs, Class Representative Enhancement Payment, any applicable state
19 and/or federal taxes, and penalties and interest, and further including penalties for PAGA claims
20 as further described herein such that the Class Settlement Amount is an all inclusive amount and
21 represents the total payment by Defendants to resolve the Lawsuit in its entirety including
22 payroll taxes, fees, costs, and any other payment required to be made associated with the Lawsuit
23 and the Settlement.

24 **17.** “Court” means Riverside Superior Court, or any other court taking jurisdiction of the
25 Lawsuit.

26 **18.** “The Defendants” include West Coast Drywall, Inc., Royal West Drywall, Inc., Paul
27 Diguisseppi, Denise Diguisseppi, and any and all of their respective officers, directors, employees
28 and agents.

1 **19.** “Effective Date” means the latest of: (i) if there are no objections filed to the Settlement,
2 the date the Court enters an Order granting final approval of this Settlement; (ii) if objections are
3 filed to the Settlement, but there is no timely appeal filed, the date of expiration of the time to
4 appeal regarding an Order granting final approval of this Settlement; or (ii) when the judgment
5 becomes a Final Judgment.

6 **20.** “Final Judgment” means the latest of: (i) the date of final affirmance on an appeal of the
7 Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the
8 Judgment; or (iii), the expiration date of the time for the filing or noticing of any form of valid
9 appeal from the Judgment.

10 **21.** “Labor Workforce and Development Agency Payment” means the amount that the
11 Parties have agreed to pay to the California Labor and Workforce Development Agency
12 (“LWDA”) in connection with the Private Attorneys General Act of 2004, California Labor Code
13 sections 2698, et seq. (hereinafter “PAGA”) from the Class Settlement Amount in the sum of
14 Two Thousand Five Hundred Dollars (\$2,500) which is allocated for PAGA penalties, of which
15 One Thousand Eight Hundred Seventy Five Dollars (\$1875) shall be paid as penalties to the
16 LWDA for the PAGA claims and the remaining amount (\$625) shall be distributed directly to
17 the Net Settlement Amount. None of the Two Thousand Five Hundred Dollar (\$2,500) paid in
18 connection with the PAGA is subject to attorneys’ fees.

19 **22.** “Net Settlement Amount” means the Class Settlement Amount less attorneys’ fees
20 and costs, the Class Representative Enhancement Payment, the Labor Workforce and
21 Development Agency Payment, and administration expenses. Any amounts not awarded for
22 attorneys’ fees and costs, the Class Representative Enhancement Payment, or settlement
23 administration shall be returned to the Net Settlement Amount.

24 **23.** “Individual Settlement Payment” means each individual Class Member’s allocated share
25 of the Net Settlement Amount which shall be determined as follows:

26 a. Each Class Member for whom the Defendants’ records indicate such employee worked
27 during the Class Period shall be allocated an Individual Settlement Payment on a pro-rata basis
28 based on the number of Qualifying Workweeks worked during the Class Period.

1 **24.** To the extent the amount actually claimed exceeds the value of the Net Settlement
2 Amount, each Class Member's Individual Settlement Payment shall be reduced on a pro rata
3 basis so the maximum settlement payout to Class Members is the value of the Net Settlement
4 Amount. "Net Individual Settlement Payment" means the net settlement payment made to each
5 individual Class Member after the Claims Administrator deducts applicable mandatory federal,
6 state, and local payroll taxes and withholdings from that portion of the Individual Settlement
7 Amount designated as wages.

8 **25.** "Notice Packet" means the Notice of Pendency of Class Action Settlement (Exhibit 1),
9 Request for Exclusion Form (Exhibit 2), and Notice of Objection to Class Action Settlement
10 Form (Exhibit 3) in a form to be agreed upon by the Parties, which the Court orders to be sent to
11 all Class Members via regular First Class U.S. Mail. The "Notice Packet" shall be sent to Class
12 Members in both the English and Spanish languages.

13 **26.** "Class" and "Class Members" means all Class Members who do not submit a Request
14 For Exclusion.

15 **27.** "Preliminary Approval" means the Court order granting preliminary approval of the
16 Settlement Agreement.

17 **28.** "Qualifying Workweeks" shall mean full (seven day) weeks each Class
18 Member was employed by Defendants during the Class Period, deducting any vacation, sick
19 time, or leave periods. The number of Qualifying Workweeks shall be calculated by adding the
20 days between the date in which the Class Member was employed by the Defendant during the
21 Class Period, divided by 7, rounded up to the next nearest whole number.

22 **29.** "Released Claims" means any and all claims, rights, demands, liabilities and causes of
23 action alleged in the First Amended Complaint and those based on the facts alleged in the First
24 Amended Complaint herein. The Released Claims include but are not limited the following
25 categories of claims and allegations: all claims for the failure to pay all wages due, including
26 overtime and minimum wage (California Labor Code sections 510, 1194, 1197 & 1197.1); all
27 claims for the failure to provide meal and rest periods (California Labor Code sections 226.7 and
28 512, Sections 11 and 12 of the IWC Wage Orders, and California Code of Regulations, Title 8,

1 section 11000, et seq.); all claims for the failure to timely pay all wages during employment
2 (California Labor Code section 204); all claims for failure to timely pay wages upon termination
3 of employment (California Labor Code sections 201 to 203); all claims for the failure to provide
4 compliant wage statements (California Labor Code sections 226(a), 1174, and 1175, and IWC
5 Wage Orders 7 (Non-Compliant Wage Statements); all claims for failure to reimburse for
6 necessary business expenses (California Labor Code section 2802) all claims under California
7 Labor Code section 558, claims pursuant to the California Private Attorneys General Act
8 (“PAGA”), (California Labor Code section 2698, et seq.) all claims brought under California
9 Business and Professions Code sections 17200, et seq., claims for attorneys’ fees and costs, and
10 unfair business practices, and all claims for wage order violations under California Labor Code
11 sections 1198 & 1199. Released Claims include all claimed or unclaimed compensatory,
12 consequential, incidental, liquidated, restitution, interest, costs and fees, injunctive or equitable
13 relief, and any other remedies available at law or equity allegedly owed or available to the Class
14 and/or Class Representative as alleged in the First Amended Complaint and those based on the
15 facts alleged in the First Amended Complaint against the Defendants for the time period of
16 February 21, 2010 up to and including the Date of Preliminary Approval.

17 **30.** “Request for Exclusion” means Exhibit 2, in a form to be agreed to by the Parties, signed
18 by a Class Member that unequivocally requests that he or she be excluded from the Settlement
19 which also must: (a) set forth the name, address, telephone number and last four digits of the
20 Social Security Number or employee identification number of the person requesting exclusion;
21 (b) be addressed to the Claims Administrator at the specified address indicated in the Notice
22 Packet; and (c) be postmarked on or before the deadline.

23 **31.** “Workweek” means a period of seven consecutive 24-hour days, during which
24 a Class Member worked.

25 **32.** “Notice of Objection” means Exhibit 3, in a form to be agreed to by the Parties, that is
26 completed and signed by a Class Member and must include the Class Member’s name, most
27 current address, most current telephone number, and the basis for the objection. Said Notice of
28 Objection must be sent to the Court on or before the deadline specified in the Class Notice and

1 must be timely served on Class Counsel and counsel for Defendants.

2 **TERMS OF AGREEMENT**

3 **33.** Plaintiff, on behalf of himself and the Class Members, and the Defendants,
4 agree as follows:

5 **Defendants' Primary Obligations under the Settlement Agreement**

6 **34.** Funding the Class Settlement Amount. Within seventy-five (75) calendar days after the
7 Effective Date, the Defendants shall deposit the Class Settlement Amount with the Claims
8 Administrator. The Class Settlement Amount shall be used, after the Effective Date, to: (1) pay
9 the Class Counsel Award; (2) pay the Class Representative Enhancement Payment; (3) pay the
10 Claims Administration Costs to the Claims Administrator; (4) pay the claims of all Class
11 Members and associated taxes; and (5) pay the amount designated to be paid to the LWDA.

12 **Calculations and Order of Payments to Be Taken from the Class Settlement Amount**

13 Payments to be taken from the Class Settlement Amount shall be calculated in the
14 following order:

15 **35.** Payment of Class Counsel Award. Defendants agrees not to oppose or impede any
16 application or motion by Class Counsel for a Class Counsel Award comprised of fees not in
17 excess of Two Hundred Sixty Six Thousand Six Hundred Sixty Six Dollars (\$266,666.00), and
18 reimbursement of costs and expenses not to exceed Fifteen Thousand Dollars (\$15,000). Within
19 five (5) business days after the Defendants deposit the Class Settlement Amount with the Claims
20 Administrator, the Claims Administrator will release to Class Counsel the total amount of the
21 respective payments due to Class Counsel. Class Counsel shall be solely and legally responsible
22 to pay all applicable taxes on the payment made pursuant to this paragraph and shall indemnify
23 and hold harmless Defendants from any claim or liability for taxes, penalties or interest arising as
24 a result of the payment. IRS Form 1099 – MISC, Box 14 shall be provided to Class Counsel for
25 the payments made pursuant to this paragraph. In consideration of the awarded attorneys' fees
26 and expenses, Class Counsel waives all claims to any further attorneys' fees and expenses in
27 connection with the Lawsuit, except as provided below. However, if the Court awards less than
28 the requested fees and/or costs and expenses, Class Counsel then does not consent to any waiver

1 and reserves the right to appeal that reduction to the extent, and only to the extent, of that
2 reduction. Any portion of the Class Counsel Award ultimately not awarded by the Court shall
3 revert back to the Class and shall be for all purposes included in the Net Settlement Amount and
4 distributed to the Class Members based on the Qualified Workweeks formula as identified in
5 section 39 below. Under no circumstance, however, will Defendants be responsible for any
6 payment whatsoever beyond the Class Settlement Amount.

7 **36. Class Representative Enhancement Payment.**

8 The Class Representative Enhancement Payments shall be deducted from the remaining
9 Class Settlement Amount after the Class Counsel Award has been deducted from it.

10 a. In exchange for a general release, and in recognition of his efforts and work in
11 prosecuting the Lawsuit on behalf of Class Members, Defendants agree not to oppose
12 Plaintiff's application to the Court for a Class Representative Enhancement Payment of
13 Seven Thousand Five Hundred Dollars (\$7,500), subject to the Court finally approving
14 this Settlement Agreement, payable to Plaintiff.

15 b. Plaintiff shall receive, in addition to the Class Representative Enhancement
16 Payment, whatever payment he is otherwise entitled to as a Class Member based on the
17 Qualified Workweeks formula as identified in section 39 below.

18 c. Within five (5) business days after Defendants deposit the Class Settlement
19 Amount with the Claims Administrator, the Claims Administrator will disburse to the
20 Class Representative the total Class Representative Enhancement Payment amount. The
21 Claims Administrator shall issue a IRS 1099 – MISC, Box 3 form for the Class
22 Representative Enhancement Payment. The Class Representative shall be solely and
23 legally responsible to pay any and all applicable taxes on his Class Representative
24 Enhancement Payment and shall indemnify and hold harmless the Parties from any
25 claim or liability for taxes, penalties, or interest arising as a result of such payment.

26 **37. Labor Workforce and Development Agency Payment.** After deducting the Class Counsel
27 Award and the Class Representative Enhancement Payment from the Class Settlement Amount,
28 a sum of Two Thousand Five Hundred Dollars (\$2,500) is allocated for PAGA penalties, of

1 which One Thousand Eight Hundred Seventy Five Dollars (\$1,875) shall be paid as a penalty to
2 the LWDA for the PAGA claims and the remaining amount shall be distributed to all claiming
3 class members as part of the Net Settlement Amount.

4 **38. Claims Administration Costs.** After deducting the Class Counsel Award, the Class
5 Representative Enhancement Payment, and the LWDA Payment from the Class Settlement
6 Amount, the Claims Administrator shall be paid for the costs of administering the Settlement.
7 The Claims Administration Costs shall not exceed Nineteen Thousand Dollars (\$19,000.00). The
8 Claims Administrator shall provide the Defendants' Counsel and Class Counsel a weekly report
9 showing: (i) the number of Class Members who have submitted timely, valid Requests for
10 Exclusion; and (ii) whether any Class Member submitted a challenge to the employment dates
11 identified in their respective Notice(s). An IRS Form 1099 – MISC, Box 7 shall be issued to the
12 Claims Administrator reflecting such payment.

13 **39. Net Settlement Amount.** After deducting the Class Counsel Award, the Class
14 Representative Enhancement Payment, the Claims Administration Costs, and the Labor
15 Workforce and Development Agency Payment, the remaining Net Settlement Amount shall be
16 used to satisfy the claims of all Class Members along with all associated taxes.

17 **40. Calculation of Individual Settlement Payments.** The Net Settlement Amount shall be
18 allocated to the Class Members as follows as Individual Settlement Payments:

19 a. Each Class Member who pursuant to Defendants' records worked during the
20 Class Period shall be paid on a pro-rata basis based on the number of Qualifying
21 Workweeks worked during the Class Period.

22 b. To the extent the amount actually claimed exceeds the value of the Net
23 Settlement Amount, each Class Member's Individual Settlement Payment shall be
24 reduced on a pro rata basis so the maximum settlement payout to the Class Members is
25 the value of the Net Settlement Amount.

26 c. The Defendants shall have no obligation to fund any amount above the Class
27 Settlement Amount.

28 **41. Uncashed or Returned Settlement Checks Will Constitute a Residual Fund.**

1 A Class Member to whom a settlement check has been issued will have 180 calendar days after
2 the mailing of his or her Settlement Share check to deposit and/or cash the check. If a Class
3 Member does not deposit and/or cash his or her check within 180 days from the date of issuance
4 or a current address for a Class Member cannot be located, the Settlement Administrator shall
5 cause that Class Member's settlement check to be canceled. In such event, this Agreement
6 nevertheless will be binding upon the Class Member to the same extent as if the Class Member
7 had received and timely cashed or deposited the settlement check. Thereafter, the Settlement
8 Administrator shall deposit each such Class Member's Settlement Share into the California
9 Industrial Relations, Unclaimed Wages Department on each such Class Member's behalf.

10 **42. Tax Treatment of Individual Settlement Payments.** All Individual Settlement Payments
11 will be allocated as follows: one-third wages, one-third penalties, and one-third interest. The
12 portion allocated to wages shall be reported on an IRS Form W-2 and the portion allocated to
13 interest and penalties shall be reported on an IRS Form-1099.

14 **43. Responsibility for Employer Taxes.** All Individual Settlement Payments which represent
15 wages for purposes of tax reporting, shall be paid from the Net Settlement Amount, including but
16 not limited to the employer's contributions of all federal, state and local payroll taxes (including
17 FICA, FUTA and SDI). From each Individual Settlement Payment, deductions for the Class
18 Member's share of mandatory federal, state, and local payroll taxes and withholdings will be
19 made, resulting in the Class Member's Net Individual Settlement Payment. West Coast Drywall,
20 Inc.'s and/or Royal West Drywall, Inc.'s share of tax payments, including all applicable payroll
21 taxes, and withholdings for wage payments made to Class Members under this Settlement shall
22 be paid from the Individual Settlement Payments. The Claim Administrator will issue an IRS
23 W-2 form to each Class Member for the portion of each Class Member's Individual Settlement
24 Payment that is attributable to wages. The Claim Administrator will issue an IRS Form-1099 to
25 each Participating Class Member for the portion of each Class Member's Individual Settlement
26 Payment that is attributable to penalties and interest.

27 **44. Tax Liability (Defendants and Counsel Disclaimers).** Neither the Defendants nor Class
28 Counsel shall make any representations as to the tax treatment or legal effect of the payments

called for hereunder.

Notice and Administrative Execution Procedures

The Notice Procedures to notify all Class Members of the Settlement Agreement provisions shall be managed and administered as follows:

45. Class List. Within twenty (20) calendar days after Preliminary Approval, Defendants shall provide the Class List to the Claims Administrator and Class Counsel in conformity with the definition, substance and format as previously indicated.

46. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class List from Defendants as provided herein, the Claims Administrator shall send a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

47. Notice Packets. All Class Members will receive a Notice Packet. Each Notice Packet will list: (1) information regarding the nature of the Lawsuit, (2) a summary of the substance of the Settlement, (3) the Class definition, (4) the formulae for calculating Individual Settlement Payments, (5) the dates the Class Member was employed by West Coast Drywall, Inc. and/or Royal West Drywall, Inc. during the Settlement Class Period, (6) instructions on how to submit Request for Exclusion Form or objection to the Settlement, (7) the deadlines by which the Class Member must file a Request for Exclusion Form, opt-out of or object to the Settlement, and (8) notice that the Class Members shall be releasing their relevant claims against the Defendants unless they affirmatively exclude themselves or opt-out of the Settlement. The Notice Packet will also inform all Class Members on how to file the Request for Exclusion which shall be included with the Notice Packet.

48. Disputed Information on Notice Packets.

If any Class Members dispute the information listed in their Notice Packets, they may produce evidence to the Claims Administrator that substantiates factual information that differs from what appears in the Notice Packet, including evidence that shows the correct employment dates or data that they contend should be reflected in the information. Records of West Coast Drywall, Inc. and/or Royal West Drywall, Inc. will be presumed determinative, absent evidence

1 to rebut those records; but, the Claims Administrator will evaluate the evidence submitted by the
2 respective Class Member and make the final decisions as to which dates and data should be
3 applied, and that determination will be final and binding on the Settling Parties and the Class
4 Member, and will be non-appealable. Any Class Member who disputes the information listed
5 Notice Packets must provide notice of the disputed information and any supporting evidence to
6 the Claims Administrator not later forty five (45) days after the Notice Packet is first mailed out.
7 If notice of the dispute is not timely submitted, the information listed in the notice packets shall
8 be final, binding and non-appealable.

9 **49. Request for Exclusion Procedures.** Any Class Member wishing to opt-out from the
10 Settlement Agreement must sign and postmark the Request for Exclusion Form provided in the
11 Notice Packet or submit a Request for Exclusion Form online not later than forty five (45) days
12 after the Notice Packet is first mailed out. Completed Request for Exclusion Forms to be
13 submitted by mail must be mailed to the Claims Administrator at the following address:

14 **JAVIER PEREZ v. WEST COAST DRYWALL, INC., et al., Settlement Administrator**
15 **c/o Phoenix Settlement Administrators**
16 **P.O. Box 3982**
Tustin, CA 92781.

17 If submitted by mail, the date of the postmark on envelope used to return the Request
18 for Exclusion Form shall be the exclusive means to determine whether a Request for Exclusion
19 has been timely submitted. Any Class Member who does not timely submit a valid Request for
20 Exclusion Form shall be bound by all terms of the Settlement Agreement, Release and any
21 Final Judgment entered by the Court if the Settlement is granted final approval by the Court.

22 **50. Certification of Requests for Exclusion.** All Request for Exclusion Forms will be
23 submitted to the Claims Administrator, who shall then certify jointly to Class Counsel and
24 Counsel for The Defendants the total number of Class Members who have excluded themselves
25 from the Settlement. If Five Percent (5%) or more of the Class Members opt out, then the
26 Settlement Agreement may, at the sole discretion of the Defendants, be rescinded and revoked,
27 and the Settlement Agreement will become null and void.

28 **51. Notification Reports Regarding Individual Settlement Payment Calculations.** The

1 Claims Administrator shall provide Counsel for the Defendants and Class Counsel a weekly
2 report showing: (i) the number of Class Members who have submitted timely, valid Requests
3 for Exclusion; (ii) the number of Class Members who are entitled to Individual Settlement
4 Payments and (iii) whether any Class Member submitted a challenge to any information
5 contained in their Notice Packet. Additionally, the Claims Administrator will provide counsel
6 for both Parties updated reports as needed or requested.

7 **52. Resolution of Disputes Concerning Individual Settlement Payments.** Should any
8 questions arise regarding the determination of eligibility for, or the amounts of, any Individual
9 Settlement Payments under the terms of this Settlement Agreement that are not otherwise
10 resolved by the Claims Administrator under the procedure set for in Section 48 above, Class
11 Counsel and the Defendants' Counsel shall meet and confer in an attempt to reach an
12 agreement. If agreement cannot be reached, the Parties shall submit the dispute to the Court for
13 adjudication.

14 **53. Objection Procedures.** To object to the Settlement Agreement, a Class Member
15 must file his or her objection with the Court and serve a copy of his or her objection on the
16 Parties ("Notice of Objection") not later than forty-five (45) days after the date of mailing of
17 the Notice Packet. The postmark date of the filing and service of the Notice of Objection shall
18 be deemed the exclusive means for determining if the Notice of Objection is timely. The Notice
19 of Objection must be signed by the Class Member and state the Class Member's name, most
20 current address, most current telephone number, the basis for the objection, and the Class
21 Member's dates of employment with West Coast Drywall, Inc. and/or Royal West Drywall,
22 Inc. The Notice Packet shall provide these instructions to the Class Members who wish to
23 object to the Settlement. Class Members who fail to make objections in the manner specified
24 above shall be deemed to have waived any objections and shall be foreclosed from making any
25 future objection (whether by appeal or otherwise) to the Settlement Agreement. Class Members
26 who file and serve timely Notices of Objection shall have a right to appear at the Final
27 Approval Hearing in order to have their objections heard by the Court.

28 **54. Additional Administrative Duties of the Claims Administrator.** The Claims

1 Administrator shall report Individual Settlement Payments to all required taxing and other
2 authorities, taking appropriate withholding from the Individual Settlement Payments,
3 administering all payroll taxes paid, and issuing IRS Forms W-2 and 1099. Upon completion
4 of administration of the Settlement, the Claims Administrator shall provide written certification
5 of such completion to the Court and counsel for all Parties.

6 **55. Minimization of Administrative Costs.** The Parties agree to cooperate in the settlement
7 administration process and to make all reasonable efforts to control and minimize the costs and
8 expenses incurred in administration of the Settlement Agreement.

9 **Release of Claims and Dismissal of Complaints**

10 **56. Release of Claims for Class Representative/Plaintiff.** Upon the Effective Date,
11 Class Representative/Plaintiff shall release all of his Released Claims and hereby agrees to the
12 additional following General Release of claims against The Defendants, as a condition of
13 receiving his Class Representative Enhancement Payment.

14 **57.** Class Representative/Plaintiff and his agents, representatives, heirs, successors, assigns,
15 and each and all of them, hereby releases, acquits, and forever discharges the Defendants, as
16 defined in section 18 above, and each and all of them, of and from the Released Claims as
17 defined in Section 29 above, and any and all obligations, debts, claims, liabilities, demands, and
18 causes of action of every kind, nature and description whatsoever, whether or not now known,
19 suspected or claimed, that he ever had, now has, or may hereafter acquire by reason of
20 employment with West Coast Drywall, Inc. and/or Royal West Drywall, Inc., accruing from the
21 beginning of time until the date that the final approval of the Settlement is granted, including all
22 claims, known or unknown. The foregoing release shall be effective as a bar to any and all
23 claims of any character, nature or kind, known or unknown, suspected or unsuspected specified
24 herein. Class Representative expressly waives any and all rights and benefits conferred upon him
25 by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable
26 law which are as follows:

27 **A general release does not extend to claims which the creditor does not know or**
28 **suspect to exist in his favor at the time of executing the release, which if known by**

1 **him must have materially affected his settlement with the debtor.**

2 **58. Release of Claims for Class Members.** Upon the Effective Date, all Class
3 Members who do not submit a timely and valid Request for Exclusion shall waive and forfeit
4 all Released Claims as defined in section 29 above against the Defendants as defined in section
5 18 above.

6 **59. Release by the Defendants.** Upon the Effective Date, the Defendants agree,
7 on, that they absolutely, fully and forever discharge and release and covenant not to sue Class
8 Representative and/or his past and present representatives, agents, attorneys, accountants,
9 assigns and heirs, and each of them, from any and all claims, actions, causes of action, debts,
10 guaranties, warranties (express or implied), balances, liabilities, demands, dividends, profits,
11 interest, earnings, obligations, costs, expenses, wages, penalties, damages and liens of every
12 kind whatsoever, whether known or unknown, suspected or unsuspected, arising out of, based
13 upon or relating to the Class Representative's employment or termination from employment
14 with West Coast Drywall, Inc. and/or Royal West Drywall, Inc..

15 **Revocation or Nullification of Settlement Agreement**

16 **60. Nullification of Settlement Agreement.** In the event: (i) the Court does not enter the
17 Order specified herein; (ii) the Court does not finally approve the Settlement as provided
18 herein; (iii) the Court does not enter a Final Judgment as provided herein which becomes final
19 as a result of the occurrence of the Effective Date; or (iv) the Settlement does not become final
20 for any other reason, this Settlement Agreement shall be null and void and any order or
21 judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as
22 void from the beginning. In addition, in the event that Five Percent (5%) or more of the Class
23 Members opt-out, Defendants may rescind the Settlement Agreement. In these circumstances,
24 the Parties and any funds to be awarded under this Settlement Agreement shall be returned to
25 their respective statuses as of the date and time immediately prior to the execution of this
26 Settlement Agreement. The Parties shall proceed under such circumstances as if this Settlement
27 Agreement had not been executed in any respect, except that any fees already incurred by the
28 Claims Administrator up to the date that Defendants receive notice by the Court of any of the

1 events (i) through (iv) shall be borne solely by Defendants. In the event an appeal is filed from
2 the Court's Final Judgment, or any other appellate review is sought prior to the Effective Date,
3 administration of the Settlement shall be stayed pending final resolution of the appeal or other
4 appellate review (unless otherwise agreed to by the Parties), but any fees incurred by the
5 Claims Administrator prior to it being notified of the filing of an appeal from the Court's Final
6 Judgment, or any other appellate review, shall be borne solely by Defendants paid to the
7 Claims Administrator within thirty (30) days of the appeal.

8 **Responsibility for Administration Costs if the Settlement Fails or Is Delayed**

9 **61.** If an objection to the Settlement Agreement is filed with the Court, regardless of the
10 ultimate outcome of any appeals taken, or if the Settlement is voided for any reason, any costs
11 already incurred by the Claims Administrator shall be borne by Defendants, but not in excess of
12 Nineteen Thousand Dollars (\$19,000.00).

13 **Distribution Timing of Settlement Proceeds**

14 **62.** Within five (5) business days after the Defendants deposit the Class Settlement
15 Amount with the Claims Administrator, the Class Settlement Amount shall be released by the
16 Claims Administrator, and used to satisfy the payments due to or in with regard to Class
17 Counsel, the Class Representative Enhancement Payment, the Labor Workforce and
18 Development Agency Payment, the Net Settlement Amount and all Class Administration Costs
19 as calculated by the terms of this Settlement Agreement. All Class Members shall be issued any
20 Individual Settlement Payments they are entitled to within ten (10) days after the Claims
21 Administrator releases the Class Settlement Amount.

22 **Preliminary and Final Approval Court Hearings on the Settlement Agreement**

23 **63. Preliminary Approval Hearing.** Plaintiff shall request a hearing before the Court to
24 request Preliminary Approval of the Settlement Agreement and to request the entry of a
25 Preliminary Approval Order for: (i) certifying the Class for settlement purposes only, (ii)
26 preliminarily approving the proposed Settlement Agreement, (iii) certifying the Class Members
27 and the Class Period for settlement purposes only, and (iv) setting a date for a Final
28 Approval/Settlement Fairness Hearing. The Preliminary Approval Order shall provide for the

1 Notice Packet to be sent to all Class Members as specified herein. In conjunction with the
2 Preliminary Approval hearing, Plaintiff shall submit this Settlement Agreement, which sets
3 forth the terms of this Settlement, and will include a Notice Packet in a form to be agreed upon
4 by the Parties.

5 **64. Final Settlement Approval Hearing and Entry of Final Judgment.** Upon expiration of the
6 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, with
7 the Court's permission, a Final Approval/Settlement Fairness Hearing shall be conducted to
8 determine Final Approval of the Settlement Agreement along with the amounts properly payable
9 for: (i) the Class Counsel Award, (ii) the Class Representative Enhancement Payments, (iii) the
10 Labor Workforce and Development Agency Payment, and (iv) the Claims Administration Costs.
11 The Final Approval/Settlement Fairness Hearing shall not be held earlier than twenty (20) days
12 after the deadline to submit Requests for Exclusion or objections to the Settlement Agreement.

13 **Final Judgment of and Continued Jurisdiction Over the Settlement Agreement**

14 **65.** Upon final approval of the Settlement by the Court or after the Final
15 Approval/Settlement Fairness Hearing, the Parties shall present the Final Judgment to the Court
16 for its approval. After entry of the Final Judgment, the Court shall have continuing jurisdiction
17 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the
18 Settlement Agreement, (ii) Settlement administration matters, and (iii) such post-Final
19 Judgment matters as may be appropriate under court rules or as set forth in this Agreement.

20 **Dispute Resolution Concerning the Terms of This Settlement Agreement**

21 **66.** Except as otherwise set forth herein, all disputes concerning the interpretation,
22 calculation or payment of settlement claims, or other disputes regarding compliance with this
23 Settlement Agreement, shall be resolved as follows:

- 24 a. If Plaintiff or Class Counsel, on behalf of any Plaintiff or any Class Member, or
25 Defendants at any time contends that the other party has breached or acted contrary to
26 the Settlement Agreement, that party shall notify the other party in writing of the
27 alleged violation.
28 b. Upon receiving notice of the alleged violation or dispute, the responding party

1 shall have ten (10) days to correct the alleged violation and/or respond to the initiating
2 party with the reasons why the party disputes all or part of the allegation.

3 c. If the response does not address the alleged violation to the initiating party's
4 satisfaction, the Parties shall negotiate in good faith for up to ten (10) days to resolve
5 their differences.

6 d. If the Parties are unable to resolve their differences within thirty (30) days after
7 the writing that notified them of the alleged violation, either Party may file an
8 appropriate motion for enforcement with the Court. The briefing of such motion shall
9 not exceed ten double-spaced pages (excluding exhibits).

10 **General and Miscellaneous Provisions**

11 **67. Exhibits Incorporated by Reference.** The terms of this Agreement include the term
12 set forth in any attached Exhibit, which are incorporated by this reference as though fully set
13 forth herein. Any Exhibit to this Agreement is an integral part of the Settlement.

14 **68. Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of
15 this matter, except such proceedings necessary to implement and obtain an Order granting Final
16 Approval of the terms of the Settlement Agreement. The Parties further agree that the mutual,
17 voluntary cessation of litigation shall terminate if the motion for final approval of the
18 Settlement Agreement is denied by the Court.

19 **69. Confidentiality.** The Parties and their respective counsel agree that they will not
20 issue any press releases, initiate any contact with the press, respond to any press inquiry or have
21 any communication with the press about the fact, amount or terms of the Settlement prior to the
22 settlement being preliminarily approved. Any communication about the Settlement to Class
23 Members prior to the court-approved mailing will be limited to a statement that a settlement
24 has been reached and the details will be communicated in a forthcoming Court-approved
25 notice.

26 **70. Entire Agreement.** This Settlement Agreement and any attached Exhibit constitute
27 the entirety of the settlement terms. No other prior or contemporaneous written or oral
28 agreements may be deemed binding on the Parties.

1 **71. Amendment or Modification.** This Settlement Agreement may be amended or
2 modified only by a written instrument signed by counsel for the Parties or their successors-in-
3 interest.

4 **72. Authorization to Enter Into Settlement Agreement.** Counsel for each Party hereto
5 warrants and represents they are expressly authorized to negotiate this Settlement Agreement and
6 to take all appropriate action required or permitted to be taken pursuant to this Settlement
7 Agreement to effectuate its terms, and to execute any other documents required to effectuate the
8 terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other
9 and use their best efforts to affect the implementation of the Settlement. If the Parties are unable
10 to reach agreement on the form or content of any document needed to implement the Settlement,
11 or on any supplemental provisions that may become necessary to effectuate the terms of this
12 Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. Class
13 Counsel represents and warrants that they have full authority, subject to Court approval, to
14 accept this Settlement on behalf of Named Plaintiffs and the Settling Class and to bind them to
15 all of its terms and conditions.

16 **73. Binding on Successors and Assigns.** This Settlement Agreement shall be binding
17 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
18 defined.

19 **74. California Law Governs.** All terms of this Settlement Agreement and Exhibits
20 hereto shall be governed by and interpreted according to the laws of the State of California.

21 **75. Counterparts.** This Settlement Agreement may be executed in one or more
22 counterparts. All executed counterparts and each of them shall be deemed to be one and the
23 same instrument provided that counsel for the Parties shall exchange among themselves
24 original signed counterparts.

25 **76. Acknowledgement That the Settlement Is Fair and Reasonable.** The Parties believe
26 this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have
27 arrived at this Settlement after arm's-length negotiations, and in the context of adversarial
28

1 litigation, taking into account all relevant factors, present and potential. The Court may, in its
2 discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement is
3 fair and reasonable.

4 **77. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the
5 interpretation, implementation and enforcement of the terms of this Settlement Agreement as
6 well as all orders and judgments entered in connection therewith. The Parties and their counsel
7 likewise submit to the Court's jurisdiction for purposes of interpreting, implementing, and
8 enforcing the terms embodied in this Settlement Agreement and all orders and judgments
9 entered in connection therewith.

10 **78. Invalidity of Any Provision.** Before declaring any provision of this Settlement
11 Agreement invalid, the Court shall first attempt to construe the provisions as valid to the fullest
12 extent possible, consistent with applicable precedents so as to define all provisions of this
13 Settlement Agreement as valid and enforceable.

14 **79. Plaintiff's Waiver of Right to Be Excluded and Object.** Plaintiff agrees to sign this
15 Settlement Agreement, and by signing this Settlement Agreement, is thereby bound by the
16 terms herein. For good and valuable consideration, Plaintiff further agrees that he shall not
17 request to be excluded from the Class and agrees not to object to any of the terms of this
18 Settlement Agreement. Any such request for exclusion or objection by Plaintiff shall be void
19 and of no force or effect. Efforts by Plaintiff to circumvent the terms of this paragraph shall be
20 void and of no force or effect.

21 **80. Waiver of Certain Appeals.** The Parties agree to waive appeals and to stipulate to
22 class certification for purposes of this settlement only; except, however, that Plaintiff or Class
23 Counsel may appeal any reduction in the Class Counsel Award below the amount it requests
24 from the Court as set forth herein, and either Party may appeal any court order that materially
25 alters the Settlement Agreement's terms.

26 **81. Class Certification for Settlement Purposes Only.** The Parties agree to stipulate to
27 class certification only for purposes of the Settlement. If, for any reason, the Settlement is not
28 approved, the stipulation to certification will be void. The Parties further agree that

1 certification for purposes of the Settlement is not an admission that class certification is proper
2 under the standard applied to contested certification motions and that this Settlement will not be
3 admissible in this or any other proceeding as evidence that (i) a class should be certified or (ii)
4 the Defendants are liable to Plaintiff or the Class Members, other than according to the
5 Settlement's terms.

6 **82. No Admission of Liability.** The Parties to the Lawsuit understand that the terms of
7 the Settlement Agreement do not in any way imply an admission of liability on the part of the
8 Defendants and that it is being agreed to as an efficient method and compromise in order to
9 resolve disputed claims and buy peace. The Defendants deny any and all wrongdoing. By
10 entering into this Settlement, The Defendants do not admit any violation of any law or
11 regulation. This Settlement is entered into solely for the purpose of compromising highly
12 disputed claims. Nothing in this Settlement is intended or will be construed as an admission of
13 liability or wrongdoing by the Defendants. This Settlement and the fact that the Settling Parties
14 were willing to settle the Lawsuit will have no bearing on, and will not be admissible in
15 connection with, any litigation, other than as is necessary to enforce the terms of this
16 Settlement.

17 **83. All Terms Subject to Final Court Approval.** All amounts and procedures described
18 in this Settlement Agreement herein shall be subject to final Court approval.

19 **84. Execution of Necessary Documents.** All Parties shall execute all documents
20 reasonably necessary to effectuate the terms of this Settlement Agreement.

21 **85. Binding Agreement.** The Parties intend that this Settlement Agreement shall be fully
22 enforceable and binding and that it shall be admissible and subject to disclosure in any
23 proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
24 otherwise might apply under federal or state law.

1 READ CAREFULLY BEFORE SIGNING

2 PLAINTIFF

3
4 Dated:

04/15/16

Javier Perez

5
6 Class Counsel:

7
8 Dated:

4/14/16

Kevin Mahoney
MAHONEY LAW GROUP, APC

9
10
11 DEFENDANTS

12 Dated:

Paul Diguseppi, President & CEO
West Coast Drywall, Inc.

14
15 Dated:

Denise Diguseppi, Secretary & CFO
West Coast Drywall, Inc.

17
18 Dated:

Paul Diguseppi, President & CEO
Royal West Drywall, Inc.

19
20
21 Dated:

Denise Diguseppi, Secretary & CFO
Royal West Drywall, Inc.

22
23
24 Counsel for the Defendants:

25 Dated:

26 By:

Teresa M. Beck, Esq.
Paul H. James, Esq.
LINCOLN, GUSTAFSON & CERCOS,
LLP

1 READ CAREFULLY BEFORE SIGNING

2 PLAINTIFF

3
4 Dated: _____

Javier Perez

5
6 Class Counsel:

7
8 Dated: _____

Kevin Mahoney
MAHONEY LAW GROUP, APC

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Paul Diguisseppi, President & CEO
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Paul Diguisseppi, President & CEO
Royal West Drywall, Inc.


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21 Dated: _____

Denise Diguisseppi, Secretary & CFO
Royal West Drywall, Inc.

22
23
24
25 Dated: 4/15/16

Counsel for the Defendants:

26 By: _____



Teresa M. Beck, Esq.
Paul H. James, Esq.
LINCOLN, GUSTAFSON & CERCOS,
LLP

1 READ CAREFULLY BEFORE SIGNING

2 PLAINTIFF

3
4 Dated: _____

Javier Perez

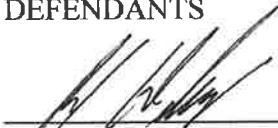
6 Class Counsel:

7
8 Dated: _____


Kevin Mahoney
MAHONEY LAW GROUP, APC

10 DEFENDANTS


11
12 Dated: 4-15-16


Paul Diguseppi, President & CEO
West Coast Drywall, Inc.

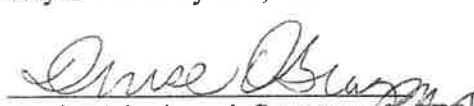
14
15 Dated: 4/14/16


Denise Diguseppi, Secretary & CFO
West Coast Drywall, Inc.

17
18 Dated: 4-15-16


Paul Diguseppi, President & CEO
Royal West Drywall, Inc.

20
21 Dated: 4/14/16


Denise Diguseppi, Secretary & CFO
Royal West Drywall, Inc.

23
24 Counsel for the Defendants:

25 Dated: _____

26 By: _____

Teresa M. Beck, Esq.
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