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10 on behalf of himself and all others similarly situated
11 and aggrieved

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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **FOR THE COUNTY OF LOS ANGELES**

24 EDUARDO GOMEZ MIRELES, on behalf of
25 himself and all others similarly situated and
26 aggrieved,

27 Plaintiff,

28 v.

29 USG CEILINGS PLUS, LLC, a Delaware
30 limited liability company; NANCY
31 MERCOLINO, an individual; and DOES 1
32 through 100, inclusive,

33 Defendants.

34 EDUARDO GOMEZ MIRELES, as an
35 aggrieved employee, and on behalf of all other
36 aggrieved employees under the Labor Code
37 Private Attorneys' General Act of 2004,

38 Plaintiff,

v.

39 USG CEILINGS PLUS, LLC, a Delaware
40 limited liability company; NANCY

CASE NO.: 21STCV45606 and
22STCV06160

[Assigned for all purposes to the Hon. Elihu
M. Berle in Dept. 6]

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

FIRST ACTION FILED: December 14,
2021

SECOND ACTION FILED: February 18,
2022

TRIAL DATE: None set

1 MERCOLINO, an individual; and DOES 1
2 through 100, inclusive,
3 Defendants.

4 This Joint Stipulation re: Class Action and Representative Action Settlement
5 (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff
6 EDUARDO GOMEZ MIRELES (“Plaintiff”), on behalf of himself and all others similarly
7 situated and aggrieved, on one hand; and defendant USG CEILINGS PLUS, LLC c
8 “Defendant”), on the other hand, in the lawsuits entitled *Gomez v. USG Ceilings Plus, LLC, et*
9 *al.*, filed in Los Angeles County Superior Court, Case No. 21STCV45606 and Case No.
10 22STCV06160 (jointly the “Action”). Plaintiff and Defendant shall be, at times, collectively
11 referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally and forever
12 resolve the claims as set forth in the Action, based upon and subject to the terms and conditions
13 of this Agreement.

14 **1. DEFINITIONS**

15 **A.** “**Action**” means the class action, entitled *Gomez v. USG Ceilings Plus, LLC, et*
16 *al.*, filed in Los Angeles County Superior Court, Case No. 21STCV45606 and the PAGA only
17 lawsuit filed in Los Angeles County Superior Court, Case No. 22 STCV06160. Both cases are
18 now pending before the Honorable Elihu M. Berle.

19 **B.** “**Aggrieved Employees**” means Class Members working for Defendant as non-
20 exempt employees during the PAGA Period in the State of California.

21 **C.** “**Class Action**” means Los Angeles Superior Court Case No. 21STCV45606.

22 **D.** “**Class Counsel**” means David D. Bibiyan, Jeffrey D. Klein, and Alexander
23 Wallin of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with
24 the term “Plaintiff’s Counsel.”

25 **E.** “**Class Members**”, “**Settlement Class**,” or “**Settlement Class Members**” means
26 all current and former non-exempt employees who worked in California for Defendant at any
27 time during the Class Period.

1 **F.** “**Class Period**” means the period from December 14, 2017 through December 31,
2 2022.

3 **G.** “**Class Notice**” means and refers to the notice sent to Class Members after
4 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
5 Agreement.

6 **H.** “**Court**” means the Superior Court of the State of California for the County of
7 Los Angeles.

8 **I.** “**Defendant**” means USG Ceilings Plus, LLC.

9 **J.** “**Employer Taxes**” means employer-funded taxes and contributions imposed on
10 the wage portions of the Individual Settlement Payments under the Federal Insurance
11 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
12 and contributions required of employers, such as for unemployment insurance.

13 **K.** “**Final Approval Date**” means the later of: (1) the date the Court signs an Order
14 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
15 objector, 60 days from the date of the Final Approval and Judgment; or (3) to the extent any
16 appeals have been filed, the date on which they have been resolved or exhausted.

17 **L.** “**General Release**” means the broader release of claims by Plaintiff, which is in
18 addition to Plaintiff’s limited release of claims as a Participating Class Member.

19 **M.** “**Gross Settlement Amount**” means a non-reversionary fund in the sum of One
20 Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00),¹ which shall be paid
21 by Defendant, from which all payments for the Individual Settlement Payments to Participating
22 Class Members, the Court-approved amounts for attorneys’ fees and reimbursement of litigation
23 costs and expenses to Class Counsel, Settlement Administration Costs, the Service Award, the
24 PAGA Payment and the LWDA Payment shall be paid. It expressly excludes Employer Taxes,
25 which shall be paid by Defendant separate, apart and in addition to the Gross Settlement Amount.

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¹ As the same may be increased in accordance with Paragraph 17 below.

1 **N. “Individual PAGA Payment”** means a payment made to an Aggrieved Employee
2 for his or his share of the PAGA Payment, which may be in addition to his or her Individual
3 Settlement Share if he or she is also a Participating Class Member.

4 **O. “Individual Settlement Payment”** means a payment to a Participating Class
5 Member of his or his net share of the Net Settlement Amount.

6 **P. “Individual Settlement Share”** means the gross amount of the Net Settlement
7 Amount that a Participating Class Member is projected to receive based on the number of pay
8 periods that he or she worked as a Settlement Class Member during the Class Period, which shall
9 be reflected in his or her Class Notice.

10 **Q. “LWDA Payment”** means the payment to the State of California Labor and
11 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
12 amount allocated toward penalties under the PAGA, all of which is to be paid from the Gross
13 Settlement Amount. The Parties have agreed that Forty Thousand Dollars and Zero Cents
14 (\$40,000.00) shall be allocated toward PAGA penalties, of which Thirty Thousand Dollars and
15 Zero Cents (\$30,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Ten Thousand
16 Dollars and Zero Cents (\$10,000.00) will be paid to Aggrieved Employees on a *pro rata* basis
17 based on the pay periods worked for Defendant as a non-exempt employee in California in the
18 PAGA Period (*i.e.* the PAGA Payment).

19 **R. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
20 that is available for distribution to the Participating Class Members after deductions for the Court-
21 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
22 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
23 Payment and the PAGA Payment.

24 **S. “PAGA Action”** means Los Angeles Superior Court Case No. 22STCV06160.

25 **T. “PAGA Payment”** is the 25% portion of the Forty Thousand Dollars and Zero
26 Cents (\$40,000.00) that is allocated toward PAGA penalties (Ten Thousand Dollars and Zero
27 Cents (\$10,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on the
28 pay periods worked as non-exempt employees in California in the PAGA Period, which would

1 be in addition to their Individual Settlement Payment if they are Participating Class Members, as
2 well.

3 U. **“PAGA Period”** means the period from December 15, 2020 through the end of
4 the Class Period.

5 V. **“Pay Periods”** means the number of pay periods that a Settlement Class Member
6 worked for the Defendant in a non-exempt position during the Class Period in California, based
7 on hire dates, re-hire dates (as applicable), leave of absence dates (as applicable) and termination
8 dates (as applicable) based on the information stored in Defendant’s HRIS system.

9 W. **“Participating Class Members”** means all Settlement Class Members who do not
10 submit a timely and valid Request for Exclusion.

11 X. **“Participating Individual Settlement Share”** means the gross amount of the Net
12 Settlement Amount that a Participating Class Member is eligible to receive based on the number
13 of pay periods that he or she worked as a Settlement Class Member during the Class Period once
14 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
15 may be entitled if he or she is also an Aggrieved Employee.

16 Y. **“Plaintiff,” “Named Plaintiff” or “Class Representative”** shall refer to Plaintiff
17 Eduardo Gomez Mireles.

18 Z. **“Preliminary Approval Date”** means the date on which the Court enters an Order
19 granting preliminary **approval** of the Settlement.

20 AA. **“Released Parties”** shall mean Defendant, Nancy Mercolino and each of their
21 past, present and future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers,
22 and company-sponsored employee benefit plans of any nature, and their successors and
23 predecessors in interest, including all of their officers, directors, shareholders, exempt
24 employees, agents, principals, heirs, representatives, accountants, auditors, consultants,
25 attorneys, administrators, fiduciaries, trustees and agents.

26 BB. **“Response Deadline”** means the deadline for Settlement Class Members to mail
27 any Requests for Exclusion, Objections or Workweek Disputes to the Settlement Administrator,
28 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English

1 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
2 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing
3 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
4 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
5 shall be the exclusive means for determining whether a Request for Exclusion, Objection or
6 Workweek Dispute was submitted by the Response Deadline.

7 **CC.** “Request for Exclusion” means a written request to be excluded from the
8 Settlement Class pursuant to Paragraph 9(C) below.

9 **DD.** “Service Award” means monetary amounts to be paid to Plaintiff of up to Seven
10 Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), which, subject to Court approval,
11 will be paid out of the Gross Settlement Amount.

12 **EE.** “Settlement Administration Costs” means all costs incurred by the Settlement
13 Administrator in administration of the Settlement, including, but not limited to, translating the
14 Class Notice to Spanish, distribution of the Class Notice to the Settlement Class in English and
15 Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual
16 PAGA Payments and Participating Individual Settlement Shares, as well as associated taxes and
17 withholdings, providing declarations, generating Individual Settlement Payment checks and
18 related tax reporting forms, doing administrative work related to unclaimed checks, transmitting
19 payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement
20 of litigation costs and expenses, to Plaintiff for his Service Award and to the LWDA for the
21 LWDA Payment, providing weekly reports of opt-outs, objections and related information, and
22 any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to
23 the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed
24 \$8,250.00. If the actual amount of the Settlement Administration Costs is less than \$8,250.00,
25 the difference between \$8,250.00 and the actual Settlement Administration Costs shall be a part
26 of the Net Settlement Amount. If the Settlement Administration Costs exceed \$8,250.00, then
27 such excess will be paid solely from the Gross Settlement Amount and Defendant will not be
28 responsible for paying any additional funds in order to pay these additional costs.

1 **FF. “Settlement Administrator”** means the Third-Party Administrator mutually
2 agreed upon by the Parties that will be responsible for the administration of the Settlement
3 including, without limitation, translating the Class Notice in Spanish, distribution of the
4 Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount
5 and related matters under this Agreement.

6 **GG. “Workweeks”** means the number of weeks that a Settlement Class Member was
7 employed by and worked for the Defendant in a non-exempt position during the Class Period in
8 California, based on hire dates, re-hire dates (as applicable), leave of absence dates (as
9 applicable) and termination dates (as applicable), based on the information stored in Defendant’s
10 HRIS system.

11 **2. BACKGROUND**

12 **A.** On December 14, 2021, Plaintiff filed a putative wage-and-hour class action
13 alleging that, during the Class Period, Defendant, as it pertains to Class Members: (1) failed to
14 pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or
15 compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof;
16 (5) failed to pay all wages due upon termination; (6) failed to provide accurate wage statements;
17 (7) failed to timely pay wages during employment; (8) failed to indemnify for all necessary
18 expenditures or losses; (9) failed to provide compensation for unused paid vacations; and (10)
19 engaged in unfair competition (the “Class Action”).

20 **B.** On December 15, 2021, Plaintiff filed with the LWDA and served on Defendant
21 a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
22 LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code
23 violations (“PAGA Notice”).

24 **C.** On January 18, 2022, after sixty-five (65) days had passed since Plaintiff filed and
25 served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor
26 Code violations, Plaintiff filed a separate representative action in the Los Angeles County
27 Superior Court, Case No. 22STCV06160, seeking PAGA civil penalties against Defendant for
28 Labor Code violations alleged in the PAGA Notice and the “PAGA Action”.

1 **D.** Prior to mediation, Defendant agreed to informally produce the following: (1) a
2 50% sampling of time and payroll records for the estimated 210 Class Members; (2) data points
3 for the Class Period through mediation, including the number of Class Members who worked for
4 Defendant, the number of Class Members who were separated from employment with Defendant,
5 the average hourly rate for Class Members, the number of Workweeks worked by Class Members
6 and the number of pay periods worked by Class Members; (3) a 50% sampling of time records
7 for the estimated 210 Class Members; (4) the names and contact information for all 210 estimated
8 Class Members; (5) portions of Defendant's' employee handbooks related to meal periods and
9 timekeeping policies; and (6) Plaintiff's complete time records and wage statements.

10 **E.** On October 31, 2022, the Parties participated in a full-day mediation before Gig
11 Kyriacou, Esquire, a well-regarded mediator experienced in mediating complex labor and
12 employment matters. With the aid of the mediator's evaluation, the Parties reached the Settlement
13 to resolve the Action.

14 **F.** Class Counsel has conducted significant investigation of the law and facts relating
15 to the claims asserted in the Class Action, in the PAGA Action and in the PAGA Notice, and
16 have concluded that the Settlement set forth herein is fair, reasonable, adequate and in the best
17 interests of the Settlement Class, taking into account the sharply contested issues involved, the
18 expense and time necessary to litigate the Action through trial and any appeals, the risks and
19 costs of further litigation of the Action, the risk of an adverse outcome, the uncertainties of
20 complex litigation, the information learned through informal discovery regarding Plaintiff's
21 allegations, and the substantial benefits to be received by Settlement Class Members.

22 **G.** Defendant has concluded that, because of the substantial expense of defending
23 against the Action, the length of time necessary to resolve the issues presented herein, the
24 inconvenience involved and the concomitant disruption to its business operations, it is in its best
25 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
26 claims asserted against it in the Action and in the PAGA Notice. However, Defendant
27 nevertheless desires to settle the Action for the purpose of avoiding the burden, expense and
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1 uncertainty of continuing litigation, and for the purpose of putting to rest the controversies
2 engendered by the Action.

3 **H.** This Agreement is intended to and does effectuate the full, final and complete
4 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
5 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
6 and Aggrieved Employees.

7 **3. JURISDICTION**

8 The Court has jurisdiction over the Parties and the subject matter of the Action. The
9 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
10 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
11 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
12 pursuant to California Rules of Court, rule 3.769, subdivision (h).

13 **4. STIPULATION OF CLASS CERTIFICATION**

14 The Parties stipulate to the certification of the Settlement Class under this Agreement for
15 purposes of settlement only.

16 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

17 After full execution of this Agreement, Plaintiff will move for an order granting
18 preliminary approval of the Settlement, approving and directing the mailing of the proposed
19 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A,”** conditionally
20 certifying the Settlement Class for settlement purposes only, and approving the deadlines
21 proposed by the Parties for the submission of Requests for Exclusion, Pay Period Disputes and
22 Objections. If and when the Court preliminarily approves the Settlement, and after administration
23 of the Class Notice in a manner consistent with the Court’s Preliminary Approval Order, Plaintiff
24 will move for an order finally approving the Settlement and seek entry of a Judgment in line with
25 this Settlement. The Parties may both respond to any Objections lodged to final approval of the
26 Settlement up to five (5) court days before the Final Approval Hearing.

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1 **6. STATEMENT OF NO ADMISSION**

2 Defendant denies any wrongdoing of any sort and further deny any liability to Plaintiff
3 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
4 PAGA Notice. This Agreement shall not be deemed an admission by Defendant of any claims or
5 allegations asserted in the Action or in the PAGA Notice. Except as set forth elsewhere herein,
6 in the event that this Agreement is not approved by the Court or any appellate court, is terminated,
7 or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived, limited or
8 affected in any way any claims, rights or remedies, or defenses in the Action or in the PAGA
9 Notice, and Defendant will not be deemed to have waived, limited or affected in any way any of
10 their objections or defenses in the Action and in the PAGA Notice. The Parties shall be restored
11 to their respective positions in the Action prior to the entry of this Settlement.

12 **7. RELEASE OF CLAIMS**

13 **A. Release by All Participating Class Members.**

14 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
15 of Judgment and payment by Defendant to the Settlement Administrator of the full Gross
16 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff and
17 all Participating Class Members release all claims against the Released Parties asserted in the
18 complaint in filed in the Class Action, or any and all claims that may be asserted against the
19 Released Parties based on the factual allegations asserted in the complaint filed in the Class
20 Action, as follows: For the duration of the Class Period, the release includes, for Participating
21 Class Members: (1) all claims for failure to pay overtime wages; (2) all claims for failure to pay
22 minimum wages; (3) all claims for failure to provide meal periods or compensation in lieu
23 thereof; (4) all claims for failure to provide rest periods or compensation in lieu thereof; (5) all
24 claims for failure to pay all wages due upon termination; (6) all claims for failure to provide
25 accurate wage statements; (7) all claims for failure to timely pay wages during employment; (8)
26 all claims for failure to indemnify for all necessary expenditures or losses; (9) all claims for
27 failure to provide compensation for unused paid vacations; and (10) all claims asserted through
28

1 California Business & Professions Code section 17200, et seq. arising out of the Labor Code
2 violations referenced in the Complaint (the “Class Released Claims”).

3 **B. Release by All Aggrieved Employees**

4 For Aggrieved Employees and, to the extent permitted by law, the State of California, the
5 release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notice
6 and in the complaint filed in the PAGA Action, for PAGA civil penalties, pursuant to Labor Code
7 sections 210, 226.3, 558, 1174.5, 1197.1 and 2699, in connection with alleged violations of Labor
8 Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246,
9 *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5,
10 2699 et seq., 2802, and 2810.5 (the “PAGA Released Claims”). The Class Released Claims and
11 PAGA Released Claims shall be referred to herein as the “Released Claims”.

12 **C. Claims Not Released**

13 The releases above expressly exclude all other claims, including claims for vested
14 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
15 compensation, and any other claims outside of the Class Released Claims of Participating Class
16 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
17 Employees (and, to the extent permitted by law, the State of California) arising outside of the
18 PAGA Period.

19 **D. General Release**

20 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
21 of Judgment and payment by Defendant to the Settlement Administrator selected of the full Gross
22 Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in addition to
23 the Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases
24 the Released Parties from all claims, demands, rights, liabilities and causes of action of every
25 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
26 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation
27 arising out of, relating to, or in connection with any act or omission of the Released Parties
28 through the date of full execution of this Agreement in connection with Plaintiff’s employment

1 with Defendant or termination thereof, except for any and all other claims that may not be
2 released as a matter of law through this Agreement. To the extent of the General Release provided
3 herein, Plaintiff stipulates and agrees that, upon entry of an Order granting Final Approval of the
4 Settlement, entry of Judgment and payment by Defendant to the Settlement Administrator
5 selected of the full Gross Settlement Amount and Employers' Taxes necessary to effectuate the
6 Settlement, they shall have expressly waived and relinquished, to the fullest extent permitted by
7 law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
8 similar provision under federal or state law, which provides:

9 A general release does not extend to claims that the creditor or
10 releasing party does not know or suspect to exist in his or her favor
11 at the time of executing the release and that, if known by him or
12 her, would have materially affected his or her settlement with the
13 debtor or released party.

13 **8. SETTLEMENT ADMINISTRATOR**

14 A. Plaintiff and Defendant, through their respective counsel, have selected Phoenix
15 Administrators to administer the Settlement, which includes, but is not limited to, translating the
16 Class Notice to Spanish, distributing and responding to inquiries about the Class Notice, and
17 calculating all amounts to be paid from the Gross Settlement Amount. Charges and expenses of
18 the Settlement Administrator, currently estimated to be \$8,250.00, will be paid from the Gross
19 Settlement Amount. If the actual amount of the Settlement Administration Costs is less than
20 \$8,250.00, the difference between \$8,250.00 and the actual Settlement Administration Costs
21 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
22 \$8,250.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant
23 will not be responsible for paying any additional funds in order to pay these additional costs.

24 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION AND EXCLUSION**
25 **PROCESS**

26 A. **Notice to the Settlement Class Members**

27 (1) Within seven (7) calendar days after the Preliminary Approval Date, Defendant's
28 Counsel shall provide the Settlement Administrator with information with respect to each

1 Settlement Class Member, including his or her: (1) name; (2) last known address(es) currently in
2 Defendant's possession, custody or control; (3) last known telephone number(s) currently in
3 Defendant's possession, custody or control; (4) last known Social Security Number(s) in
4 Defendant's possession, custody or control; and (5) the dates of employment (*i.e.*, hire dates and,
5 if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member ("Class
6 List"). The Settlement Administrator shall perform an address search using the United States
7 Postal Service National Change of Address ("NCOA") database and update the addresses
8 contained on the Class List with the newly-found addresses, if any. Within seven (7) calendar
9 days or soon thereafter of receiving the Class List from Defendant, the Settlement Administrator
10 shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-
11 class regular U.S. Mail using the most current mailing address information available. The
12 Settlement Administrator shall maintain the Class List and digital copies of all the Settlement
13 Administrator's records evidencing the giving of notice to any Settlement Class Member for at
14 least four (4) years from the Final Approval Date.

15 (2) The Class Notice will set forth:

- 16 (a) the Settlement Class Member's estimated Individual
17 Settlement Payment and Individual PAGA Payment,
18 and the basis for each;
- 19 (b) the information required by California Rule of Court,
20 rule 3.766, subdivision (d);
- 21 (c) the material terms of the Settlement;
- 22 (d) the proposed Settlement Administration Costs;
- 23 (e) the definition of the Settlement Class;
- 24 (f) a statement that the Court has preliminarily approved
25 the Settlement;
- 26 (g) how the Settlement Class Member can obtain
27 additional information, including contact information
28 for Class Counsel;

- 1 (h) information regarding opt-out and objection
2 procedures;
- 3 (i) the date and location of the Final Approval Hearing;
4 and
- 5 (j) that the Settlement Class Member must notify the
6 Settlement Administrator no later than the Response
7 Deadline if the Settlement Class Member disputes the
8 accuracy of the number of pay periods worked as set
9 forth on his or her Class Notice (“Pay Period Dispute”).
10 If a Settlement Class Member fails to timely dispute the
11 number of pay periods attributed to him or her in
12 conformity with the instructions in the Class Notice,
13 then he or she shall be deemed to have waived any
14 objection to its accuracy and any claim to any
15 additional settlement payment based on different data.

16 (3) If a Class Notice from the initial notice mailing is returned as
17 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
18 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
19 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
20 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
21 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
22 Member within three (3) calendar days. Further, any Class Notices that are returned to the
23 Settlement Administrator with a forwarding address before the Response Deadline shall be
24 promptly re-mailed to the forwarding address affixed thereto.

25 (4) No later than seven (7) calendar days from the Response Deadline, the
26 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
27 completion of the notice process, including the number of attempts to obtain valid mailing
28 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,

1 and copies of all Requests for Exclusion and Objections received by the Settlement
2 Administrator.

3 **B. Objections**

4 Only Participating Class Members may object to the Settlement. In order for any
5 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
6 do so by mailing a written objection to the Settlement Administrator at the address or phone
7 number provided on the Class Notice no later than the Response Deadline. The Settlement
8 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendant's
9 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
10 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection
11 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
12 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
13 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
14 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
15 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
16 will remain a member of the Settlement Class and if the Court approves this Agreement, the
17 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
18 the same extent as a Settlement Class Member who does not object. The date of mailing of the
19 Class Notice to the objecting Settlement Class Member shall be conclusively determined
20 according to the records of the Settlement Administrator. Settlement Class Members need not
21 object in writing to be heard at the Final Approval Hearing; they may object or comment in
22 person at the hearing at their own expense. Class Counsel and Defendant's Counsel may respond
23 to any objection lodged with the Court up to five (5) court days before the Final Approval
24 Hearing.

25 **C. Requesting Exclusion**

26 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
27 Settlement by mailing a written request to be excluded from the Settlement ("Request for
28 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.

1 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last
2 four (4) digits of the Class Member's Social Security Number; (3) the Class Member's signature;
3 and (4) the following statement: "Please exclude me from the Settlement Class in the *Gomez v.*
4 *USG Ceilings Plus, LLC, et al.*, matter" or any statement of similar meaning standing for the
5 proposition that the Class Member does not wish to participate in the Settlement. The Settlement
6 Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel
7 and Defendant's Counsel and shall report the Requests for Exclusions that it receives, to the
8 Court, in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement
9 Class Member who requests exclusion using this procedure will not be entitled to receive any
10 payment from the Settlement and will not be bound by the Settlement Agreement or have any
11 right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who
12 does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will
13 be bound by all terms of the Settlement, including those pertaining to the Released Claims, as
14 well as any Judgment that may be entered by the Court if Final Approval of the Settlement is
15 granted. A Settlement Class Member cannot submit both a Request for Exclusion and an
16 objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the
17 Request for Exclusion will control and the Objection will be overruled. Settlement Class
18 Members who worked during the PAGA Period as Aggrieved Employees that submit a valid
19 Request for Exclusion will still be deemed Aggrieved Employees, will still receive their
20 Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

21 **D. Disputes Regarding Settlement Class Members' Pay Period Data.**

22 Each Settlement Class Member may dispute the number of pay periods attributed to him
23 or her on his or her Class Notice ("Pay Periods Dispute"). Any such disputes must be mailed to
24 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
25 Response Deadline. The Settlement Administrator shall immediately provide copies of all
26 disputes to Class Counsel and counsel for Defendant and shall immediately attempt to resolve all
27 such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendant
28

1 and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the
2 dispute.

3 E. **No Solicitation of Objections or Requests for Exclusion.**

4 Neither the Parties nor their respective counsel or management will solicit or otherwise
5 encourage any Class Member, directly or indirectly, to seek exclusion from the Settlement, object
6 to the Settlement, and/or appeal from the Judgment

7 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
8 **PAGA PAYMENTS**

9 Individual Settlement Payments will be calculated and distributed to Participating Class
10 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
11 Members' respective number of Pay Periods worked during the Class Period. Individual PAGA
12 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
13 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
14 number of pay periods worked during the PAGA Period. Specific calculations of the Individual
15 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
16 follows:

17 A. The Settlement Administrator will use the Pay Periods provided by Defendant
18 to determine the total number of pay periods worked by each Settlement Class Member during
19 the Class Period ("Class Member's Pay Periods"), as well as the aggregate number of pay
20 periods worked by all Settlement Class Members during the Class Period ("Class Pay
21 Periods"). Additionally, the Settlement Administrator will use the Pay Periods provided by
22 Defendant to determine the total number of pay periods worked by each Aggrieved Employee
23 during the PAGA Period ("Aggrieved Employee's Pay Periods"), as well as the aggregate
24 number of pay periods worked by all Aggrieved Employees during the PAGA Period ("PAGA
25 Pay Periods").

26 B. To determine each Settlement Class Member's Individual Settlement Share, the
27 Settlement Administrator will use the following formula: Individual Settlement Share =
28 (Settlement Class Member's Pay Periods worked ÷ Class Pay Periods) × Net Settlement

1 Amount.

2 C. To determine each Participating Class Member's Participating Individual
3 Settlement Share, the Settlement Administrator will determine the aggregate number of pay
4 periods worked by all Participating Class Members during the Class Period ("Participating
5 Class pay periods") and use the following formula: Individual Settlement Share = (Participating
6 Class Member's Pay Periods worked ÷ Participating Class Pay Periods) × Net Settlement
7 Amount.

8 D. The net amount of the Participating Individual Settlement Share is to be paid out
9 to Participating Class Members by way of check and is referred to as "Individual Settlement
10 Payment(s)".

11 E. To determine each Aggrieved Employee's Individual PAGA Payment, the
12 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
13 PAGA Payment = (Aggrieved Employee's Pay Periods worked ÷ PAGA Pay Periods) ×
14 \$10,000.00 (the PAGA Payment).

15 F. Individual Settlement Payments and Individual PAGA Payments shall be paid
16 to Participating Class Members and/or Aggrieved Employees by way of check. When a
17 Participating Class Member is also an Aggrieved Employee, one check may be issued that
18 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

19 G. **Payments To Class Members Do Not Trigger Additional or Derivative**
20 **Payments.** It is expressly understood and agreed that the receipt of payments under the
21 Settlement will not entitle Plaintiff or any Class Member to additional or derivative
22 compensation or benefits under any of Defendant's bonus, contest, or other compensation or
23 benefit plan or agreement in place during the period covered by the Settlement, nor will it
24 entitle any Plaintiff or any Class Member to any increased retirement, 401k benefits or
25 matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the
26 payments provided for in this Agreement are the sole payments to be made by Defendant to
27 Plaintiff and Class Members, and that Plaintiff and Class Members are not entitled to any
28 additional or derivative compensation or benefits as a result of having received said payments

1 (notwithstanding any contrary language or agreement in any benefit or compensation plan
2 document that might have been in effect during the period covered by this Settlement).

3 **11. DISTRIBUTION OF PAYMENTS**

4 **A. Distribution of Individual Settlement Payments**

5 Participating Class Members will receive an Individual Settlement Payment and
6 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
7 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
8 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)
9 calendar days after expiration of the 180-day period, checks for such payments shall be
10 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
11 abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid
12 Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
13 Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street,
14 Suite 600, San Francisco, California 94104, the *cy pres* recipient, for use in Los Angeles
15 County. The Settlement Administrator shall prepare a report regarding the distribution plan
16 pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court
17 by Class Counsel along with a proposed amended judgment that is consistent with the
18 provisions of Code of Civil Procedure section 384.

19 **B. Funding of Settlement**

20 Defendant shall, within forty-five (45) days of Final Approval Date, make payment of the
21 Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 17 of this
22 Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal Revenue
23 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”)
24 with an FDIC insured banking institution, for distribution in accordance with this Agreement and
25 the Court’s Orders and subject to the conditions described herein.

26 **C. Time for Distribution**

27 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
28 Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator

1 shall distribute all payments due from the QSA for: (1) the Service Award to Plaintiff, as
2 specified in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award
3 to be paid to Class Counsel, as specified in this Agreement and approved by the Court; (3) the
4 Settlement Administrator Costs, as specified in this Agreement and approved the Court; (4) the
5 LWDA Payment, as specified in this Agreement and approved by the Court; (5) Individual
6 PAGA Payments to Aggrieved Employees, as specified in this Agreement and approved by the
7 Court; and (6) Individual Settlement Payments to Participating Class Members, less applicable
8 taxes and withholdings, as specified in this Agreement and approved by the Court. All interest
9 accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to
10 Participating Class Members based on the number of pay periods worked by them in the Class
11 Period.

12 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

13 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
14 fees of up to one-third (1/3) of the Gross Settlement Amount, which, unless escalated pursuant
15 to Paragraph 17 of this Agreement, amounts to Five Hundred Thousand Dollars and Zero Cents
16 (\$500,000.00). Class Counsel shall further apply for, and Defendant shall not oppose, an
17 application or motion by Class Counsel for reimbursement of actual costs associated with Class
18 Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to
19 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees and
20 costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and
21 costs necessary to prosecute, settle and obtain Final Approval of the settlement in Action. The
22 "future" aspect of the amounts stated herein includes, without limitation, all time and expenses
23 expended by Class Counsel (including any appeals therein). There will be no additional charge
24 of any kind to either the Settlement Class Members or request for additional consideration from
25 Defendant for such work unless, Defendant materially breaches this Agreement, including any
26 term regarding funding, and further efforts are necessary from Class Counsel to remedy said
27 breach, including, without limitation, moving the Court to enforce the Agreement. Should the
28 Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than

1 the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net
2 Settlement Amount. This Settlement is not contingent upon Court approval of the full attorneys'
3 fees requested by Class Counsel.

4 **13. SERVICE AWARD TO PLAINTIFF**

5 Named Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an
6 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to
7 Plaintiff, for participation in and assistance with the Action. Any Service Award and additional
8 consideration awarded and/or paid to Plaintiff shall be paid from the Gross Settlement Amount
9 and shall be reported on an IRS Form 1099. If the Court approves the Service Award in less than
10 the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement
11 Amount. The Parties agree that the approval, and amount, of any incentive award in this Action
12 shall be in the Court's sole discretion and not subject to any appeal by Plaintiff who is the sole
13 recipient of any approved Class Representative's Service Award. This Settlement is not
14 contingent on Plaintiff's receipt of any service award out of the Maximum Settlement Amount.

15 **14. TAXATION AND ALLOCATION**

16 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
17 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
18 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
19 agree that the employees' share of taxes and withholdings with respect to the wage portion of the
20 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
21 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
22 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
23 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
24 be made pursuant to applicable state and/or local withholding codes or regulations.

25 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
26 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
27 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
28 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes

1 set forth in this Section may be modified in a manner to bring Defendant into compliance with
2 any such changes.

3 c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to
4 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of
5 payroll taxes as described above.

6 d. Neither Counsel for Plaintiff nor Defendant intend anything contained in this
7 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
8 be relied upon as such within the meaning of United States Treasury Department Circular 230
9 (31 C.F.R. Part 10, as amended) or otherwise.

10 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

11 The Parties agree to allocate Forty Thousand Dollars and Zero Cents (\$40,000.00) of the
12 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
13 (75%) of the amount allocated toward PAGA (\$30,000.00) will be paid to the LWDA and twenty-
14 five percent (25%) (\$10,000.00) will be distributed to Aggrieved Employees on a *pro rata* basis
15 based upon their respective pay periods worked as Aggrieved Employees during the PAGA
16 Period.

17 **16. COURT APPROVAL**

18 This Agreement is contingent upon an order by the Court granting Final Approval of the
19 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
20 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
21 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
22 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
23 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
24 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
25 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
26 the Settlement Agreement being voided or not approved, and which control in such an event.

1 **17. INCREASE IN WORKWEEKS**

2 Defendant represented that there were no more than 31,747 Workweeks worked by Class
3 Members during the Class Period. In the event the number of actual Workweeks worked
4 increases by more than 10% or 3,174 Workweeks worked, then the Gross Settlement Amount
5 shall be increased proportionally by the Workweeks worked in the Class Period in excess of
6 34,921 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated
7 by dividing the originally agreed-upon Gross Settlement Amount (\$1,500,000.00) by 31,747
8 Workweeks. The Parties agree that the Workweek Value of the settlement amounts to \$47.25 per
9 Workweek (\$1,500,000.00 / 31,747 Workweeks). Thus, for example, should there be 35,000
10 Workweeks worked by Class Members in the Class Period, then the Gross Settlement Amount
11 shall be increased by \$3,732.75 ((35,000 Workweeks – 34,921 Workweeks) x \$47.25 per
12 Workweek).

13 **18. NOTICE OF JUDGMENT**

14 In addition to any duties set out herein, the Settlement Administrator shall provide
15 notice of the Final Judgment entered in the Action by posting the same on its website for a
16 period of no less than four (4) years.

17 **19. MISCELLANEOUS PROVISIONS**

18 **A. Interpretation of the Agreement**

19 This Agreement constitutes the entire agreement between the Parties with respect to its
20 subject matter. Except as expressly provided herein, this Agreement has not been executed in
21 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
22 written representations or terms shall modify, vary or contradict its terms. In entering into this
23 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
24 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
25 enforced under the laws of the State of California, both in its procedural and substantive aspects,
26 without regard to its conflict of law provisions. Any claim arising out of or relating to the
27 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
28 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendant

1 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
2 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
3 and each of them, participated in the negotiation and drafting of this Agreement and had available
4 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
5 Defendant may claim that any ambiguity in this Agreement should be construed against the other.
6 The Agreement may be modified only by a writing signed by counsel for the Parties and approved
7 by the Court.

8 **B. Further Cooperation**

9 The Parties and their respective attorneys shall proceed diligently to prepare and execute
10 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
11 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
12 will not take any action inconsistent with this Agreement, including, without limitation,
13 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
14 Party has taken actions inconsistent with the Settlement, including, without limitation,
15 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
16 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
17 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
18 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
19 opt-outs and/or objections.

20 **C. Counterparts**

21 The Agreement may be executed in one or more actual or non-original counterparts, all
22 of which will be considered one and the same instrument and all of which will be considered
23 duplicate originals.

24 **D. Authority**

25 Each individual signing below warrants that he or she has the authority to execute this
26 Agreement on behalf of the Party for whom or which that individual signs.

27 **E. No Third-Party Beneficiaries**

28

1 Plaintiff, Participating Class Members, Aggrieved Employees, the State of California,
2 Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-
3 party beneficiaries.

4 **F. Deadlines Falling on Weekends or Holidays**

5 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
6 or legal holiday, that deadline shall be continued until the following business day.

7 **G. Modification of Settlement**

8 This Settlement, and any and all parts of it, may be amended, modified, changed, or
9 waived only by an express written instrument signed by all Parties or their successors-in-interest,
10 subject to approval by the Court.

11 **H. Jurisdiction of the Court**

12 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
13 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
14 of this Settlement Agreement and all orders and judgments entered in connection therewith,
15 and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
16 interpreting, implementing, and enforcing the settlement embodied in this Settlement
17 Agreement and all orders and judgments entered in connection therewith.

18 **I. Severability**

19 In the event that one or more of the provisions contained in this Agreement shall for any
20 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
21 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
22 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
23 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

24 **J. Options To Terminate Settlement**

25 1. Any reduction in the Class Counsel Fees and Expenses, and/or any
26 reduction to the requested Class Representative's Service Award, does not constitute grounds to
27 terminate or void the Settlement.

28

1 2. Defendant has the right to cancel the Settlement if more than ten percent
2 (10%) of the Class Members submit timely and valid requests for exclusion from the Settlement
3 as of the Opt-Out deadline. This option to cancel the Settlement must be exercised by Defendant
4 by providing written notice to Class Counsel within thirty (30) days of the Response Deadline.
5 If Defendant exercises the option to terminate the Settlement, then, Defendant shall be
6 responsible for paying all settlement administration costs.

7 3. Either Settling Party may terminate this Settlement by giving written
8 notice to the other Settling Party (through its counsel) no later than twenty (20) calendar days
9 after receiving notice that one of the following has occurred: (i) the Court declines to enter the
10 Preliminary Approval Order or the Final Approval Order in substantially the form submitted by
11 the Parties; or (ii) the Court's final approval of the Settlement is reversed or materially modified
12 on appellate review. Notwithstanding the foregoing, the Parties agree to meet and confer to
13 address any concerns the Court may have regarding the Settlement, and if necessary, file
14 supplemental briefing and/or an amended Settlement Agreement which is mutually agreed upon
15 by the Parties.

16 4. In the event of termination of this Settlement as provided above, this
17 Settlement will become and shall be considered null and void, and it will have the following
18 effects: (i) the Settling Parties will have no further obligations under the Settlement; (ii)
19 Defendant shall have no obligation to make any payments to any person, party, Class Member
20 or attorney that otherwise would have been owed under this Settlement, except that in case of
21 termination under Paragraph 19.(J)(2), Defendant will pay the Settlement Administrator's
22 reasonable fees and expenses incurred as of the date that the Settlement is terminated; (iii) in case
23 of termination under Paragraph 19(J)(3), Plaintiff will pay 50% and Defendant will pay 50% of
24 the Settlement Administrator's reasonable fees and expenses incurred as of the date that the
25 Settlement is terminated; (iv) the Settlement and all negotiations, statements and proceedings
26 relating thereto shall be without prejudice to the rights of any of the Settling Parties, all of whom
27 shall be restored to their respective positions in the Action prior to the Settlement; and (v) neither
28 this Settlement nor any ancillary documents, actions, statements or filings in furtherance of

1 settlement (including all matters associated with the mediation) shall be admissible or offered
2 into evidence in the Action or any other case or proceeding for any purpose whatsoever.

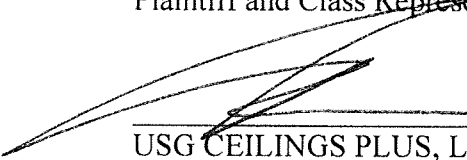
3 5. Notice of the termination of the Settlement by must be provided to counsel
4 for the other Settling Party in writing.

5
6
7 **IT IS SO AGREED:**

8
9 Dated: _____, 2023

EDUARDO GOMEZ MIRELES
Plaintiff and Class Representative

10
11 Dated: Feb 3, 2023



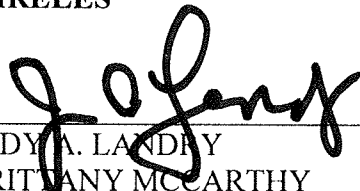
USG CEILINGS PLUS, LLC
Defendant
By: C. Griffin
Its: President : CEO

12
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17
18 **AGREED AS TO FORM:**

19 Dated: _____, 2023

DAVID D. BIBIYAN
VEDANG J. PATEL
**Counsel for Plaintiff EDUARDO GOMEZ
MIRELES**

20
21
22 Dated: Feb 3, 2023




JODY A. LANDRY
BRITANY MCCARTHY
**Counsel for Defendant USG CEILINGS
PLUS, LLC**

1 settlement (including all matters associated with the mediation) shall be admissible or offered
2 into evidence in the Action or any other case or proceeding for any purpose whatsoever.

3 5. Notice of the termination of the Settlement by must be provided to counsel
4 for the other Settling Party in writing.

5
6
7 **IT IS SO AGREED:**

8
9 Dated: Feb 16, 2023, 2023


Eduardo Gomez (Feb 16, 2023 15:23 PST)


EDUARDO GOMEZ MIRELES
Plaintiff and Class Representative

10
11
12 Dated: _____, 2023

USG CEILINGS PLUS, LLC
Defendant
By: _____
Its: _____

13
14
15
16
17
18 **AGREED AS TO FORM:**

19
20 Dated: February 16, 2023



DAVID D. BIBIYAN
VEDANG J. PATEL
**Counsel for Plaintiff EDUARDO GOMEZ
MIRELES**

21
22
23
24 Dated: _____, 2023

JODY A. LANDRY
BRITTANY MCCARTHY
**Counsel for Defendant USG CEILINGS
PLUS, LLC**