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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
21 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

22 CARLOS JIMENEZ, as an individual and  
23 on behalf of all employees similarly  
24 situated,

25 Plaintiff,

26 v.

27 TINCO SHEET METAL INC., and DOES 1  
28 through 50, inclusive,

Defendants.

Case No. 19STCV13260

**CLASS ACTION**

**SECOND AMENDED STIPULATION OF  
CLASS ACTION SETTLEMENT AND  
RELEASE**

Assigned for all purposes to:  
Hon. Kenneth R. Freeman, Dept. 14

Complaint Filed: April 17, 2019  
Trial Date: None Yet Set

1    **SECOND AMENDED STIPULATION OF CLASS ACTION SETTLEMENT AND**  
2    **RELEASE**

3                    IT IS HEREBY STIPULATED, by and among Plaintiff CARLOS JIMENEZ, on behalf  
4 of himself and the Settlement Class Members on the one hand, and Defendant TINCO SHEET  
5 METAL INC. and subject to the approval of the Court, that the above-captioned action is hereby  
6 being compromised and settled pursuant to the terms and conditions set forth in this Joint  
7 Stipulation of Class Action Settlement and Release (the “Settlement”).

8                    **1. DEFINITIONS**

9                    Capitalized terms used in this Settlement shall have the meanings set forth below:

10                    1.1.    “Action” shall mean the lawsuit entitled *Jimenez v. Tinco Sheet Metal Inc.*; and  
11 DOES 1 through 50, pending in the Superior Court of the State of California, County of Los  
12 Angeles, and designated as Case No. 19STCV13260.

13                    1.2.    “Claims Administrator” means Phoenix Settlement Administrators.

14                    1.3.    “Claims Administration Costs” means the amount to be paid to the third-party  
15 Claims Administrator to administer the Settlement, not to exceed Twenty Thousand Dollars  
16 (\$20,000.00).

17                    1.4.    “Class Counsel” means Kevin Mahoney, and Berkeh Alemzadeh of the Mahoney  
18 Law Group, APC.

19                    1.5.    “Class Counsel Award” means reasonable attorneys’ fees for Class Counsel’s  
20 litigation and resolution of this Action in a maximum amount of Two Hundred Sixty-Six  
21 Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$266,666.67) or (1/3rd of the  
22 Gross Settlement Amount). The Court shall determine the amount of the Class Counsel Award,  
23 and it shall be paid from the Gross Settlement Amount.

24                    1.6.    “Class Counsel Costs” means expenses incurred by Class Counsel for Class  
25 Counsel’s litigation and resolution of this Action, not to exceed Twenty Thousand Dollars  
26 (\$20,000.00). The Court shall determine the amount of the Class Counsel Costs, and it shall be  
27 paid from the Gross Settlement Amount.

28                    1.7.    “Class Information” means information regarding Settlement Class Members that

1 Defendant Tinco Sheet Metal Inc. will in good faith compile from its records and provide to the  
2 Claims Administrator. Class Information shall be provided as a Microsoft Excel spreadsheet and  
3 shall include: each Settlement Class Member's full name; last known address; last four (4) digits  
4 of social security number; employee identification number; and the total number of workweeks  
5 each Settlement Class Member worked for Defendant Tinco Sheet Metal Inc., during the Class  
6 Period.

7 1.8. "Class Period" means the period from April 17, 2015, through and including the  
8 date the Court grants Preliminary Approval of the Settlement.

9 1.9. "Class Representative Enhancement Award" means the amount that the Court  
10 authorizes to be paid to the Class Representative Carlos Jimenez, not to exceed Seven Thousand  
11 Five Hundred Dollars (\$7,500.00), in addition to his Individual Settlement Payment, for his  
12 service in connection with being the Class Representative. The Class Representative  
13 Enhancement Award shall be paid from the Gross Settlement Amount. Any portion of the  
14 requested Class Representative Enhancement Award that is not awarded to Plaintiff Carlos  
15 Jimenez shall be part of the Net Settlement Amount.

16 1.10. "Court" means the Superior Court of the State of California for the County of Los  
17 Angeles.

18 1.11. "Defendants" means Tinco Sheet Metal Inc., and all of its current and former  
19 parents, owners, subsidiaries, predecessors and successors, and each of their respective officers,  
20 directors, partners, shareholders and agents, and any other successors, assigns, or legal  
21 representatives.

22 1.12. "Defense Counsel" means Leonard M. Tavera of Semper Law Group, LLP.

23 1.13. "Effective Date" means the date that the Gross Settlement Amount is fully funded  
24 as agreed to in this Agreement.

25 1.14. "Employee" means Plaintiff Carlos Jimenez.

26 1.15. "Employer" means Defendant TINCO SHEET METAL INC., and all of their  
27 current and former parents, owners, subsidiaries, predecessors and successors, and each of their  
28 respective officers, directors, partners, shareholders and agents, and any other successors or

1 assigns.

2 1.16. "Employee Taxes" means the employee's share of any and all applicable federal,  
3 state, and local payroll taxes on the portion of Participating Class Members' Individual  
4 Settlement Payment that constitutes wages. The Employee Taxes will be paid out of the Net  
5 Settlement Amount.

6 1.17. "Employer Taxes" means the employer's share of any and all applicable federal,  
7 state, and local payroll taxes on the portion of Participating Class Members' Individual  
8 Settlement Payment that constitutes wages. The Employer Taxes will be paid separately by the  
9 Employer and shall not be paid out of the Gross Settlement Amount.

10 1.18. "Final Approval Hearing" means the hearing held by the Court, pursuant to class  
11 action procedures and requirements, on the motion for final approval of the Settlement.

12 1.19. "Final Approval Date" means the date, which the Court grants final approval of  
13 the Settlement.

14 1.20. "Final Judgment" means the Court's entry of an order of judgment in this Action  
15 following the Court's final approval of the Settlement.

16 1.21. "Gross Settlement Amount" means the maximum amount Defendant shall have to  
17 pay in connection with this Settlement, by way of a common fund, which shall be inclusive of  
18 all Individual Settlement Amounts to Participating Class Members, Class Counsel Award, Class  
19 Counsel Costs, Claims Administrator Costs, Class Representative Enhancement Award,  
20 Employee Taxes, and PAGA Allocation. Subject to Court approval and the terms of this  
21 Settlement, the Gross Settlement Amount Defendant shall be required to pay is Eight Hundred  
22 Thousand Dollars (\$800,000.00). No portion of the Gross Settlement Amount will revert to  
23 Defendant, and the Settlement does not require Participating Class Members to submit claims as  
24 a prerequisite to receiving their Individual Settlement Payment. This settlement sum is based on  
25 Defendant's representation that the class size is approximately four hundred sixty-five (465)  
26 individuals. Defendant shall not be required to pay more than the Gross Settlement Amount, as  
27 long as the class size does not increase by more than ten (10) percent (i.e., if the class size  
28 increases to eleven (11) percent, the Settlement Agreement shall increase proportionately, i.e.,

1 by eleven percent of the Gross Settlement Amount), and so forth. Under no other circumstances  
2 shall Defendants be required to pay more than the Gross Settlement Amount except as provided  
3 for in this Settlement.

4 1.22. "Individual Settlement Payment" means the amount payable to each Participating  
5 Class Member, as calculated pursuant to Paragraph 3.23 of the Settlement, from the Net  
6 Settlement Amount. Checks for Individual Settlement Payments will specifically indicate that  
7 they are void if not negotiated within one hundred eight (180) days of their issuance.

8 1.23. "LWDA PAGA Allocation" means Seven Thousand Five Hundred Dollars  
9 (\$7,500.00), representing seventy-five percent (75%) of the PAGA Allocation, and is the amount  
10 payable from the Gross Settlement Amount to California's Labor Workforce Development  
11 Agency.

12 1.24. "Net Settlement Amount" means the Gross Settlement Amount, less (i) the Class  
13 Representative Payment approved by the Superior Court (not to exceed \$7,500.00); (ii) the Class  
14 Counsel Fees Payment approved by the Superior Court (not to exceed \$266,666.67); (iii) the Class  
15 Counsel Litigation Expenses Payment approved by the Superior Court (not to exceed \$20,000.00)  
16 (iv) the PAGA payment approved by the Superior Court (\$7,500.00); (v) the Settlement  
17 Administrator Payment approved by the Superior Court (not to exceed \$20,000.00), (vi) any other  
18 fees or expenses (other than Class Counsel Fees Payment and Class Counsel Litigation Expenses  
19 Payment) incurred by implementing the terms and conditions of this Agreement as approved by  
20 the Superior Court.

21 1.25. "Non-Participating Class Member" shall mean a Class Member who submits a  
22 complete, valid and timely request to be excluded from the Settlement pursuant to the instructions  
23 provided in the Class Notice and/or who has signed a release with Defendants<sup>0</sup> to resolve any  
24 claims as alleged in the Action.

25 1.26. "Notice of Objection" means a written statement of objection to the Settlement  
26 made and signed by a Settlement Class Member and includes the following: (1) the full name of  
27 the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3)  
28 the last four (4) digits of the Settlement Class Member's Social Security number and/or the

1 Employee ID number; (4) the basis for the objection; and, (5) whether the Settlement Class  
2 Member intends to appear at the Final Approval Hearing.

3 1.27. "Notice of Settlement" means the Notice of Proposed Class Action Settlement  
4 (substantially in the form attached hereto as **Exhibit "A"**).

5 1.28. "Notice Packet" means the Notice of Proposed Class Action Settlement, Notice of  
6 Estimated Individual Settlement Payment, and the Request for Exclusion.

7 1.29. "PAGA Allocation" means Ten Thousand Dollars (\$10,000.00), allocated from  
8 the Gross Settlement Amount for the compromise of claims for civil penalties brought under the  
9 Labor Code Private Attorneys General Act of 2004 ("PAGA"). Per California Labor Code section  
10 2699(i), Seven Thousand Five Hundred Dollars (\$7,500.00), representing seventy five percent  
11 (75%) of the PAGA Allocation, will be paid to California's Labor Workforce Development  
12 Agency. The remaining Two Thousand Five Hundred Dollars (\$2,500.00), representing twenty  
13 five percent (25%) of the PAGA Allocation, shall be distributed to PAGA Members as defined  
14 in § 1.30 below.

15 1.30. "PAGA Members" means all non-exempt, hourly paid employees currently and  
16 formerly employed by Defendant in the state of California from March 26, 2018, through the date  
17 of preliminary approval.

18 1.31. "PAGA Period" means, March 26, 2018 through and including the date the Court  
19 grants Preliminary Approval of the Settlement.

20 1.32. "Participating Class Members" means all Settlement Class Members who do not  
21 submit a valid and timely Request for Exclusion.

22 1.33. "Parties" means Plaintiff and Defendant collectively, and "Party" shall mean any  
23 Plaintiff or any Defendant, individually.

24 1.34. "Plaintiff" means Carlos Jimenez.

25 1.35. "Plaintiff's General Released Claims" means, in addition to the releases made by  
26 Participating Class Members, Plaintiff, on behalf of himself, his heirs, successors, assigns,  
27 executors, trustees, and estates, in exchange for the terms and conditions of this Agreement,  
28 including the Class Representative Enhancement Award requested or as otherwise authorized by

1 the Court, shall also, as of the Effective Date, fully and forever release the Released Parties, to  
2 the full extent permitted by law, of and from any and all claims arising from his employment with  
3 Defendant, known and unknown, asserted and unasserted, which Plaintiff had or may have had  
4 against the Released Parties, whether sounding in tort, in contract, in law, in equity or otherwise,  
5 and including but not limited to all claims for violation of any local, state, or federal statute, rule,  
6 or regulation.

7 1.36. "Preliminary Approval Date" means the date the Court enters the Preliminary  
8 Approval Order for the Settlement.

9 1.37. "Preliminary Approval Order" means the Proposed Order (filed concurrently with  
10 this Settlement) for preliminary approval of the Settlement, as amended by the Court.

11 1.38. "Released Class Claims" means any and all known and unknown claims, debts,  
12 liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or  
13 causes of action contingent or accrued for, arising out of the allegations and claims asserted in  
14 the operative complaint, including without limitation, all wage and hour claims for unpaid  
15 wages including minimum wage payments, failure to pay wages during employment, failure to  
16 pay overtime, failure to pay wages upon termination, uniform maintenance costs, meal and rest  
17 break violations, wage statement violations and penalties, waiting time penalties,  
18 reimbursement, restitution and other equitable relief, disgorgement, conversion, unjust  
19 enrichment, civil and statutory penalties, interests, liquidated damages, punitive damages,  
20 attorneys' fees and costs, claims under California Labor Code sections 201-203, 204, 223, 226,  
21 226.7, 510, 512, 1194, 1197, 2698-2699.5, 2802, Industrial Welfare Commission Wage Order  
22 No. 9, claims under California Business & Professions Code sections 17200-17204, penalties  
23 pursuant to the Private Attorneys General Act ("PAGA"), and any other benefit claims on  
24 account of the allegations asserted in the operative complaint during the Class Period. This  
25 release shall apply to all claims arising at any point between April 17, 2015 through the date the  
26 Court grants Preliminary Approval of the Settlement.

27 1.39. "Released PAGA Claims" means any and all known and unknown claims, debts,  
28 liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or

1 causes of action contingent or accrued for, arising out of the allegations and claims asserted in  
2 the operative complaint and the Plaintiff's letter to the LWDA, including without limitation, all  
3 wage and hour claims for unpaid wages including minimum wage payments, failure to pay wages  
4 during employment, failure to pay overtime, failure to pay wages upon termination, uniform  
5 maintenance costs, meal and rest break violations, wage statement violations and penalties,  
6 waiting time penalties, reimbursement, restitution and other equitable relief, disgorgement,  
7 conversion, unjust enrichment, civil and statutory penalties, interests, liquidated damages,  
8 punitive damages, attorneys' fees and costs, for violation of Labor Code sections 201-203, 204,  
9 223, 226, 226.7, 510, 512, 1194, 1197 pursuant to Labor Code section 2698-2699.5, the Private  
10 Attorneys General Act ("PAGA"), and any other benefit claims on account of the allegations  
11 asserted in the operative complaint during the PAGA Period. This release shall apply to all  
12 claims arising at any point between March 26, 2018, through the date the Court grants  
13 Preliminary Approval of the Settlement.

14 1.40. **"Released Parties"** means Tinco Sheet Metal Inc., and all of its current, former,  
15 and future parents, owners, subsidiaries, predecessors and successors, and all of their agents,  
16 employees, officers, directors, partners, shareholders, agents, and any other successors, assigns,  
17 or legal representatives.

18 1.41. **"Request for Exclusion"** means a Settlement Class Member's completed Request  
19 for Exclusion form to opt out of the Settlement in the form substantially similar to that attached  
20 hereto as **Exhibit B**.

21 1.42. **"Response Deadline"** means the date sixty (60) days after the Claims  
22 Administrator mails Notice Packets to Settlement Class Members, and shall be the last date on  
23 which Settlement Class Members may: (a) postmark Requests for Exclusion from the Settlement,  
24 or (b) postmark Objections to the Settlement.

25 1.43. **"Settlement"** means the terms of this Stipulation of Class Action Settlement and  
26 Release.

27 1.44. **"Settlement Class Member(s)"** or **"Settlement Class"** means all non  
28 exempt employees, currently and formerly employed by Defendant, in the State of California



1 during the Class Period.

2 **RECITALS**

3 2.1. Class Certification. The Parties stipulate and agree to the certification of this  
4 Action for purposes of this Settlement only. Should the Settlement not become final and effective,  
5 class certification shall immediately be set aside (subject to further proceedings on motion of any  
6 party to certify or deny certification thereafter), the Settlement shall be deemed null and void, and  
7 will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose  
8 whatsoever. The Parties' willingness to stipulate to class certification as part of the Settlement  
9 shall have no bearing on and shall not be admissible in or considered in connection with, the issue  
10 of whether a class should be certified in a non-settlement context in this Action, and shall have  
11 no bearing on and shall not be admissible or considered in connection with the issue of whether  
12 a class should be certified in any other lawsuit.

13 2.2. Procedural History. On April 17, 2019, Plaintiff Carlos Jimenez, a former  
14 employee of Defendant filed the Action in the Superior Court of California for the County of Los  
15 Angeles as a proposed class action on behalf of all current and former non-exempt California  
16 employees of Defendants during the period of April 17, 2015 through the date of final judgment.  
17 Plaintiff Jimenez alleged that Defendants, (1) failed to pay all wages, including overtime wages,  
18 (2) failed to provide meal periods; (3) failed to provide rest periods; (4) failed to provide accurate  
19 itemized wage statements; (5) failed to pay wages upon termination of employment; (6) failed to  
20 reimburse for necessary business expenditures; and (7) engaged in unfair business practices. On  
21 August 7, 2019, Plaintiff filed a First Amended Complaint to add an eighth (8<sup>th</sup>) cause of action  
22 adding penalties under the Private Attorney's General Act ("PAGA"), Labor Code section 2698,  
23 et seq. Plaintiff Jimenez sought recovery under the California Labor Code, the applicable  
24 Industrial Welfare Commission Wage Order, and the California Business & Professions Code.

25 2.3. Settlement Negotiations. On October 19, 2020, the Parties participated in a private  
26 mediation session with Steven Rottman, a well-respected, experienced mediator in the field of  
27 wage and hour class actions. Prior to the mediation, Class Counsel conducted extensive formal  
28 and informal discovery and investigation during the prosecution of the Action. The discovery

1 and investigation included, among other things: (1) inspection and analysis of employee  
2 documents and data, including personnel files, time and payroll records, employment policies and  
3 procedures, and other relevant documents; (2) evaluation of legal positions taken by Defendant;  
4 (3) evaluation of potential class-wide damages and PAGA penalties; and (4) review and research  
5 of applicable law with respect to the claims and potential defenses brought by Defendant. Class  
6 Counsel has vigorously prosecuted this Class Action, and Defendant has vigorously defended it.  
7 The Parties have engaged in sufficient discovery and investigation to assess the relative merits of  
8 the claims and contentions of the Parties. Based on this information and the settlement discussions  
9 during the mediation conducted at arm's length and settlement discussions, the Parties came to  
10 an agreement October 19, 2020. The settlement is the result of an informed and detailed  
11 evaluation of the potential liability of total exposure in relation to the costs and risks associated  
12 with continued litigation of the Action.

13       2.4.     Benefits of Settlement to Settlement Class Members. Plaintiff and Class Counsel  
14 recognize the length of continued proceedings necessary to litigate their disputes through  
15 certification, trial, and any possible appeal. Plaintiff and Class Counsel have also taken into  
16 account the uncertainty and risk of the outcome of further litigation, the difficulties and delays  
17 inherent in such litigation, including, but not limited to, the risks related to a contested motion for  
18 class certification, and the risks related to liability raised by the issues in this case. Plaintiff and  
19 Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims  
20 asserted in the Action and the difficulties in establishing damages for the Settlement Class  
21 Members. Plaintiff and Class Counsel have also taken into account Defendant's agreement to  
22 enter into a settlement that confers substantial relief upon Settlement Class Members. Based on  
23 the foregoing, Plaintiff and Class Counsel have determined that this Settlement is a fair, adequate,  
24 and reasonable, and is in the best interests of the Settlement Class Members.

25       2.5.     Defendants' Denial of Wrongdoing and Liability and Reasons for Settlement.  
26 Defendant contends that the Settlement Class Members were properly and timely paid all wages  
27 owed, including, but not limited to, all straight time and overtime, were properly reimbursed, and  
28 were provided meal and rest periods as required under California law. However, Defendant has

1 concluded that any further defense of this litigation would be protracted and expensive for all  
2 Parties. Substantial amounts of time, energy and resources of Defendant has been and, unless this  
3 Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff  
4 and Settlement Class Members. Defendant has also taken into account the risks of further  
5 litigation in reaching their decision to enter into this Settlement. Nonetheless, Defendant has  
6 concluded that further proceedings in the Action would be protracted and expensive and that it is  
7 desirable that the Action be fully and finally settled in the manner and upon the terms and  
8 conditions set forth in this Settlement in order to dispose of burdensome and protracted litigation,  
9 to permit the operation of Defendant's business without further expensive litigation and the  
10 distraction and diversion of its personnel with respect to matters at issue in the Action . Defendant  
11 has also taken into account the uncertainty and risks inherent in any litigation, especially in  
12 complex cases such as this Action. Defendant has therefore determined that it is desirable and  
13 beneficial to them that the Action be settled in the manner and upon the terms and conditions set  
14 forth in this Settlement.

15 2.6. No Admissions. The Parties understand and agree that this Settlement is the result  
16 of a good faith compromise of disputed claims and allegations, and Defendant is entering into  
17 this Settlement Agreement solely to resolve doubtful and disputed matters. No part of this  
18 Settlement Agreement or any conduct or written or oral statements made in connection with this  
19 Settlement, where or not the Settlement Agreement is finally approved and/or consummated,  
20 may be offered as or construed to be an admission or concession of any kind by either of any of  
21 the Parties. In particular, but without limiting the generality of the foregoing, nothing about this  
22 Settlement or Settlement Agreement shall be offered or construed as an admission that  
23 Defendant has violated any of their obligations under the California Labor Code, or of liability  
24 in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever on the part of  
25 Defendant and/or Released Parties. In addition, this Settlement Agreement shall not be offered  
26 or be admissible in evidence against any of the Parties or any of the Released Parties, except in  
27 any action or proceeding brought by or against Plaintiff, the Class, Class Members, or Defendant  
28 to enforce its terms, or by Defendant in defense of any claims brought by Plaintiff, the Class,

1 Class Members. The provision of this paragraph shall become effective when this Settlement is  
2 signed and shall be binding on the Parties and their counsel regardless of whether the Settlement  
3 Agreement is preliminarily and/or finally approved or terminated for any reason, or rendered  
4 null and void.

5 2.7. Settlement Class Members' Claims. Plaintiff claims that the Released Claims  
6 have merit and give rise to liability on the part of Defendant. This Settlement is a compromise  
7 of disputed claims. Nothing contained in this Settlement and no documents referred to herein,  
8 nor any action taken to carry out this Settlement may be construed or used as an admission by  
9 or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the  
10 claims asserted.

11 2.8. Defendant's Defenses. Defendant has denied and continues to deny each and all  
12 of the allegations, claims, and contentions alleged by Plaintiff in the Action. Defendant has  
13 expressly denied and continue to deny all charges of wrongdoing or liability against them arising  
14 out of any of the conduct, statements, acts, or omissions alleged in the Action. Defendant  
15 contends that it complied in good faith with California and federal wage-and-hour laws and has  
16 dealt legally and fairly with Plaintiff and Settlement Class Members and PAGA Members.  
17 Defendant further denies that, for any purpose other than settling the Action, these claims are  
18 appropriate for class or representative treatment.

19 2.9. Gross Amount Payable by Defendants. Under the terms of this Settlement, the  
20 gross amount payable by Defendant shall not exceed the Gross Settlement Amount of Eight  
21 Hundred Thousand Dollars (\$800,000.00) as provided by this Agreement, exclusive of the  
22 normal employer's share of any payroll taxes attributable to the Settlement Share payments  
23 allocated to wages. Employer shall pay the employer's share of taxes separate and apart from  
24 the Gross Settlement Amount.

25 **3. TERMS OF SETTLEMENT**

26 The Parties agree as follows:

27 3.1. Binding Settlement. This Settlement shall bind the Parties and all Participating  
28 Class Members, subject to the terms and conditions hereof and the Court's approval.

1           3.2.     Release as To Plaintiff and All Settlement Class Members.

2                     3.2.1.     Release as All Settlement Class Members. As of the Effective Date,  
3                     which Defendant shall fully fund the Settlement up eighteen (18)  
4                     months after the Final Approval Date, all Settlement Class Members,  
5                     including Plaintiff, who do not opt out of the Settlement, will be  
6                     deemed to have fully, finally and forever released, settled,  
7                     compromised, relinquished, and discharged the Released Parties from  
8                     the Released Claims for the period of April 17, 2015 to the Preliminary  
9                     Approval Date. Settlement Class Members, including Plaintiff, who do  
10                    not opt out of the Settlement will be deemed to have released any  
11                    further attempt, by lawsuit, administrative claim or action, arbitration,  
12                    demand, or other action of any kind by each and all of the Settlement  
13                    Class Members (including participation to any extent in any class or  
14                    collective action), to obtain recovery against the Defendant that is  
15                    reasonably related to the Released Claims for harms arising during the  
16                    Class Period. Even if a Settlement Class Member opts out of the  
17                    Settlement, the Settlement Class Member shall still be entitled to  
18                    receive his or her share of the PAGA Settlement allocation.  
19

20                   3.2.2.     Release as To Plaintiff. As of the Effective Date, which Defendant  
21                   shall fully fund the Settlement up eighteen (18) months after the Final  
22                   Approval Date Plaintiff will be deemed to have fully, finally and  
23                   forever released, settled, compromised, relinquished, and discharged  
24                   any and all of Plaintiff's General Released Claims against the Released  
25                   Parties. With respect to the Plaintiff's General Released Claims only,  
26                   Plaintiff shall be deemed to have, and by operation of the Final  
27                   Judgment shall have, expressly waived and relinquished, to the fullest  
28                   extent permitted by law, the provisions, rights, and benefits of section

1 1542 of the California *Civil Code*, or any other similar provision under  
2 federal or state law, which section provides:

3 *A general release does not extend to claims which the creditor does not*  
4 *know or suspect to exist in his or her favor at the time of executing the*  
5 *release, which if known by him or her must have materially affected his or*  
6 *her settlement with the debtor.*

7 Plaintiff may hereafter discover facts in addition to or different from those they  
8 now know or believe to be true with respect to the subject matter of the Plaintiff's General  
9 Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the  
10 Final Judgment shall have, fully, finally, and forever settled and released any and all of the  
11 Plaintiff's General Released Claims, whether known or unknown, suspected or unsuspected,  
12 contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of  
13 law or equity now existing or coming into existence in the future, including, but not limited to,  
14 conduct that is negligent, intentional, with or without malice or a breach of any duty, law or rule,  
15 without regard to the subsequent discovery or existence of such different or additional facts.  
16 Plaintiff agrees not to sue or otherwise make a claim against any of the Released Parties for  
17 Plaintiffs' General Released Claims.  
18

19 3.3. Release as to Defendant: Pursuant to this Agreement, Defendant and Released  
20 Parties and on behalf of their agents, representatives, attorneys, insurers, assigns, and/or anyone  
21 acting on their respective behalf, and in consideration of the promises, assurances, and covenants  
22 set forth in this Agreement, hereby fully release the Employee and Employee's heirs, agents,  
23 representatives, assigns, executors, and/or anyone on Employee's behalf (collectively, the  
24 Employee Released Parties") from all claims or causes of action by reason of any injuries and/or  
25 damages or losses, known or unknown, foreseen or unforeseen, patent or latent, which the  
26 Company has sustained or which may be sustained as a result of any facts and circumstances  
27 arising out of or in any way related to Employee's employment with the Company, and to any  
28 other disputes, claims, disagreements, or controversies, between the Parties up to and including

1 the date of this Agreement is signed.

2 3.4. Tax Liability. The Parties understand and agree that the Parties are not providing  
3 tax or legal advice. Participating Class Members will remain responsible for any Employee  
4 Taxes. Participating Class Members will assume any employee tax obligations or consequences  
5 that may arise from this Settlement and should consult with a tax expert if they have questions.  
6 However, Individual Settlement Payments for the Class Settlement Allocation will be allocated  
7 as follows: twenty percent (20%) as wages (a W-2 will be issued) and eighty percent (80%) as  
8 interest and penalties (a 1099 will be issued). Any required payroll deductions will be based on  
9 this apportionment. The Parties agree that, in the event that any taxing body determines that  
10 additional employee taxes are due from any Participating Class Member, such Participating  
11 Class Member assumes all responsibility for the payment of such taxes. For the PAGA  
12 Settlement Allocation, such payment shall not be subject to any tax withholdings due to the  
13 nature of the payment being civil penalties.  
14

15 3.5. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision  
16 of this Settlement, and no written communication or disclosure between or among the Parties,  
17 Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall any  
18 such communication or disclosure constitute or be construed or be relied upon as, tax advice  
19 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as  
20 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,  
21 independent legal and tax counsel for advice (including tax advice) in connection with this  
22 Settlement, (b) has not entered into this Settlement based upon the recommendation of any other  
23 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any  
24 communication or disclosure by any attorney or advisor to any other party to avoid any tax  
25 penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any  
26 other party has imposed any limitation that protects the confidentiality of any such attorney's or  
27 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure  
28 by the acknowledging party of the tax treatment or tax structure of any transaction, including

1 any transaction contemplated by this Settlement.

2 3.6. Settlement Approval and Implementation Procedures. As part of this Settlement,  
3 the Parties agree to the following procedures for obtaining the Court's preliminary approval of  
4 the Settlement, certifying the Settlement Class, notifying Settlement Class Members of the  
5 Settlement, obtaining the Court's final approval of the Settlement, and processing the Individual  
6 Settlement Payments.

7 3.7. Preliminary Approval and Certification. As soon as practicable after execution of  
8 this Settlement, but no later than thirty (30) days, the Parties will jointly submit this Settlement  
9 to the Court for its preliminary approval. Such submission will include this Settlement, the  
10 proposed Notice Packet, the proposed Preliminary Approval Order, and any, memoranda and  
11 evidence as may be necessary for the Court to determine that this Settlement is fair, adequate,  
12 and reasonable. The Parties agree to request the Court to enter an order conditionally certifying  
13 the Settlement Class after the preliminary approval hearing, in accordance with California Rules  
14 of Court, Rule 3.769(c).

15 3.8. Class Information. No more than twenty-one (21) calendar days after the entry of  
16 the Preliminary Approval Order, Defendant, shall provide the Claims Administrator with the  
17 Class Information for purposes of mailing Notice Packets to Settlement Class Members,  
18 including: 1. Class Member's full name; 2. Class Member's last known address; 3. Class  
19 Member's last four (4) digits of social security number; 4. Class Member's employee  
20 identification number; and 5. based on Defendant's payroll records, the Class Member's total  
21 number of workweeks. The Settlement Administrator shall use commercially reasonable efforts  
22 to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized  
23 disclosure or use of such data other than as permitted by the Settlement. The Settlement  
24 Administrator shall ensure that the Class Notice and any other communications to Class  
25 Members shall not include the Class Members' social security number, except for the last four  
26 (4) digits, if necessary.

27 3.9. Notice by First Class U.S. Mail. Upon receipt of the Class Information, the Claims  
28



1 Administrator will perform a search on the National Change of Address database to update the  
2 Settlement Class Members' addresses. No more than ten (10) calendar days after receiving the  
3 Class Information from Defendants, as provided herein, the Claims Administrator shall mail  
4 copies of the Notice Packet to all Settlement Class Members by regular First-Class U.S. Mail.  
5 The Claims Administrator shall exercise its best judgment to determine the current mailing  
6 address for each Settlement Class Member. The address identified by the Claims Administrator  
7 as the current mailing address shall be presumed to be the best mailing address for each  
8 Settlement Class Member.

9 3.10. Undeliverable Notices. Any Notice Packets returned to the Claims Administrator  
10 as undeliverable on or before the sixty (60) day Response Deadline shall be re-mailed to the  
11 forwarding address affixed thereto.

12 3.11. For each Settlement Class Member whose Notice Packet is returned, there will be  
13 one (1) skip trace by the Claims Administrator. If an updated mailing address is identified, the  
14 Claims Administrator shall resend the Notice Packet to the Settlement Class Member. One (1)  
15 supplemental Notice Packet shall be mailed to each Settlement Class Member whose original  
16 Notice Packet is returned as undeliverable to the Claims Administrator. Such re-mailing shall  
17 be made within five (5) business days of the Claims Administrator receiving notice that the  
18 respective Notice Packet was undeliverable. Any requests by the Claims Administrator for  
19 documents or information from Defendant must be responded to within a reasonable amount of  
20 time by counsel for Defendant. It is the intent of the Parties that reasonable means be used to  
21 locate the Settlement Class Members and apprise them of their rights.

22 3.12. Settlement Class Members to whom Notice Packets are resent after having been  
23 returned undeliverable to the Claims Administrator, during the entire Response Deadline, shall  
24 have an additional fourteen (14) calendar days from the date of re-mailing, or until the sixty (60)  
25 day Response Deadline has expired, whichever is later, to mail the Request for Exclusion or a  
26 Notice of Objection. Notice Packets that are resent shall inform the recipient of this adjusted  
27 deadline. The date of the postmark on the return envelope shall be the exclusive means used to  
28

1 determine whether a Settlement Class Member has returned his or her Request for Exclusion on  
2 or before the adjusted deadline. It will be conclusively presumed that if an envelope so mailed  
3 has not been returned within twenty (20) days of the mailing, that the Settlement Class Member  
4 received the Notice Packet. If a Settlement Class Member's Notice Packet is returned to the  
5 Claims Administrator more than once as undeliverable, then an additional Notice Packet shall  
6 not be re-mailed. Nothing further shall be required of, or done by, the Parties, Class Counsel, or  
7 Defendants' Counsel to provide notice of the proposed Settlement.

8 3.13. Compliance with the procedures specified in paragraphs 3.9-3.12 of this  
9 Settlement shall constitute due and sufficient notice to Settlement Class Members of this  
10 Settlement and shall satisfy the requirement of due process. In the event the procedures set forth  
11 herein are followed and the intended recipient of a Notice Packet still does not receive the Notice  
12 Packet, the intended recipient will be a participating Class Member and will be bound by all  
13 terms of the Settlement and the Order Granting Final Approval entered by the Court. Nothing  
14 else shall be required of, or done by, the Parties, Class Counsel, and Defense Counsel to provide  
15 notice of the proposed Settlement.  
16

17 3.14. Disputes. Settlement Class Members will have the opportunity during the sixty  
18 (60) day response period, should they disagree with Defendant's records regarding their days  
19 worked during the Class Period, to provide documentation and/or an explanation to show  
20 contrary days worked. A space will be provided on the Notice of Settlement Payment for Class  
21 Members to raise such disputes. For a Class Member's dispute to be considered, the Class  
22 Member must fully complete the Notice and timely return it to the Settlement Administrator.  
23 Class Members will have sixty (60) days after the date the Notice Packet is mailed by the  
24 Settlement Administrator to mail in a dispute, including any supporting evidence the Class  
25 Member may have. Notice Packets are resent after having been returned undeliverable to the  
26 Claims Administrator, during the entire Response Deadline, shall have an additional fourteen  
27 (14) calendar days from the date of re-mailing, or until the sixty (60) day Response Deadline  
28 has expired, whichever is later. The date of the postmark of the return mailing envelope shall be

1 the exclusive means used to determine whether a dispute has been timely submitted to the  
2 Settlement Administrator. If there is a dispute, the Claims Administrator will consult with the  
3 Parties to determine whether an adjustment is warranted. The Claims Administrator shall  
4 determine the eligibility for, and the amounts of, any Individual Settlement Payments under the  
5 terms of this Settlement. The Claims Administrator's determination of the eligibility for and  
6 amount of any Individual Settlement Payment shall be binding upon the Settlement Class  
7 Member and the Parties.

8 3.15. Exclusions (Opt-Outs). The Notice Packet shall state that Settlement Class  
9 Members who wish to exclude themselves from the Settlement must submit a Request for  
10 Exclusion Form by the Response Deadline. The Request for Exclusion: (1) must contain the  
11 name, address (2) must be signed by the Settlement Class Member or his or her representative;  
12 and (3) must be postmarked by the Response Deadline and returned to the Claims Administrator  
13 at the specified address. If the Request for Exclusion does not contain the information listed in  
14 (1)-(2), it will not be deemed valid for exclusion from this Settlement. Notice Packets are resent  
15 after having been returned undeliverable to the Claims Administrator, during the entire  
16 Response Deadline, shall have an additional fourteen (14) calendar days from the date of re-  
17 mailing, or until the sixty (60) day Response Deadline has expired, whichever is later. The date  
18 of the postmark on the return-mailing envelope shall be the exclusive means used to determine  
19 whether a Request for Exclusion has been timely submitted. Any Settlement Class Member  
20 who requests to be excluded from the Settlement will not be entitled to any recovery under the  
21 Settlement and will not be bound by the terms of the Settlement. Settlement Class Members who  
22 receive a Notice Packet, but fail to submit a valid and timely Request for Exclusion on or before  
23 the Response Deadline shall be bound by all terms of the Settlement and any Final Judgment  
24 entered in this Action if the Settlement is approved by the Court. At no time shall any of the  
25 Parties or their counsel seek to solicit or otherwise encourage members of the Settlement Class  
26 to submit Requests for Exclusion from the Settlement. Class Counsel shall not represent any  
27 Settlement Class Member with respect to any such Requests for Exclusion. Settlement Class  
28

1 Members who submit a valid Request for Exclusion may not also submit a Notice of Objection.

2 3.16. Objections. The Notice Packet shall state that Settlement Class Members who  
3 wish to remain Class Members, but desire to object to the Settlement must not submit a Request  
4 for Exclusion and must submit a written statement of objection (“Notice of Objection”) by the  
5 Response Deadline to the Claims Administrator. The Notice of Objection must be signed by the  
6 Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the  
7 dates of employment of the Settlement Class Member; (3) and, (4) whether the Settlement Class  
8 Member intends to appear at the Final Approval Hearing. Notice Packets are resent after having  
9 been returned undeliverable to the Claims Administrator, during the entire Response Deadline,  
10 shall have an additional fourteen (14) calendar days from the date of re-mailing, or until the  
11 sixty (60) day Response Deadline has expired, whichever is later. The Notice of Objection must  
12 be postmarked by the Response Deadline and returned to the Claims Administrator at the  
13 specified address. Within five (5) days of receiving a notice of objection from a Settlement Class  
14 Member, the Claims Administrator shall forward the notice of objection to Class Counsel and  
15 Defense Counsel. The Parties will thereafter lodge the Settlement Class Member’s Notice of  
16 Objection with the Court. Settlement Class Members, regardless of whether or not they submit  
17 a timely Notice of Objection, will have a right to appear at the Final Approval Hearing, with or  
18 without an attorney, in order to have their objections heard by the Court. At no time shall any  
19 of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members  
20 to file or serve written objections to the Settlement or appeal from the Final Judgment. Class  
21 Counsel shall not represent any Settlement Class Members with respect to any such objections.  
22

23 3.17. Plaintiffs’ Participation. By executing this Settlement, Plaintiff hereby stipulates  
24 he will not object to or exclude himself from the Settlement in anyway.

25 3.18. No Solicitation of Settlement Objections or Exclusions. The Parties and their  
26 counsel agree to use their best efforts to carry out the terms of this Settlement. At no time shall  
27 any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class  
28 Members to submit either written objections to the Settlement or Requests for Exclusion from

1 the Settlement, or to appeal from the Court's Final Judgment.

2 3.19. Funding of the Gross Settlement. This is a non-reversionary Settlement in which  
3 Defendant is required to pay the entire Gross Settlement Amount of Eight Hundred Thousand  
4 Dollars (\$800,000.00). No portion of the Gross Settlement Amount will revert to Defendant.  
5 Defendant shall fully fund the Settlement within eighteen (18) months after the Final Approval  
6 Date. The funding of the Settlement is not subject to a payment plan. No payments from the  
7 Gross Settlement Amount shall be made before the Gross Settlement Amount is fully funded.  
8 No release in this Settlement shall be effective until the Gross Settlement Amount is fully  
9 funded. If Defendant defaults, Plaintiff and all Participating Class Members will be able to  
10 pursue all claims, and the Settlement becomes null and void.

11 3.20. No more than five (5) business days after the Gross Settlement Amount is fully  
12 funded, the Claims Administrator will provide the Parties with an accounting of all anticipated  
13 payments from the Gross Settlement Amount. The Net Settlement Amount shall be calculated  
14 by deducting from the Gross Settlement Amount payments for (1) Class Representative  
15 Enhancement Awards, as specified in this Settlement and approved by the Court; (2) Class  
16 Counsel Award, as specified in this Settlement and approved by the Court; (3) Class Counsel  
17 Costs, as specified in this Settlement and approved by the Court; (4) Claims Administration  
18 Costs, as specified in this Settlement and approved by the Court; and (5) the LWDA PAGA  
19 Allocation, as specified in this Settlement and approved by the Court. The Net Settlement  
20 Amount shall be distributed in Individual Settlement Payments in accordance with Paragraphs  
21 3.12.

22 3.21. Individual Class Settlement Payments. Each Participating Class Member shall be  
23 eligible to receive an Individual Settlement Payment, which is a share of the Net Settlement  
24 Amount, based on the number of weeks worked by the Participating Class Member during the  
25 Class Period, as a proportion of all weeks worked by all Participating Class Members during the  
26 Class Period. Individual Settlement Payments shall be paid pursuant to the formula set forth in  
27 Paragraph 3.22 below. Individual Settlement Payments shall be mailed by regular First-Class  
28

1 U.S. Mail to Participating Class Members' last known mailing address no later than fifteen (15)  
2 calendar days after the Gross Settlement Amount is fully funded. Individual Settlement  
3 Payments will specifically indicate that they are void if not negotiated within one hundred eight  
4 (180) days of their issuance. Individual Settlement Payments reflect settlement of a dispute  
5 regarding wages, interest, and penalties. Individual Settlement Payments will be allocated as  
6 follows: twenty percent (20%) as wages; and eighty percent (80%) as interest and penalties. The  
7 "wage" portion of each Individual Settlement Payment will be reduced by Employee Taxes.  
8 The Claims Administrator shall issue the appropriate tax documents associated with the  
9 Individual Settlement Payments, including an IRS Form W-2 for the amounts allocated as  
10 "wages" and an IRS Form 1099 for the amounts allocated as "interest" or "penalties."  
11

12  
13 Individual PAGA Settlement Payments. Each PAGA Member shall be eligible to receive an  
14 Individual PAGA Settlement Payment, regardless of whether the PAGA Member opts out of  
15 the Settlement, which is a share of the PAGA Allocation, based on the number of weeks worked  
16 by the PAGA Member during the PAGA Period, as a proportion of all weeks worked by all  
17 Participating Class Members during the PAGA Period. Individual PAGA Settlement Payments  
18 shall be paid pursuant to the formula set forth in Paragraph 3.22 below. Individual PAGA  
19 Settlement Payments shall be mailed by regular First-Class U.S. Mail to PAGA Members' last  
20 known mailing address no later than fifteen (15) calendar days after the Gross Settlement  
21 Amount is fully funded. Individual PAGA Settlement Payments will specifically indicate that  
22 they are void if not negotiated within one hundred eight (180) days of their issuance. Individual  
23 PAGA Settlement Payments reflect settlement of a dispute civil penalties. Individual PAGA  
24 Settlement Payments will not be subject to taxes.

25 3.22. Individual Settlement Payment Formula. After deducting the Class Counsel  
26 Award and Class Counsel Costs, the LWDA PAGA Allocation, Class Representative  
27 Enhancement Awards, and Claims Administration Costs, the remaining funds (the "Net  
28 Settlement Amount"), will be distributed as follows: The Claims Administrator shall divide the

1 Net Settlement Amount by the total number of workweeks Participating Class Members worked  
2 during the Class Period in order to determine the amount each Participating Class Member is  
3 entitled to for each workweek he or she was employed by Defendant (the "Daily Amount").  
4 The Claims Administrator will multiply the Weekly Amount by the estimated total number of  
5 workweeks that each Participating Class Member worked during the Class Period. The product  
6 of each calculation represents the gross Individual Settlement Payment for the respective  
7 Participating Class Member. The Claims Administrator will then deduct Employee Taxes  
8 attributable to wages from the Class Settlement allocation to arrive at the net Individual  
9 Settlement Payment for each respective Class Member. Within twenty-one (21) calendar days  
10 after Preliminary Approval, Defendant, shall provide the Claims Administrator with any  
11 information reasonably necessary to perform the calculation of number of workweeks for each  
12 Settlement Class Member, and any other reasonably required information the Claims  
13 Administrator requests to perform the calculations required under this Settlement. Defendant  
14 shall have no responsibility for deciding the validity of any Individual Settlement Payment or  
15 any other payments made pursuant to this Settlement, shall have no involvement in or  
16 responsibility for the determination or payment of Employee Taxes with respect to the Class  
17 payment allocation, and shall have no liability for any errors made with respect to such  
18 Employee Taxes.  
19

20 3.23. Settlement Class Members are not eligible to receive any compensation other than  
21 the Individual Settlement Payment, and they may only receive an Individual Settlement Payment  
22 if they do not submit a valid and timely Request for Exclusion to opt out of the Settlement.  
23 Plaintiffs, however, is also eligible to receive a Class Representative Enhancement Award.  
24 Settlement Class Members will be eligible to receive their Individual PAGA Settlement  
25 Payment even if they opt-out of the Settlement.

26 3.24. No benefit, including but not limited to pension benefits, shall increase or accrue  
27 as a result of any payment made pursuant to this Settlement.

28 3.25. If a check for an Individual Settlement Payment is returned to the Claims

1 Administrator as undeliverable, the Claims Administrator shall promptly attempt to obtain a  
2 valid mailing address by performing a skip trace search. If another address is identified, the  
3 Claims Administrator shall mail the check to the newly identified address. If an Individual  
4 Settlement Payment check is returned to the Claims Administrator a second time as  
5 undeliverable, the Claims Administrator shall not attempt any further re-mailing of that check.  
6 Any settlement checks that remain uncashed one hundred eighty (180) or more calendar days  
7 after issuance shall be voided. The Claims Administrator shall forward all voided settlement  
8 checks to the California State Controller's Office's Unclaimed Property Division. The Claims  
9 Administrator shall also compile a list of the Participating Class Members for whom their funds  
10 were deposited with the California State Controller's Office's Unclaimed Property Division. In  
11 such event, the Participating Class Member shall nevertheless remain bound by the Settlement.  
12 The Parties agree that good cause exists for the Court to approve this distribution because the  
13 unclaimed funds are unclaimed wages of employees that will be held by the State of California  
14 for the benefit of these employees, who may request receipt of payment from the California  
15 State Controller's Office's Unclaimed Property Division.  
16

17 3.26. Class Representative Enhancement Award. Defendant agrees not to oppose or  
18 object to any application or motion by Plaintiff for a Class Representative Enhancement Award,  
19 not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) for Plaintiff Carlos Jimenez,  
20 as consideration for Plaintiff's time and effort in bringing and prosecuting this matter. The Class  
21 Representative Enhancement Award shall be paid to Plaintiff from the Gross Settlement Amount  
22 no later than fifteen (15) calendar days after the Gross Settlement Amount is fully funded. The  
23 Claims Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Class  
24 Representative Enhancement Award. Plaintiff shall be solely and legally responsible for  
25 payment of all applicable taxes on their Class Representative Enhancement Award and shall  
26 hold Defendants harmless from any claim or liability for taxes, penalties, or interest arising as a  
27 result of the Class Representative Enhancement Award. The Class Representative Enhancement  
28 Award shall be in addition to Plaintiff's Individual Settlement Payment as a Participating Class



1 Member. In the event that the Court awards lesser amounts than the Class Representative  
2 Enhancement Awards requested, then any portion of the requested amounts not awarded to  
3 Plaintiff shall be added to the Net Settlement Amount. Plaintiff shall not have the right to revoke  
4 their agreement to the Settlement on the grounds the Court did not approve any or all of his  
5 request for a Class Representative Enhancement Award.

6 3.27. Class Counsel Award and Costs. Defendants agree not to oppose or object to any  
7 application or motion by Class Counsel for a Class Counsel Award not to exceed Two Hundred  
8 Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$266,666.67) and  
9 Class Counsel Costs not to exceed Twenty Thousand Dollars (\$20,000.00) from the Gross  
10 Settlement Amount. The Class Counsel Award and Class Counsel Costs shall be paid no later  
11 than fifteen (15) calendar days after the Gross Settlement Amount is fully funded. Class Counsel  
12 shall be solely and legally responsible to pay all applicable taxes on the payments made pursuant  
13 to this paragraph. The Claims Administrator shall issue an IRS Form 1099 — MISC to Class  
14 Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent  
15 upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any  
16 amount requested by Class Counsel for the Class Counsel Award and Class Counsel Costs and  
17 not granted by the Court shall be part of the Net Settlement Amount.

18 3.28. PAGA Settlement Allocation. Subject to Court approval, the Parties shall allocate  
19 a total of Ten Thousand Dollars (\$10,000.00) from the Gross Settlement Amount for the  
20 compromise of claims for civil penalties brought under the PAGA (the "PAGA Allocation").  
21 Per California Labor Code section 2699(i), Seven Thousand Five Hundred Dollars (\$7,500.00),  
22 representing seventy-five percent (75%) of the PAGA Allocation, will be paid to California's  
23 Labor Workforce Development Agency. The remaining Two Thousand Five Hundred Dollars  
24 (\$2,500.00), representing twenty-five percent (25%) of the PAGA Allocation, shall be part of  
25 the Net Settlement Amount to be distributed to PAGA Members.

26 3.29. LWDA PAGA Allocation. The LWDA PAGA Allocation shall be Seven  
27 Thousand Five Hundred Dollars (\$7,500.00), representing seventy-five percent (75%) of the  
28

1 PAGA Allocation, and shall be paid to California's Labor Workforce Development Agency  
2 from the Gross Settlement Amount by the Claims Administrator no later than fifteen (15)  
3 calendar days after the Gross Settlement Amount is fully funded. The remaining Two Thousand  
4 Five Hundred Dollars (\$2,500.00), representing twenty-five percent (25%) of the PAGA  
5 Allocation, shall be part of the Net Settlement Amount for distribution to Participating Class  
6 Members who worked during the PAGA period.

7 3.30. Defendant's Option to Terminate Settlement. If, after the Response Deadline and  
8 before the Final Approval Hearing, five percent (5%) or more of the number of Settlement Class  
9 Members submit timely and valid Requests for Exclusion from the Settlement, Defendant shall  
10 have, in its sole discretion, the option to terminate this Settlement. Defendant shall exercise its  
11 option to terminate, if it wishes, prior to the Final Approval Hearing. If Defendant decides to  
12 void the Settlement, then the Settlement and conditional class certification shall be considered  
13 void, and neither the Settlement, conditional class certification, nor any of the related  
14 negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the  
15 same position, without prejudice, as if this Settlement had been neither entered into nor filed  
16 with the Court. Should Defendant void the Settlement under this paragraph, they shall be  
17 responsible for all Claims Administration Costs.

18 3.31. Claims Administration Costs. The Claims Administrator shall be paid for the costs  
19 of administration of the Settlement from the Gross Settlement Amount. Such costs of  
20 administration are not to exceed Twenty Thousand Dollars (\$20,000.00), unless the court  
21 approves a higher amount. No fewer than twenty (20) days prior to the Final Approval Hearing,  
22 the Claims Administrator shall provide the Parties with a statement detailing the costs of  
23 administration. The Claims Administrator, on Defendant's behalf, shall have the authority and  
24 obligation to make payments, credits and disbursements, including payments and credits in the  
25 manner set forth in this Settlement, to Participating Class Members, calculated in accordance  
26 with the methodology set out in this Settlement and orders of the Court. The Parties agree to  
27 cooperate in the administration of the Settlement and to make all reasonable efforts to control  
28

1 and minimize the costs and expenses incurred in administration of the Settlement. The Parties  
2 each represent they do not have any financial interest in the Claims Administrator or otherwise  
3 have a relationship with the Claims Administrator that could create a conflict of interest. The  
4 Claims Administrator shall be responsible for: processing and mailing all court-approved  
5 payments to the Plaintiffs, Class Counsel, Participating Class Members, and the LWDA;  
6 printing and mailing the Notice Packets to the Settlement Class Members as called for in this  
7 Settlement and ordered by the Court; receiving and reporting Notice of Objections and Requests  
8 for Exclusion submitted by Settlement Class Members; providing declaration(s) as necessary in  
9 support of preliminary and/or final approval of this Settlement; and other tasks as the Parties  
10 mutually agree or the Court orders the Claims Administrator to perform. The Claims  
11 Administrator shall keep the Parties timely apprised of the performance of all Claims  
12 Administrator responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other  
13 tax documents required by administration of this Settlement shall be prepared by the Claims  
14 Administrator. Any expenses incurred in connection with such preparation shall be Claims  
15 Administration Costs. The Claims Administrator shall be paid the Claims Administration Costs  
16 from the Gross Settlement Amount no later than fifteen (15) calendar days after the Gross  
17 Settlement Amount is fully funded.

19 3.32. Final Approval Hearing. At a reasonable time following the Response Deadline,  
20 the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and  
21 the Court shall determine amounts properly payable for (i) the Class Counsel Award, (ii) the  
22 Class Counsel Costs, (iii) the Class Representative Enhancement Awards, (iv) the LWDA  
23 PAGA Allocation; and (v) the Claims Administration Costs.

24 3.33. Entry of Final Judgment. If the Court approves this Settlement at the Final  
25 Approval Hearing, the Parties shall request that the Court enter the Final Judgment after the  
26 Gross Settlement Amount has been fully funded, with the Court retaining jurisdiction over the  
27 Parties to enforce the terms of the judgment. If the Court grants final approval to the Settlement,  
28 notice of Final Approval shall be posted on the Settlement Administrator's website, at

1 www.phoenixclassaction.com.

2 3.34. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Participating  
3 Class Members pursuant to this Settlement will not count as earnings or compensation for  
4 purposes of any benefits (e.g., pensions or retirement plans) sponsored by Defendant. It is  
5 expressly understood and agreed that the receipt of Individual Settlement Amount shall not  
6 entitle any Participating Class Member to additional compensation or benefits under any  
7 collective bargaining agreement or under any bonus, contest or other compensation or benefit  
8 plan or agreement in place during the period covered by the Settlement, nor shall it entitle any  
9 Participating Class Member to any increased pension and/or retirement, or other deferred  
10 compensation benefits. It is the intent of the Parties that Individual Settlement Amounts  
11 provided for in this Stipulation are the sole payments to be made by Defendant to Participating  
12 Class Members in connection with this Settlement, with the exception of Plaintiff, and that the  
13 Participating Class Members are not entitled to any new or additional compensation or benefits  
14 as a result of having received the Individual Settlement Awards. Furthermore, the receipt of  
15 Individual Settlement Amounts by Participating Class Members shall not, and does not, by itself  
16 establish any general, special, or joint employment relationship between and among the  
17 Participating Class Member(s) and Defendant.

18  
19 3.35. Nullification of Settlement. In the event: (i) the Court does not enter the  
20 Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of  
21 the Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided  
22 herein; or (iv) the Settlement does not become final for any other reason, this Settlement shall  
23 be null and void and any order or judgment entered by the Court in furtherance of this Settlement  
24 shall be treated as void from the beginning. In such a case, the Parties and any funds to be  
25 awarded under this Settlement shall be returned to their respective statuses as of the date and  
26 time immediately prior to the execution of this Settlement, and the Parties shall proceed in all  
27 respects as if this Settlement had not been executed, except that any costs and fees already  
28 incurred by the Claims Administrator shall be paid jointly by the Parties. In the event an appeal

1 is filed from the Court's Final Judgment, or any other appellate review is sought, administration  
2 of the Settlement shall be stayed pending final resolution of the appeal or other appellate review,  
3 and any other payments required hereunder by Defendant will not be paid pending the  
4 completion and final resolution of the appeal, and any payment thereafter will: (1) occur only if  
5 the Order Granting Final Approval is upheld after all appeals; and (2) be in a manner that is  
6 provided for in the Settlement and in the Order Granting Final Approval.

7 3.36. No Admission by the Parties. Defendant denies any and all claims alleged in this  
8 Action and deny all wrongdoing whatsoever. This Settlement is not a concession or admission,  
9 and shall not be used against Defendant as an admission or indication, with respect to any claim,  
10 of any fault, concession, or omission by Defendants. Neither this Settlement, nor any of its  
11 terms and conditions, nor any of the negotiations connected with it, is a concession or admission,  
12 and none shall be used against Defendant as an admission or indication with respect to any claim  
13 of any fault, concession, or omission by Defendant or that class certification is proper under the  
14 standard applied to contested certification motions. The Parties stipulate and agree to the  
15 certification of the proposed class for settlement purposes only. The Parties further agree that  
16 this Settlement will not be admissible in this or any other proceeding as evidence that either: (i)  
17 a class action should be certified or (ii) Defendant is liable to Plaintiff or any Class Member,  
18 other than according to the terms of this Settlement.

19 3.37. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning  
20 the interpretation, calculation or payment of settlement claims, or other disputes regarding  
21 compliance with this Settlement shall be resolved as follows:  
22

23 3.38. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class  
24 Members, or Defendant, at any time believe that the other Party or Parties have breached or  
25 acted contrary to the Settlement, that Party shall notify the other Party or Parties in writing of  
26 the alleged violation. Upon receiving notice of the alleged violation or dispute, the responding  
27 Party shall have ten (10) days to correct the alleged violation and/or respond to the initiating  
28 Party with the reasons why the Party disputes all or part of the allegation.

1 3.38.1. If the response does not address the alleged violation to the initiating  
2 Party's satisfaction, the Parties shall negotiate in good faith for up to ten  
3 (10) days to resolve their differences.

4 3.38.2. If thereafter, the Parties still cannot resolve the dispute, the Parties shall  
5 utilize the services of Steve Rottman (Mediator) in a good-faith attempt  
6 to mediate and resolve the dispute.

7 3.38.3. If the Parties are unable to resolve their differences after twenty (20)  
8 days, either Party may file an appropriate motion for enforcement with  
9 the Court.

10 3.39. Exhibits and Headings. The terms of this Settlement include the terms set forth in  
11 Exhibits A and B, which are attached to this Settlement and incorporated by this reference as  
12 though fully set forth in this paragraph. Any Exhibits to this Settlement are an integral part of  
13 the Settlement. The descriptive headings of any paragraphs or sections of this Settlement are  
14 inserted for convenience of reference only and do not constitute a part of this Settlement.

15 3.40. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the  
16 Action and thereafter implement and complete the Settlement.

17 3.41. Amendment or Modification. This Settlement may be amended or modified only  
18 by a written instrument signed by all the Parties and counsel for all Parties or their successors-  
19 in-interest. Any amendment(s) or modification(s) to this Agreement requires court approval.

20 3.42. Entire Settlement. This Settlement and any attached Exhibits constitute the entire  
21 agreement among these Parties, and no oral or written representations, warranties or  
22 inducements have been made to any Party concerning this Settlement or its exhibits, other than  
23 the representations, warranties and covenants contained and memorialized in the Settlement and  
24 its exhibits. No other prior or contemporaneous written or oral agreements may be deemed  
25 binding on the Parties.

26 3.43. Authorization to Enter into Settlement. Counsel for all Parties warrant and  
27 represent they are expressly authorized by the Parties whom they represent to negotiate this  
28

1 Settlement and to take all appropriate actions required or permitted to be taken by such Parties  
2 pursuant to this Settlement to effectuate its terms, and to execute any other documents required  
3 to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each  
4 other and use their best efforts to affect the implementation of the Settlement. In the event the  
5 Parties are unable to reach agreement on the form or content of any document needed to  
6 implement the Settlement, or on any supplemental provisions that may become necessary to  
7 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve  
8 such disagreement. The person signing this Settlement on behalf of Defendant TINCO SHEET  
9 METAL INC. represents and warrants that he or she is authorized to sign this Settlement on  
10 behalf of Defendant TINCO SHEET METAL INC. Plaintiff CARLOS JIMENEZ represents  
11 and warrants that he is authorized to sign this Settlement and that he has not assigned any claim,  
12 or part of a claim, covered by this Settlement to a third-party.

13  
14 3.44. Binding on Successors and Assigns. This Settlement shall be binding upon, and  
15 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

16 3.45. No Prior Assignments. The Parties and their counsel represent, covenant, and  
17 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported  
18 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,  
19 demand, action, cause of action or right herein released and discharged.

20 3.46. California Law Governs. All terms of this Settlement and the exhibits hereto shall  
21 be governed by and interpreted according to the laws of the State of California.

22 3.47. This Settlement is Fair, Adequate and Reasonable. The Parties believe this  
23 Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this  
24 Settlement after extensive arms-length negotiations, taking into account all relevant factors,  
25 present and potential.

26 3.48. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h),  
27 the Parties agree that the Court shall retain jurisdiction with respect to the interpretation,  
28 implementation, and enforcement of the terms of this Settlement and all orders and judgments

1 entered in connection therewith, and the Parties and their counsel hereto submit to the  
2 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this  
3 Settlement and all orders and judgments entered in connection therewith.

4 3.49. Invalidity of Any Provision. Before declaring any provision of this Settlement  
5 invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent  
6 possible, consistent with applicable precedents.

7 3.50. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to  
8 class certification for purposes of this Settlement only.

9 3.51. Cooperation. The Parties agree to cooperate fully with one another to accomplish  
10 and implement the terms of this Settlement. Such cooperation shall include, but not be limited  
11 to, execution of such other documents and the taking of such other action as may be reasonably  
12 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall use their  
13 best efforts, including all efforts contemplated by this Settlement and any other efforts that may  
14 become necessary by Court order, or otherwise, to effectuate this Settlement and its terms.

15 3.52. Publicity. Plaintiff and Class Counsel agree that they will not issue any press  
16 releases, initiate any contact with the press, respond to any press inquiry, or have any  
17 communication with the press about the Action and/or the fact, amount, or terms of the  
18 Settlement. However, for marketing purposes, Class Counsel may refer to the settlement amount  
19 and the nature of the case without identifying any of the Parties directly or indirectly. Before the  
20 date of the filing of the motion for preliminary approval of the Settlement, Plaintiff and Class  
21 Counsel will not initiate any contact with Settlement Class Members about the Settlement,  
22 except that: (a) Class Counsel, if contacted by a Settlement Class Member, may respond that a  
23 settlement has been reached and that the details will be communicated in a forthcoming Court-  
24 approved notice; and (b) Plaintiff, if contacted by a Settlement Class Member, may respond only  
25 that the Settlement Class Member should contact Class Counsel. Neither Plaintiff nor Class  
26 Counsel shall hold a press conference or otherwise seek to affirmatively contact the media about  
27 the Settlement. If contacted by the media regarding the Settlement, Class Counsel shall state, "It  
28



1 is a fair settlement, and we are happy with the results.” Additionally, no Party or their counsel  
2 shall disparage the Settlement. Nothing in this paragraph shall prevent Class Counsel from  
3 carrying out their duties.

4 3.53. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms  
5 and conditions of this Settlement. Accordingly, this Settlement will not be construed more  
6 strictly against one party than another merely by virtue of the fact that it may have been prepared  
7 by counsel for one of the Parties, it being recognized that, because of the arm’s-length  
8 negotiations between the Parties, all Parties have contributed to the preparation of this  
9 Settlement.

10 3.54. Representation by Counsel. The Parties acknowledge that they have been  
11 represented by counsel throughout all negotiations that preceded the execution of this  
12 Settlement, and that this Settlement has been executed with the consent and advice of counsel,  
13 and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are  
14 no liens on the Settlement Agreement.

15 3.55. All Terms Subject to Final Court Approval. All amounts and procedures described  
16 in this Stipulation are subject to final Court approval.

17 3.56. Notices. Unless otherwise specifically provided, all notices, demands or other  
18 communications in connection with this Settlement shall be: (1) in writing; (2) deemed given  
19 on the third business day after mailing; and (3) sent via United States registered or certified mail,  
20 return receipt requested, addressed as follows:  
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**To Plaintiffs:**

Kevin Mahoney, Esq.  
[kmahoney@mahoney-law.net](mailto:kmahoney@mahoney-law.net)  
Berkeh Alemzadeh, Esq.  
[balem@mahoney-law.net](mailto:balem@mahoney-law.net)  
MAHONEY LAW GROUP, APC  
249 East Ocean Boulevard, Suite 814  
Long Beach, CA 90802  
Telephone: (562) 590-5550  
Facsimile: (562) 590-8400

**To Defendants:**

Leonard M. Tavera (SBN: 127070)  
[ltavera@semperlawgroup.com](mailto:ltavera@semperlawgroup.com)  
**SEMPER LAW GROUP, LLP**  
330 N. Brand Boulevard, Suite 670  
Glendale, California 91203  
Telephone: (213) 437-9700  
Facsimile: (213) 596-1466

3.57. Execution by Settlement Class Members. It is agreed that it is impossible or impractical to have each Settlement Class Member execute this Settlement. The Notice of Settlement will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if each Settlement Class Member executed this Settlement.

3.58. Execution by Plaintiff and Defendant. Plaintiff and Defendant, by signing this Settlement, are bound by the terms herein.

3.59. Fair, Adequate and Reasonable Settlement. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Settlement.


3.60. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

3.61. Counterparts. This Settlement shall become effective upon its execution by all of the undersigned. Plaintiff, Class Counsel, Defendant, and Defense Counsel may execute this Settlement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Copies of the executed Settlement shall be effective

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for all purposes as though the signatures contained therein were original signatures.

Dated: 11 / 07 / 2022

By:   
Carlos Jimenez

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant TINCO SHEET METAL INC.

**“APPROVED AS TO FORM”**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kevin Mahoney, Esq.  
Berkeh Alemzadeh, Esq.  
Attorney for Plaintiff

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Leonard Tavera, Esq.  
Attorney for Defendant

1 for all purposes as though the signatures contained therein were original signatures.

2  
3 Dated: \_\_\_\_\_

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

4 Carlos Jimenez

5  
6 Dated: 11-7-22

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

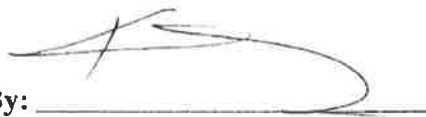
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Defendant TINCO SHEET METAL INC.

8  
9 **"APPROVED AS TO FORM"**

10  
11 Dated: 11-7-2022

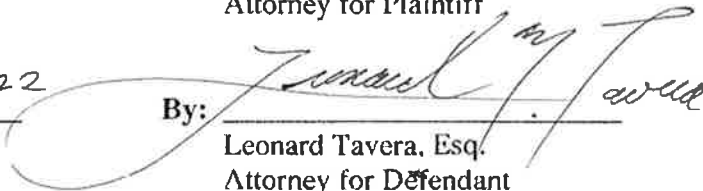
By: \_\_\_\_\_

12 

13 Kevin Mahoney, Esq.  
Berkeh Alemzadeh, Esq.  
Attorney for Plaintiff

14  
15 Dated: 11.07.2022

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

16 

17 Leonard Tavera, Esq.  
Attorney for Defendant