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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

RAFAEL GUTIERREZ, individually and on  
behalf of others similarly situated,

Plaintiff,

v.

M. ARGUESO & CO. INC., DBA  
PARAMELT, a Delaware corporation; and  
DOES 1 through 50, inclusive,

Defendants.

Case No.: 21STCV22694  
Assigned to: Hon. Yvette M. Palazuelos  
Dept.: SS-9

**STIPULATION AND SETTLEMENT OF  
CLASS, COLLECTIVE AND  
REPRESENTATIVE ACTION**

[Complaint Filed: June 15, 2021]

**STIPULATION AND SETTLEMENT OF CLASS, COLLECTIVE**  
**AND REPRESENTATIVE ACTION**

I. Subject to final approval by the Court, which counsel and the Parties agree to diligently pursue and recommend in good faith, Plaintiff Rafael Gutierrez (“Plaintiff”), individually and on behalf of all others similarly situated and alleged aggrieved employees, on the one hand, and Defendant M. Argueso & Co. Inc., dba Paramelt (“Defendant”), on the other hand, (collectively, the “Parties” and individually, a “Party”), hereby agree to the following binding settlement of the class and representative action designated Rafael Gutierrez v. M. Argueso & Co. Inc., dba Paramelt, Los Angeles County Superior Court Case No. 21STCV22694 (the “Action”), pursuant to the terms and conditions set forth below (the “Settlement,” “Settlement Agreement” or “Agreement”). Following the Effective Date, and the payment by Defendant of all monies due under the Agreement, and subject to the Court’s Final Approval Order, Plaintiff shall file with the Court a declaration from the Settlement Administrator certifying the status of distribution of all payments, as more fully set forth herein, and a Satisfaction of Judgment.

II. **Definitions.**

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

A. **“Action.”**

The case titled Rafael Gutierrez v. M. Argueso & Co. Inc., dba Paramelt, Los Angeles County Superior Court Case No. 21STCV22694, as amended.

B. **“Aggrieved Employees.”**

All current and former non-exempt employees of Defendant employed in California at any time during the PAGA Period.

C. **“Attorneys’ Fees and Costs.”**

The attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the Action, including, but not limited to, costs associated with documenting the Settlement, securing the Court’s approval of the Settlement, any expert expenses, and securing an

1 entry of judgment on all claims in the Action which are covered by the Released Claims as defined  
2 herein. Class Counsel will request attorneys' fees not to exceed one-third (1/3) of the Class  
3 Settlement Amount of \$250,000.00, which is a total of \$83,333.33. The costs requested to be  
4 reimbursed will not exceed \$20,000.00. The attorneys' fees and costs awarded are subject to the  
5 Court's approval. Defendant has agreed not to oppose Class Counsel's request for attorneys' fees  
6 and reimbursement of costs and expenses as set forth above. Such Attorneys' Fees and Costs shall  
7 be paid from the Class Settlement Amount. Class Counsel will be issued an IRS Form 1099 for  
8 the Attorneys' Fees and Costs detailed in this Section and shall be solely and legally responsible  
9 for paying all applicable taxes on the payment made pursuant to this Section.

10 **D. "Claims Administrator."**

11 Phoenix Settlement Administrators shall be the third-party class action settlement  
12 claims administrator as agreed to by the Parties and approved by the Court for the purposes of  
13 administering this Settlement. The Parties each represent that they do not have any financial  
14 interest in the Claims Administrator or otherwise have a relationship with the Claims  
15 Administrator that could create a conflict of interest.

16 **E. "Claims Administration Costs."**

17 The costs payable from the Class Settlement Amount to the Claims Administrator  
18 for administering this Settlement, including, but not limited to, printing, distributing, and tracking  
19 documents for this Settlement, calculating estimated amounts per Class Member, tax reporting,  
20 distributing the Class Settlement Amount, and providing necessary reports and declarations, and  
21 other duties and responsibilities set forth herein to process this Settlement Agreement, and as  
22 requested by the Parties. The Claims Administration Costs will be paid from the Class Settlement  
23 Amount, including, if necessary, any such costs in excess of the amount represented by the Claims  
24 Administrator as being the maximum costs necessary to administer the Settlement. The Claims  
25 Administration Costs are currently estimated to be \$4,500.00. To the extent actual Claims  
26 Administration Costs are greater than \$4,500.00, such excess amount will be deducted from the  
27 Class Settlement Amount, subject to the Court's approval. The Claims Administration Costs will  
28 be paid no sooner than fifteen (15) calendar days following the Effective Date.

1           **F.       “Class Counsel.”**

2                       Sam Sani of Sani Law, APC, and Paul K. Haines of Haines Law Group, APC shall  
3 be appointed Class Counsel upon approval by the Court.

4           **G.       “Class List.”**

5                       A complete list of all Class Members that Defendant will diligently and in good  
6 faith compile from its records and provide to the Claims Administrator within ten (10) business  
7 days after Preliminary Approval of this Settlement. The Class List will be formatted in a readable  
8 Microsoft Office Excel spreadsheet and will include each Class Member’s full name, most recent  
9 mailing address, telephone number, Social Security number, dates of employment (*i.e.*, hire date  
10 and termination date, if applicable), approximate number of workweeks worked during the Class  
11 Period, and any other relevant information needed to calculate settlement payments.

12           **H.       “Class Member(s)” or “Settlement Class.”**

13                       All current and former non-exempt employees of Defendant employed in California  
14 at any time during the Class Period.

15           **I.       “Class Period.”**

16                       The period from June 15, 2017 through the date of Preliminary Approval of the  
17 Settlement, or September 6, 2022, whichever date is sooner.

18           **J.       “Class Representative Enhancement Payment.”**

19                       The amount to be paid to Plaintiff in recognition of his effort and work in  
20 prosecuting the Action on behalf of Class Members and for his general release of all claims.  
21 Subject to the Court granting Final Approval of this Settlement Agreement, Plaintiff will request  
22 Court approval of a Class Representative Enhancement Payment of \$7,500.00. Plaintiff will be  
23 issued an IRS Form 1099 in connection with his respective Class Representative Enhancement  
24 Payment. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes  
25 on this payment and shall hold Defendant harmless from any claim or liability for taxes, penalties  
26 or interest arising as a result of the payment. The Class Representative Enhancement Payment  
27 will be paid from the Class Settlement Amount and will be in addition to Plaintiff’s Individual  
28 Settlement Payment paid pursuant to the Settlement, and is conditioned on the execution of a

1 stand-alone settlement agreement and general release of all claims (which includes Plaintiff's  
2 Released Claims and shall be set forth more-fully in the stand-alone settlement agreement and  
3 general release of all claims). Defendant makes no representations as to the tax treatment or legal  
4 effect of the payment called for herein, and Plaintiff is not relying on any statement or  
5 representation by Defendant or its counsel in this regard.

6 **K. "Class Settlement Amount."**

7 The sum of no more than \$250,000.00 to be paid by Defendant in full satisfaction  
8 of all claims arising from the Action. The Class Settlement Amount includes all Individual  
9 Settlement Payments to Class Members (including all Employee Paid Taxes), Individual PAGA  
10 Settlement Payments to Aggrieved Employees, the Class Representative Enhancement Payment to  
11 Plaintiff, Claims Administration Costs to the Claims Administrator, the Labor and Workforce  
12 Development Agency ("LWDA") Payment, and the Attorneys' Fees and Costs. Defendant will be  
13 responsible for any and all Employer Paid Taxes required by law on the wage portions of the  
14 Individual Settlement Payments to Class Members, separate and in addition to the Class  
15 Settlement Amount.

16 **L. "Effective Date."**

17 The date on which the Final Award becomes final. For purposes of this Section,  
18 the Final Award "becomes final" only after the Court grants the Motion for Final Approval and  
19 upon service of the Notice of Entry of Order and/or Judgment, and upon the latter of: (i) if no  
20 appeal, or other challenge is filed, the sixty-first (61st) day following Notice of Entry of the  
21 Court's Order and/or Judgment; (ii) the date of affirmance of an appeal of the Order Granting  
22 Final Approval and/or Judgment becomes final under the California Rules of Court; or (iii) the  
23 date of final dismissal of any appeal from the Order Granting Final Approval and/or Judgment or  
24 the final dismissal of any proceeding on review of any court of appeal decision relating to the  
25 Order Granting Final Approval and/or Judgment.

26 **M. "Employee Paid Taxes."**

27 Taxes paid by an individual employee, including Federal Insurance Contributions  
28 Act, federal withholding taxes, state disability insurance, state withholding taxes.

1           **N.       “Employer Paid Taxes.”**

2                       Taxes paid by the employer, including Federal Unemployment Tax Act, Federal  
3 Insurance Contributions Act, state unemployment insurance, and Employee Training Tax  
4 payments.

5           **O.       “Final Approval” or “Final Award.”**

6                       The Court entering an Order Granting Final Approval of the Settlement Agreement  
7 and Judgment.

8           **P.       “Individual Settlement Payment.”**

9                       Each Class Member’s share of the Net Settlement Amount, which shall be  
10 distributed to the Class Members, less any and all Employee Paid Taxes required by law as a  
11 result of the payment of the amount allocated to such Class Member as set forth herein.

12           **Q.       “LWDA Notice.”**

13                       The Parties agree that Plaintiff will submit Notice to the Labor and Workforce  
14 Development Agency (“LWDA”) of this Settlement along with a copy of this Settlement  
15 Agreement in conformity with Labor Code Section 2699(1) , and will thereafter submit a copy of  
16 any judgment or any other order (*e.g.*, the Final Award) providing for an award of civil penalties  
17 in conformity with Labor Code Section 2699(1).

18           **R.       “LWDA Payment” or “PAGA Settlement Amount.”**

19                       The amount that the Parties have agreed to pay to the LWDA in connection with  
20 the California Private Attorneys General Act of 2004 (“PAGA”). The Parties have agreed that  
21 \$20,000.00 of the Class Settlement Amount will be allocated to the resolution of any claims  
22 arising under PAGA (“PAGA Settlement Amount”) as set forth in the Released Aggrieved  
23 Employee Claims. Pursuant to PAGA, \$15,000.00 (75%) of the PAGA Settlement Amount will  
24 be paid to the LWDA and \$5,000.00 (25%) of the PAGA Settlement Amount will be distributed to  
25 Aggrieved Employees. The 25% portion of the PAGA Settlement Amount is referred to as  
26 Aggrieved Employees Amount.

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1           **S.       “Net Settlement Amount.”**

2           The portion of the Class Settlement Amount remaining after deduction of the  
3 approved Class Representative Enhancement Payment, Claims Administration Costs, PAGA  
4 Settlement Amount, and the Attorneys’ Fees and Costs. The Net Settlement Amount is to be paid  
5 to Class Members as Individual Class Payments, including all Employee Paid Taxes.

6           **T.       “Notice of Class Action Settlement.”**

7           The document substantially in the form attached as Exhibit 1 that will be mailed to  
8 Class Members’ last known addresses and which will provide Class Members with information  
9 regarding the Action and information regarding the Settlement.

10          **U.       “Notice of Objection.”**

11          Class Members who do not opt out may object to this Settlement Agreement as  
12 explained in the Class Notice by (1) submitting a written objection with the Claims Administrator  
13 (who shall provide all objections as received to Class Counsel and Defendant’s counsel, as well as  
14 file all such objections with the Court) by the date and in the manner set forth in the Class Notice,  
15 or (2) by offering oral comments at the Final Approval Hearing. Defendant’s counsel and Class  
16 Counsel shall submit any responses to written objections no later than the deadline to file the  
17 Motion for Final Approval. The Settlement Administrator shall immediately upon receipt transmit  
18 to the Parties’ counsel copies of all written objections and supporting papers. The Parties then  
19 shall file any written objections received in this manner and all supporting papers with the Court  
20 as soon as practicable but not more than three (3) business days after receipt. A Class Member  
21 may appear personally or through an attorney, at his or her own expense, at the Final Approval  
22 hearing to present his or her objection directly to the Court. If a Class Member objects to this  
23 Settlement, the Class Member will remain a member of the Settlement Class and if the Court  
24 approves this Agreement, the Class Member will be bound by the terms of the Settlement and  
25 Final Approval in the same way and to the same extent as a settlement class member who does not  
26 object. The Court retains final authority with respect to the consideration and admissibility of any  
27 Class Member objections.

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1                   Neither the Parties nor their counsel will solicit or otherwise encourage Class  
2 Members to submit written objections to the Settlement Agreement or appeal from the Order and  
3 Judgment. Class Counsel will not represent any Class Members with respect to any such  
4 objections to this Settlement.

5                   **V.       “Notice Packet.”**

6                   The Notice of Class Action Settlement, Individual Settlement Payment  
7 calculations, and Individual PAGA Payment calculations to include workweek information.

8                   **W.       “PAGA Period.”**

9                   The period from June 15, 2020 through the date of Preliminary Approval of the  
10 Settlement, or September 6, 2022, whichever date is sooner.

11                  **X.       “Plaintiff.”**

12                  Plaintiff Rafael Gutierrez.

13                  **Y.       “Plaintiff’s Released Claims.”**

14                  Upon the Effective Date, and as a condition of receiving any portion of his Class  
15 Representative Enhancement Payment, Plaintiff shall fully and finally release the Released Parties  
16 from any and all claims, known and unknown, under federal, state and/or local law, statute,  
17 ordinance, regulation, common law, or other source of law, including but not limited to claims  
18 arising from or related to his employment with Defendant and his compensation while an  
19 employee of Defendant. Plaintiff’s Released Claims include all claims asserted in the Action  
20 and/or arising from or related to the facts and claims alleged in the Action or the PAGA letter sent  
21 to the LWDA on Plaintiff’s behalf, or that could have been raised in the Action or the PAGA letter  
22 sent to the LWDA on Plaintiff’s behalf based on the facts and claims alleged. Plaintiff’s Released  
23 Claims include, but are not limited to, all claims for unpaid wages, including, but not limited to,  
24 failure to pay minimum wages, straight time compensation, overtime compensation, double-time  
25 compensation, and interest; the calculation of the regular rate of pay; wages related to alleged  
26 illegal time rounding; failure to pay wages at least twice each calendar month; failure to timely  
27 pay wages; failure to timely pay final wages; missed/short/late/interrupted meal period, rest  
28 period, and/or recovery period wages/premiums; failure to provide meal periods; failure to



1 authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest  
2 period, and/or recovery period premiums; reimbursement for all necessary business expenses,  
3 including work-related cell-phone expenses and car mileage for work-related travel; payment for  
4 all hours worked, including off-the-clock work; wage statements; deductions; failure to keep  
5 accurate records; failure to provide suitable seating; failure to maintain temperature providing  
6 reasonable comfort; unlawful deductions and/or withholdings from wages; unfair business  
7 practices; penalties, including, but not limited to, recordkeeping penalties, wage statement and  
8 payroll reporting penalties, minimum-wage penalties, and waiting-time penalties; and attorneys'  
9 fees and costs. Plaintiff's Released Claims include all claims arising under the California Labor  
10 Code (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5,  
11 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7,  
12 226.8, 227.3, 246, 247.5, 248.5, 256, 450, 510, 511, 512, 515, 516, 550, 551, 552, 558, 1174,  
13 1174.5, 1175, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.2, 1198, 1198.5, 2698 *et seq.*,  
14 2699 *et seq.*, 2802, and 2804); all claims arising under: the Wage Orders of the California  
15 Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (PAGA);  
16 California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to  
17 include sections 3287, 3336 and 3294; 8 CCR §§ 3203, 11070, 11090, 11100; California Code of  
18 Civil Procedure § 1021.5; all state and local ordinances related to COVID-19 right of recall; the  
19 California common law of contract; the FLSA, 29 U.S.C. §§ 201, *et seq.*; 29 CFR 778.223; 29  
20 CFR 778.315; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C.  
21 §§ 1001, *et seq.* (ERISA). Plaintiff's Released Claims also include all claims for lost wages and  
22 benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising  
23 under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful  
24 termination, such as, by way of example only, (as amended) 42 U.S.C. § 1981, Title VII of the  
25 Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in  
26 Employment Act (ADEA), and the California Fair Employment and Housing Act (FEHA); and the  
27 law of contract and tort. This release excludes the release of claims not permitted by law.

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1 Plaintiff's Released Claims include all claims, whether known or unknown. Even  
2 if Plaintiff discovers facts in addition to or different from those that he now knows or believes to  
3 be true with respect to the subject matter of Plaintiff's Released Claims, those claims will remain  
4 released and forever barred. Thus, Plaintiff expressly waives and relinquish the provisions, rights  
5 and benefits of section 1542 of the California Civil Code, which reads:

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

9 Notwithstanding the foregoing, Plaintiff's Released Claims are limited to any such  
10 claims that arose from the beginning of time to the date Plaintiff executes this Agreement.

11 **Z. "Released Aggrieved Employee Claims."**

12 All Aggrieved Employees, including those who timely and effectively exclude  
13 themselves from the Released Class Claims (Settlement), shall nevertheless be bound by the  
14 Released Aggrieved Employee Claims and shall receive a pro rata portion of 25% of the PAGA  
15 Settlement Amount. Aggrieved Employees shall release the Released Parties of all known and  
16 unknown claims for civil penalties under PAGA that were asserted in the Action, or could have  
17 been pled in the Action based on the allegations asserted during the PAGA Period in the operative  
18 First Amended Class and Representative Action Complaint, and Plaintiff's June 16, 2021 LWDA  
19 exhaustion letter identified on the LWDA's website as LWDA-CM-835165-21, including any  
20 claims involving any alleged failure to pay minimum wage, alleged failure to pay overtime wages,  
21 alleged meal period violations, alleged rest period violations, alleged wage statement violations,  
22 and alleged failure to timely pay all final wages owed at end of employment, including claims  
23 relating to alleged violations of Labor Code Sections 201, 202, 203, 204, 210, 216, 226, 226.3,  
24 226.7, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and  
25 1199 ("Released Aggrieved Employee Claims"). Aggrieved Employees' Released Aggrieved  
26 Employee Claims are limited to the PAGA Period.

27 **AA. "Preliminary Approval."**

28 The Court's order granting preliminary approval of the Settlement Agreement.

1           **BB. “Qualified Settlement Account.”**

2           The fund established by the Claims Administrator pursuant to Internal Revenue  
3 Code Section 1.468B-1.

4           **CC. “Released Class Claims.”**

5           As of the date Defendant fully funds the Settlement, all Class Members shall fully  
6 and finally release Released Parties of the Released Class Claims. The Released Class Claims  
7 consist of all claims asserted in the Action and/or arising from or related to the facts and claims  
8 alleged in the Action or the PAGA letter sent to the LWDA on Plaintiff’s behalf, or that could  
9 have been raised in the Action or the PAGA letter sent to the LWDA on Plaintiff’s behalf based  
10 on the facts and claims alleged. The Released Class Claims include all claims for unpaid wages,  
11 including, but not limited to, failure to pay minimum wages, straight time compensation, overtime  
12 compensation, double-time compensation, and interest; the calculation of the regular rate of pay;  
13 wages related to alleged illegal time rounding; missed/short/late/interrupted meal period, rest  
14 period, and/or recovery period wages/premiums; failure to provide meal periods; failure to  
15 authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest  
16 period, and/or recovery period premiums; payment for all hours worked, including off-the-clock  
17 work and/or donning/doffing; wage statements; failure to keep accurate records; failure to timely  
18 pay wages; failure to timely pay final wages; unfair business practices related to the Released  
19 Class Claims; penalties, including recordkeeping penalties, wage statement penalties, minimum-  
20 wage penalties, and waiting-time penalties; non-compliant wage statements; and attorneys’ fees  
21 and costs; all claims related to the Released Class Claims arising under: the California Labor Code  
22 (including, but not limited to, sections 200, 201, 202, 203, 204, 206, 210, 215, 216, 218, 218.5,  
23 218.6, 221-223, 224, 225, 225.5, 226, 226.3, 226.7, 510, 511, 512, 515, 516, 550, 551, 552, 558,  
24 558.1, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2699 *et seq.*);  
25 the Wage Orders of the California Industrial Welfare Commission; the California Private  
26 Attorneys General Act of 2004 (PAGA); California Business and Professions Code section 17200,  
27 *et seq.*; the California Civil Code, to include but not limited to, sections 3287, 3336 and 3294; 12  
28 CCR § 11040; 8 CCR § 11060; California Code of Civil Procedure § 1021.5; the California

1 common law of contract; the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*; 29 CFR  
2 778.223; 29 CFR 778.315; and federal common law. This release excludes the release of claims  
3 not permitted by law.

4           Class Members who timely cash or otherwise negotiate their Settlement Payment  
5 Check will be deemed to have opted into the Action for purposes of the FLSA and, as to those  
6 Class Members, the Released Class Claims include any and all claims the Class Members may  
7 have under the FLSA asserted in the Action, arising from or related to the facts and claims alleged  
8 in the Action, or that could have been alleged in the Action based on the facts and claims alleged  
9 in the Action, as amended, during the Class Period. Only those Class Members who timely cash  
10 or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the  
11 Actions for purposes of the FLSA and thereby release and waive any of their claims under the  
12 FLSA arising under or relating to the alleged claims.

13           The following language will be printed on the reverse of each Settlement Payment  
14 Check, or words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge  
15 that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement  
16 and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of the [Actions], elect to  
17 participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that  
18 are covered by the Settlement.”

19           Upon entry of Judgment, Class Members are precluded from filing a wage and hour  
20 action under the Fair Labor Standards Act against the Released Parties for claims and/or causes of  
21 action encompassed by the Released Claims which are extinguished and precluded pursuant to the  
22 holding in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (2018).

23           This release excludes the release of claims not permitted by law.

24           The period of the Released Class Claims shall extend from June 15, 2017 through  
25 the date of Preliminary Approval of the Settlement, or September 6, 2022, whichever date is  
26 sooner.

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1           **DD. “Released Parties.”**

2           Defendant, and each of its past, present and future agents, employees, servants,  
3 officers, directors, managing agents, members, owners (whether direct or indirect), partners,  
4 trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity  
5 sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors,  
6 successors, insurers, consultants, joint venturers, joint employers, potential and alleged joint  
7 employers, temporary staffing agencies, dual employers, potential and alleged dual employers, co-  
8 employers, potential and alleged co-employers, common law employers, potential and alleged  
9 common law employers, contractors, affiliates, service providers, alter-egos, potential and alleged  
10 alter-egos, vendors, affiliated organizations, any person and/or entity with potential or alleged to  
11 have joint liability, and all of their respective past, present and future employees, directors,  
12 officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders,  
13 fiduciaries, parents, subsidiaries, other service providers, and assigns, and any and all persons  
14 and/or entities acting under, by, through or in concert with any of them.

15           **EE. “Request for Exclusion.”**

16           A notice submitted by a Class Member requesting to be excluded from the  
17 Settlement. For the Request for Exclusion to be valid, it must include the Class Member’s full  
18 name, signature, address, telephone number and a written statement requesting to be excluded  
19 from this Settlement. The Request for Exclusion must be returned by mail or fax to the Claims  
20 Administrator at the specified address or facsimile number and postmarked or faxed on or before  
21 the Response Deadline. The date of the postmark or fax receipt confirmation will be the exclusive  
22 means to determine whether a Request for Exclusion has been timely submitted. A Class Member  
23 who does not submit a timely and valid Request for Exclusion from the Settlement will be deemed  
24 a Class Member and will be bound by all terms of the Settlement Agreement if the Settlement is  
25 granted Final Approval by the Court. Any Class Member who timely submits a valid Request for  
26 Exclusion will not receive payment from the Settlement, and will not be bound by the terms of the  
27 Settlement Agreement or Judgment (with the exception of claims arising under PAGA).  
28 Aggrieved Employees eligible for a portion of the PAGA Settlement Amount will receive their

1 share of the employee portion of the PAGA Settlement Amount and will be deemed to have  
2 released the PAGA Released Claims, regardless of whether they submit a timely and valid  
3 Request for Exclusion.

4 **FF. “Response Deadline.”**

5 The deadline by which Class Members must mail or fax to the Claims  
6 Administrator valid Requests for Exclusion, Notices of Objection to the Settlement, or workweek  
7 disputes. The Response Deadline will be sixty (60) calendar days from the initial mailing of the  
8 Notice Packet by the Claims Administrator, unless the 60th day falls on a Sunday or Federal  
9 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.  
10 Postal Service is open. The Response Deadline for Requests for Exclusion, Notices of Objection,  
11 or workweek disputes will be extended fifteen (15) calendar days for any Class Member who is re-  
12 mailed a Notice Packet by the Claims Administrator, unless the 15th day falls on a Sunday or  
13 Federal holiday, in which case the Response Deadline will be extended to the next day on which  
14 the U.S. Postal Service is open. The Response Deadline may also be extended by express  
15 agreement between Class Counsel and Defendant. Under no circumstances, however, will the  
16 Claims Administrator have the authority to unilaterally extend the deadline for Class Members to  
17 submit a Request for Exclusion, Notice of Objection to the Settlement, or workweek disputes.

18 **GG. “Settlement Payment Check.”**

19 The payment to Class Members. The back of the Settlement Payment Check shall  
20 state, immediately below the space where the check is to be endorsed by the payee: “By endorsing  
21 or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms  
22 set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards  
23 Act (“FLSA”) portion of the [Action], elect to participate in the settlement of the FLSA claims,  
24 and agree to release all of my FLSA claims that are covered by the Settlement.”

25 **III. Funding of the Class Settlement Amount.**

26 Within fifteen (15) calendar days after the Effective Date of the Settlement,  
27 Defendant will make a one-time deposit of the Class Settlement Amount into a Qualified  
28 Settlement Account to be established by the Claims Administrator as well as an amount sufficient

1 to pay the Employer Paid Taxes with respect to the wages portion of the Individual Settlement  
2 Payments. Within fourteen (14) calendar days of the funding of the Settlement, the Claims  
3 Administrator will issue payments to: (a) Class Members who have not timely and validly  
4 requested exclusion; (b) Aggrieved Employees; (c) the LWDA; (d) Plaintiff; and (e) Class  
5 Counsel. The Claims Administrator will also issue a payment to itself for Court-approved services  
6 performed in connection with the Settlement. Defendant has no obligation to deposit such funds  
7 prior to the deadline set forth herein. Prior to issuing checks to Class Members, the Claims  
8 Administrator will run the Class Members' most updated addresses against the National Change of  
9 Address Database to obtain the most current address for mailing the checks. If a check is returned  
10 as undeliverable from Class Members whose Notice Packet was returned and no new address was  
11 ascertained, then no further steps need to be taken. For other checks returned, the Claims  
12 Administrator shall conduct a skip trace or other similar search to locate an updated address and  
13 the Claims Administrator shall re mail the check within seven (7) business days of return of the  
14 check.

15 **IV. Attorneys' Fees and Costs.**

16 Defendant agrees not to oppose or impede any application by Class Counsel for  
17 attorneys' fees of not more than \$83,333.33, or the reimbursement of costs and expenses  
18 associated with Class Counsel's litigation and settlement of the claims covered by the Action not  
19 to exceed \$20,000.00. No counsel shall be entitled to attorneys' fees or costs for work performed  
20 in the Action other than as provided in this Settlement Agreement. The instant Settlement  
21 Agreement is the exclusive means for recovery of attorneys' fees and costs incurred in the Action  
22 by any attorney, law firm and/or other legal services provider except for the event that either party  
23 is required to seek to enforce this settlement agreement or the judgment.

24 **V. Class Representative Enhancement Payment.**

25 In exchange for a general release and in recognition of his effort and work in  
26 prosecuting the Action on behalf of Class Members, Defendant agrees not to oppose or impede  
27 any application or motion for a Class Representative Enhancement Payment in the amount of up to  
28 \$7,500.00 for Plaintiff. The Class Representative Enhancement Payment will be paid from the

1 Class Settlement Amount and will be in addition to Plaintiff's Individual Settlement Payment paid  
2 pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any and all  
3 applicable taxes on the payment made pursuant to this Section and will indemnify and hold  
4 Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of  
5 the payment.

6 **VI. Claims Administration Costs.**

7 The Claims Administrator will be paid for the reasonable costs of administration of  
8 the Settlement and distribution of payments from the Class Settlement Amount, which are  
9 currently estimated to be \$4,500.00.

10 The Parties hereby acknowledge that the Claims Administration Costs may  
11 increase above the current estimate of \$4,500.00 and that any such additional Claims  
12 Administration Costs that are approved by the Parties' counsel and the Court shall be taken out of  
13 the Class Settlement Amount.

14 **VII. Labor and Workforce Development Agency Payment/PAGA Settlement Amount.**

15 Subject to Court approval, the Parties agree that \$20,000.00 of the Class Settlement  
16 Amount will be designated for satisfaction of PAGA claims (the "PAGA Settlement Amount")  
17 and release of the Released Aggrieved Employee Claims. Pursuant to the PAGA, \$15,000.00  
18 (75%) of the PAGA Settlement Amount will be paid to the LWDA and \$5,000.00 (25%) of the  
19 PAGA Settlement Amount will be paid to Aggrieved Employees.

20 **VIII. Net Settlement Amount.**

21 The Net Settlement Amount will be used to satisfy Individual Settlement Payments  
22 to Class Members from the Settlement Class in accordance with the terms of this Settlement.

23 **IX. Individual Settlement Payment Calculations.**

24 Individual Settlement Payments will be calculated and apportioned from the Net  
25 Settlement Amount as follows:

26 (a) Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount  
27 shall be designated as the "Wage Statement Amount." Each Class Member  
28 who was employed by Defendant at any time from June 15, 2020 through



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the date of Preliminary Approval of the Settlement, or September 6, 2022, whichever date is sooner shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.

(b) Waiting Time Amount: Fifteen percent (15%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” Each Class Member who separated their employment with Defendant between June 15, 2018 through the date of Preliminary Approval of the Settlement, or September 6, 2022, whichever date is sooner shall receive an equal, pro-rata share of the Waiting Time Amount.

(c) The remainder of the Net Settlement Amount will be distributed to each Class Member based on the number of workweeks a Class Member worked during the Class Period. Specific calculations of Individual Settlement Payments will be made as follows:

(1) The Claims Administrator will calculate the total number of weeks worked (weeks in which at least one day was worked) by each Class Member (“Individual Workweeks”) and the total number of weeks worked by all Class Members (“Class Workweeks”) during the Class Period.

(2) To determine each Class Member’s Individual Settlement Payment, the Claims Administrator will use the following formula: Individual Settlement Payment = (Individual Workweeks ÷ Class Workweeks) × Net Settlement Amount.

The Individual Settlement Payment will be reduced by any required deductions for each Class Member as set forth herein, including Employee Paid Taxes. The Individual Settlement Payments will be allocated as follows: twenty percent (20%) to wages and eighty percent (80%) to penalties and other non-taxable items.

1           The Individual Settlement Payments made to Class Members under this Settlement,  
2 and any other payments made pursuant to this Settlement, will not be utilized to calculate any  
3 additional benefits under any benefit plans to which any Class Members may be eligible,  
4 including, but not limited to, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,  
5 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’  
6 intention that this Settlement Agreement will not affect any rights, contributions, or amounts to  
7 which any Class Members may be entitled under any benefit plans.

8 **X. Individual PAGA Payments.**

9           Individual PAGA Payments will be calculated and apportioned from the Aggrieved  
10 Employees Amount based on the number of pay periods an Aggrieved Employee worked during  
11 the PAGA Period. Specific calculations of Individual PAGA Payments will be made as follows:

- 12           (a)     The Claims Administrator will calculate the total number of pay periods  
13                   worked (pay periods in which at least one days was worked) by each  
14                   Aggrieved Employee (“Individual Pay Periods”) and the total number of  
15                   pay periods worked by all Aggrieved Employees (“Total Pay Periods”)  
16                   during the Class Period.
- 17           (b)     To determine each Aggrieved Employees Individual PAGA Payment, the  
18                   Claims Administrator will use the following formula: Individual PAGA  
19                   Payment = (Individual Pay Periods ÷ Total Pay Periods) × Aggrieved  
20                   Employees Amount.

21 **XI. Claims Administration Process.**

22           1.     The Parties agree to cooperate in the administration of the Settlement and to  
23 make all reasonable efforts to control and minimize the costs and expenses incurred in  
24 administration of the Settlement. The Claims Administrator will provide the following services:

- 25           a.     Establish and maintain a Qualified Settlement Account.
- 26           b.     Calculate the Individual Settlement Payment each Class Member is eligible  
27                   to receive.
- 28           c.     Translate the Notice Packet into Spanish by request of Class Members.

- 1 d. Print and mail the Notice Packet.
- 2 e. Establish and maintain a toll-free information telephone support line to
- 3 assist Class Members who have questions regarding the Notice Packet.
- 4 f. Establish and maintain a website with information to assist Class Members,
- 5 including the posting of notice of final judgment.
- 6 g. Conduct additional address searches for mailed Notice Packets that are
- 7 returned as undeliverable.
- 8 h. Process Requests for Exclusion, calculate Class Members' Individual
- 9 Settlement Payment, field inquiries from Class Members, and administer
- 10 any Requests for Exclusion. This service will include settlement proceed
- 11 calculation, printing and issuance of Settlement Payment Checks, and
- 12 preparation of IRS W-2 and 1099 Tax Forms. Basic accounting for and
- 13 payment of employee tax withholdings and forwarding all payroll taxes and
- 14 penalties to the appropriate government authorities will also be included as
- 15 part of this service.
- 16 i. Issuing to Plaintiff, Class Members, and Plaintiff's Counsel any W-2, 1099,
- 17 or other tax forms as may be required by law for all amounts paid pursuant
- 18 to this Settlement.
- 19 j. Provide declarations and/or other information to the Court as requested by
- 20 the Parties and/or the Court.
- 21 k. Provide weekly status reports to counsel for the Parties.
- 22 2. Within fourteen (14) days of Preliminary Approval, Defendant will provide
- 23 the Class List to the Claims Administrator.
- 24 3. Within seven (7) calendar days after receiving the Class List from
- 25 Defendant, the Claims Administrator will (i) run the names of all Class Members through the
- 26 National Change of Address ("NCOA") database to determine any updated addresses for
- 27 Settlement Class Members, (ii) update the addresses of any Class Member for whom an updated
- 28 address was found through the NCOA search, and (iii) mail the Notice Packet to each Class

1 Member at his or her last known address or at the updated address found through the NCOA  
2 search, and retain proof of mailing..

3           4.       Any Notice Packets returned to the Claims Administrator as non-deliverable  
4 on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the  
5 forwarding address affixed thereto and the Claims Administrator will indicate the date of such re-  
6 mailing on the Notice Packet. If no forwarding address is provided, the Claims Administrator will  
7 promptly attempt to determine the correct address using a skip-trace, or other search using the  
8 name, address and/or Social Security number of the Class Member involved, and will then  
9 perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet,  
10 whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15)  
11 calendar days or (b) the Response Deadline to postmark a Request for Exclusion or Notice of  
12 Objection to the Settlement.

13           5.       All Class Members will be mailed a Notice Packet containing the forms  
14 attached as Exhibit 1 as approved by the Court.

15           6.       Class Members will have an opportunity to dispute the information  
16 provided in their Notice Packets. To the extent Class Members dispute the number of workweeks  
17 to which they have been credited or the amount of their Individual Settlement Payment, Class  
18 Members may produce evidence to the Claims Administrator showing that such information is  
19 inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed  
20 determinative. However, if a Class Member produces evidence to the contrary, the Claims  
21 Administrator will evaluate the evidence submitted by the Class Member and will make the final  
22 decision as to the number of eligible workweeks that should be applied and/or the Individual  
23 Settlement Payment to which the Class Member may be entitled. The workweek dispute must be  
24 returned by mail or fax to the Claims Administrator at the specified address or facsimile number  
25 and postmarked or faxed on or before the Response Deadline. The date of the postmark or fax  
26 receipt confirmation will be the exclusive means to determine whether a workweek dispute has  
27 been timely submitted. All such disputes are to be resolved not later than fourteen (14) calendar  
28 days after the Response Deadline.

1           7.       Defective Submissions. If a Class Member's Request for Exclusion is  
2 defective as to the requirements listed herein, that Class Member will be given an opportunity to  
3 cure the defect(s). The Claims Administrator will mail the Class Member a cure letter within three  
4 (3) business days of receiving the defective submission to advise the Class Member that his or her  
5 submission is defective and that the defect must be cured to render the Request for Exclusion  
6 valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15)  
7 calendar days from the date of the cure letter, whichever date is later, to postmark or fax a revised  
8 Request for Exclusion.

9           8.       Request for Exclusion Procedures. Any Class Member wishing to opt-out  
10 from the Settlement Agreement must sign and postmark or fax a written Request for Exclusion to  
11 the Claims Administrator within the Response Deadline. The date of the postmark on the return  
12 mailing envelope or the fax receipt confirmation will be the exclusive means to determine whether  
13 a Request for Exclusion has been timely submitted. All Requests for Exclusion will be submitted  
14 to the Claims Administrator, who will certify jointly to Class Counsel and Defendant's Counsel  
15 the Requests for Exclusion that were timely submitted. Any Class Member who does not timely  
16 seek exclusion will be bound by the terms of this Settlement Agreement. Any Class Member who  
17 timely submits a valid Request for Exclusion will not receive payment from the Settlement, and  
18 will not be bound by the terms of the Settlement Agreement or Judgment (with the exception of  
19 the PAGA Released Claims if they are an Aggrieved Employee). Class Members eligible for a  
20 portion of the PAGA Settlement will receive their share of the employee portion of the PAGA  
21 Settlement Amount and will be deemed to have released the PAGA Released Claims, regardless of  
22 whether they submit a Request for Exclusion.

## 23 **XII. NULLIFICATION OF THE SETTLEMENT AGREEMENT.**

24           1.       Defendant's Option to Nullify the Settlement Agreement. If ten percent  
25 (10%) or more of the Class Members opt out of the Settlement (or are otherwise excluded),  
26 Defendant, in its sole discretion, shall have the option of nullifying the Settlement Agreement. In  
27 such a case, the Parties and any funds to be awarded under this Settlement Agreement shall be  
28 returned to their respective statuses as of the date and time immediately prior to the execution of

1 this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had  
2 not been executed, except that any fees already incurred by the Claims Administrator shall be paid  
3 by Defendant.

4           2.       Plaintiff's Option to Nullify the Settlement Agreement. Defendant  
5 represents that the approximately forty-five (45) Class Members have worked approximately  
6 6,422 workweeks through May 17, 2022. If the actual number of workweeks worked by Class  
7 Members during the Class Period (i.e., through the date of Preliminary Approval or September 6,  
8 2022 – whichever is sooner) grows by more than ten percent (10%), or more than the 7,065  
9 workweeks, then Plaintiff has the option to nullify this Agreement. Plaintiff shall provide ten (10)  
10 business days' notice of such intent to nullify prior to taking any action with the court. During this  
11 10-day nullification notice period, Defendant at its exclusive discretion may cure by agreeing to  
12 increase the Class Settlement Amount proportionately for any excess increase in the total number  
13 of workweeks worked by Class Members during the Class Period. For example, if the total  
14 number of workweeks worked by Class Members during the Class Period increases by 11%  
15 beyond 6,422 workweeks (i.e., approximately 7,129 workweeks), the Class Settlement Amount  
16 will increase by 1% (actual increase minus the 10% tolerated increase). In the alternative,  
17 Defendant shall have the exclusive option to modify the applicable Class Period to a date prior to  
18 Preliminary Approval to avoid incurring the pro rata increase. If Plaintiff nullifies this Agreement  
19 pursuant to this provision, Plaintiff will be responsible for any fees already incurred by the Claims  
20 Administrator.

21           3.       Nullification of the Settlement Agreement. In the event: (i) the Court does  
22 not enter the Preliminary Approval Order and approve the Released Class Claims and/or the  
23 Released Aggrieved Employee Claims specified herein; (ii) the Court does not finally approve the  
24 Settlement as provided herein; (iii) Defendant or Plaintiff exercises their option to nullify the  
25 Settlement Agreement, as described in the above Section; or (iv) the Settlement does not become  
26 final for any other reason (e.g., an objection by the LWDA), this Settlement Agreement shall be  
27 null and void. A reduction of the Attorneys' Fees and Costs and/or any Class Representative  
28 Enhancement Payment(s) shall not be grounds for nullification of this Settlement. If the

1 Settlement is nullified, any order or judgment entered by the Court in furtherance of this  
2 Settlement Agreement shall be treated as void from the beginning, and the Stipulations and  
3 Recitals contained herein shall be of no force or effect, and shall not be treated as an admission by  
4 the Parties or their counsel. In such a case, the Parties and any funds to be awarded under this  
5 Settlement Agreement shall be returned to their respective statuses as of the date and time  
6 immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in  
7 all respects as if this Settlement Agreement had not been executed, except that any fees already  
8 incurred by the Claims Administrator shall be paid equally by both Parties. The Parties agree that  
9 they will cooperate and take all steps necessary in order to obtain preliminary and/or final  
10 approval in the event that the Court raises issues or questions about this Settlement or anything  
11 pertaining to this Settlement (including, but not limited to, the motion for preliminary approval  
12 and motion for final approval).

13           4.     Settlement Terms Bind All Class Members Who Do Not Opt Out. Any  
14 Class Member who does not affirmatively opt out of the Settlement Agreement by submitting a  
15 timely and valid Request for Exclusion will be bound by all its terms, including those pertaining to  
16 the Released Class Claims. Class Members eligible for a portion of the PAGA Settlement will  
17 receive their share of the employee portion of the PAGA Settlement Amount and will be deemed  
18 to have released the PAGA Released Claims, regardless of whether they submit a Request for  
19 Exclusion.

20 **XIII. Certification Reports Regarding Individual Settlement Payment Calculations.**

21           1.     The Claims Administrator will provide Defendant’s counsel and Class  
22 Counsel a weekly report which certifies: (a) the number of Class Members who have submitted  
23 valid Requests for Exclusion; (b) any objections submitted to the Settlement along with a copy of  
24 any such objection; and (c) whether any Class Member has submitted a challenge to any  
25 information contained in his/her Notice Packet. Additionally, the Claims Administrator will  
26 provide to counsel for both Parties any updated reports regarding the administration of the  
27 Settlement Agreement as needed or requested.

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1                   2.       Uncashed Settlement Checks. Any checks issued by the Claims  
2 Administrator to Class Members will be negotiable for one-hundred eighty (180) calendar days.  
3 After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become  
4 null and void, and any monies remaining in the distribution account shall be distributed to the  
5 Controller of the State of California to be held pursuant to the Unclaimed Property Law,  
6 California Civil Code § 1500 *et seq.*, for the benefit of those Settlement Class members or  
7 Aggrieved Employees who did not cash their checks until such time that they claim their property.  
8 The Settling Parties agree that this disposition results in no “unpaid residue” under California  
9 Civil Procedure Code § 384, as the entire Settlement Payment will be paid out to Settlement Class  
10 members, whether or not they all cash their Settlement Checks. Therefore, Defendant will not be  
11 required to pay any interest on said amount.

12                   3.       Certification of Completion. Upon completion of administration of the  
13 Settlement, the Claims Administrator will provide a written declaration under oath to certify such  
14 completion to the Court and counsel for all Parties.

15 **XIV. Tax Treatment of Individual Settlement Payments.**

16                   The Individual PAGA Payments will be allocated as 100% penalties and reported on an  
17 IRS-Form 1099. All Individual Settlement Payments will be allocated as follows: twenty percent  
18 (20%) of each Individual Settlement Payment will be allocated as wages and eighty percent (80%)  
19 will be allocated as penalties or non-wages. The portion allocated to wages will be reported on an  
20 IRS Form W-2 and the portion allocated to non-wages will be reported on an IRS Form-1099 by  
21 the Claims Administrator. The Individual Settlement Payments will be reduced by any required  
22 deductions for each Class Member, including Employee Paid Taxes owed by the Class Members  
23 as a result of the wage component, resulting in a net wage component. The Claims Administrator  
24 will issue a check and W-2 Form to each Class Member for the wage component. The Claims  
25 Administrator will issue a second check and IRS Form-1099 for the remaining non-wages  
26 component. No withholding shall be made on the non-wages portion of the Individual Settlement  
27 Payment. The Claims Administrator shall be responsible for issuing the payments and calculating  
28 and withholding all required state and federal taxes. The Claims Administrator shall determine the



1 eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this  
2 Settlement Agreement. Any disputes not resolved by the Claims Administrator concerning the  
3 administration of the Settlement will be resolved by the Court, under the laws of the State of  
4 California. Prior to any such involvement of the Court, counsel for the Parties will confer in good  
5 faith to resolve the dispute without the necessity of involving the Court.

6 **XV. Administration of Taxes by the Claims Administrator.**

7 1. Tax Liability. Defendant makes no representation as to the tax treatment or  
8 legal effect of the payments called for hereunder, and Plaintiff and Class Members are not relying  
9 on any statement, representation, or calculation by Defendant or by the Claims Administrator in  
10 this regard. Plaintiff and Class Members understand and agree they will be solely responsible for  
11 the payment of their share of any taxes and penalties assessed on the payments described herein.

12 2. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT  
13 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”  
14 AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE  
15 ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES  
16 THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN  
17 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR  
18 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY  
19 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE  
20 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES  
21 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE  
22 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS  
23 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX  
24 ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT  
25 ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE  
26 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO  
27 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY  
28 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY

1 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
2 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER  
3 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY  
4 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF  
5 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE  
6 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY  
7 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
8 SETTLEMENT AGREEMENT.

9 **XVI. Releases.**

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

14           2.     It is the desire of Plaintiff, Class Members (except those who exclude  
15 themselves from the Settlement), and Defendant to fully, finally, and forever settle, compromise,  
16 and discharge the Released Class Claims and Released Aggrieved Employee Claims. As of the  
17 date Defendant fully funds the Settlement, and except as to such rights or claims as may be created  
18 by this Settlement Agreement, the Class Members shall fully release and discharge the Released  
19 Parties from any and all Released Class Claims for the entire Class Period and the Aggrieved  
20 Employees shall fully release and discharge the Released Parties from any and all Released  
21 Aggrieved Employee Claims for the entire PAGA Period. This release of the Released Class  
22 Claims shall be binding on all Class Members who have not timely submitted a valid and  
23 complete Request for Exclusion, including each of their respective attorneys, agents,  
24 representatives, heirs, successors, and assigns, and shall inure to the benefit of the Released  
25 Parties, who shall have no further or other liability or obligation to any Class Member with respect  
26 to the Released Class Claims, except as expressly provided herein.

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1 **XVII. Preliminary Approval Hearing.**

2           1.       Plaintiff will obtain a hearing before the Court to request Preliminary  
3 Approval of the Settlement Agreement and the entry of a Preliminary Approval Order for: (a)  
4 conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary  
5 Approval of the proposed Settlement Agreement, and (c) setting a date for a Final  
6 Approval/Settlement Fairness Hearing.

7           2.       The Preliminary Approval Order will provide for the Notice Packet to be  
8 sent to all Class Members as specified herein. In conjunction with the Preliminary Approval  
9 Hearing, Plaintiff will submit this Settlement Agreement and will include the proposed Notice  
10 Packet.

11           3.       Class Counsel will be responsible for drafting all documents necessary to  
12 obtain Preliminary Approval and will provide drafts of all such documents to Defendant's Counsel  
13 two (2) business days prior to filing the motion for Preliminary Approval of the Settlement  
14 counsel. Any failure by the Court to fully and completely approve the Settlement Agreement  
15 which has the effect of preventing the full and complete approval of the Settlement Agreement as  
16 written and agreed to by the Parties will result in this Settlement Agreement, and all obligations  
17 under this Settlement Agreement, being nullified and voided.

18 **XVIII. Final Settlement Approval Hearing and Entry of Judgment.**

19           1.       Upon expiration of the Response Deadline, and with the Court's  
20 permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the  
21 Final Approval of the Settlement Agreement along with the amounts properly payable for: (a)  
22 Individual Settlement Payments and Individual PAGA Payments; (b) the LWDA payment; (c) the  
23 Attorneys' Fees and Costs; (d) the Class Representative Enhancement Payment; and (e) all Claims  
24 Administration Costs.

25           2.       Depending on the Court's availability, the Parties will request that the Final  
26 Approval Hearing will be held approximately forty-five (45) calendar days after the Response  
27 Deadline. A violation of this provision shall not serve as grounds for nullification of this  
28 Agreement.

1                   3.       Class Counsel will be responsible for drafting all documents necessary to  
2 obtain Final Approval, and will provide drafts of all such documents to Defendant’s Counsel two  
3 (2) business days prior to filing the motion for Final Approval of the Settlement. Class Counsel  
4 will also be responsible for drafting the Attorneys’ Fees and Costs application to be heard at the  
5 Final Approval/Settlement Fairness Hearing. Any failure by the Court to fully and completely  
6 approve the Settlement Agreement will result in this Settlement Agreement entered into by the  
7 Parties, and all obligations under this Settlement Agreement, being nullified and voided. Upon  
8 such failure, any order or judgment entered by the Court in furtherance of this Settlement  
9 Agreement shall be treated as void from the beginning, and the Stipulations and Recitals contained  
10 herein shall be of no force or effect and shall not be treated as an admission by the Parties or their  
11 counsel. In such a case, the Parties and any funds to be awarded under this Settlement Agreement  
12 shall be returned to their respective statuses as of the date and time immediately prior to the  
13 execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this  
14 Settlement Agreement had not been executed, except that any fees already incurred by the Claims  
15 Administrator shall be paid equally by both Parties.

16 **XIX. Judgment and Continued Jurisdiction.**

17                   The Court shall retain jurisdiction with respect to the interpretation,  
18 implementation, and enforcement of the terms of this Settlement Agreement and all orders and  
19 judgments entered in connection therewith, and the Parties and their counsel hereto submit to the  
20 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement  
21 embodied in this Settlement Agreement and all orders and judgments entered in connection  
22 therewith.

23 **XX. Other Provisions.**

24                   1.       Exhibits Incorporated by Reference. The terms of this Settlement include  
25 the terms set forth in any attached Exhibits, which are incorporated by this reference as though  
26 fully set forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

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1                   2.     Entire Agreement. This Settlement Agreement and any attached Exhibits  
2 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written  
3 or oral agreements may be deemed binding on the Parties.

4                   3.     Amendment or Modification. This Settlement Agreement may be amended  
5 or modified only by a written instrument signed by counsel for all Parties or their successors-in-  
6 interest and approved by the Court.

7                   4.     Authorization to Enter Into Settlement Agreement. Counsel for all Parties  
8 warrant and represent they are expressly authorized by the Parties whom they represent to  
9 negotiate this Settlement Agreement and to take all appropriate action required or permitted to be  
10 taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute  
11 any other documents required to effectuate the terms of this Settlement Agreement. The Parties  
12 and their counsel will cooperate with each other and use their best efforts to effect the  
13 implementation of the Settlement. If the Parties are unable to reach agreement on the form or  
14 content of any document needed to implement the Settlement, or on any supplemental provisions  
15 that may become necessary to effectuate the terms of this Settlement, the Parties may seek the  
16 assistance of Jeffrey Krivis, Esq. (mediator) to resolve such disagreement.

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

20                   6.     California Law Governs. All terms of this Settlement Agreement and  
21 Exhibits hereto will be governed by and interpreted according to the laws of the State of  
22 California.

23                   7.     Execution and Counterparts. This Settlement Agreement is subject only to  
24 the execution of all Parties. However, the Settlement Agreement may be executed in one or more  
25 counterparts. All executed counterparts and each of them, including electronic signatures (*e.g.*,  
26 DocuSign), facsimile and scanned copies of the signature page, will be deemed to be one and the  
27 same instrument. The Parties expressly agree to the use of authorized electronic signature (*e.g.*,  
28 DocuSign).

1                   8.       Acknowledgement that the Settlement is Fair and Reasonable. The Parties  
2 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and  
3 have arrived at this Settlement after arm's-length negotiations and in the context of adversarial  
4 litigation, taking into account all relevant factors, present and potential. The Parties further  
5 acknowledge that they are each represented by competent counsel and that they have had an  
6 opportunity to consult with their counsel regarding the fairness and reasonableness of this  
7 Settlement.

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

12                  10.       Class Action Certification for Settlement Purposes Only. The Parties agree  
13 to stipulate to class certification only for purposes of the Settlement. If, for any reason, the  
14 Settlement is not approved, the stipulation to certification will be void. The Parties further agree  
15 that certification for purposes of the Settlement is not an admission that class action certification is  
16 proper under the standards applied to contested certification motions and that this Settlement  
17 Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a  
18 class action should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other  
19 than according to the Settlement's terms.

20                  11.       Non-Admission of Liability. The Parties enter into this Settlement  
21 Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense,  
22 and risk of continued litigation. In entering into this Settlement Agreement, Defendant does not  
23 admit, and specifically denies, it has violated any federal, state, or local law; violated any  
24 regulations or guidelines promulgated pursuant to any statute or any other applicable laws,  
25 regulations or legal requirements; breached any contract; violated or breached any duty; engaged  
26 in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its  
27 employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the  
28 negotiations connected with it, shall be construed as an admission or concession by Defendant of

1 any such violations or failures to comply with any applicable law. Except as necessary in a  
2 proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its  
3 terms and provisions shall not be offered or received as evidence in any action or proceeding to  
4 establish any liability or admission on the part of Defendant or to establish the existence of any  
5 condition constituting a violation of, or a non-compliance with, federal, state, local or other  
6 applicable law.

7           12.    Captions. The captions and section numbers in this Settlement Agreement  
8 are inserted for the reader's convenience, and in no way define, limit, construe or describe the  
9 scope or intent of the provisions of this Settlement Agreement.

10           13.    Waiver. No waiver of any condition or covenant contained in this  
11 Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be  
12 considered to imply or constitute a further waiver by such party of the same or any other  
13 condition, covenant, right or remedy.

14           14.    Enforcement Action. If one or more of the Parties institutes any legal  
15 action or other proceeding against any other Party or Parties to enforce the provisions of this  
16 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or  
17 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees  
18 and costs, including expert witness fees incurred in connection with any enforcement Action.

19           15.    Mutual Preparation. The Parties have had a full opportunity to negotiate the  
20 terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will  
21 not be construed more strictly against one Party than another merely by virtue of the fact that it  
22 may have been prepared by counsel for one of the Parties, it being recognized that, because of the  
23 arm's-length negotiations between the Parties, all Parties have contributed to the preparation of  
24 this Settlement Agreement.

25           16.    Representation by Counsel. The Parties acknowledge that they have been  
26 represented by counsel throughout all negotiations that preceded the execution of this Settlement  
27 Agreement and that this Settlement Agreement has been executed with the consent and advice of  
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1 counsel and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there  
2 are no liens on the Settlement Agreement.

3 17. All Terms Subject to Final Court Approval. All amounts and procedures  
4 described in this Settlement Agreement herein will be subject to final Court approval.

5 18. Cooperation and Execution of Necessary Documents. All Parties will  
6 cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate  
7 the terms of this Settlement Agreement.

8 19. Confidentiality. Neither Plaintiff nor Plaintiff's Counsel shall issue any  
9 press release or announcement of any kind related in any way to the Settlement. Plaintiff and  
10 Plaintiff's Counsel agree that, prior to Preliminary Approval of the Settlement, they will keep the  
11 terms of this Settlement confidential except for purposes of communicating with Plaintiff only.  
12 Plaintiff shall be informed that the Settlement is confidential and shall be advised to keep the  
13 Settlement confidential. From and after Preliminary Approval of the Settlement, the Class  
14 Members (including Plaintiff and Class Counsel) may: (1) as required by law; (2) as required  
15 under the terms of the Settlement; or (3) as required under counsel's duties and responsibilities as  
16 Class Counsel, comment regarding the specific terms of the Settlement. In all other cases,  
17 Plaintiff and Class Counsel agree to limit their statements regarding the terms of the Settlement,  
18 whether oral, written or electronic (including the world wide web), to say the Class Action has  
19 been resolved and that Plaintiff and Class Counsel are satisfied with the Settlement terms.  
20 Nothing in this Section is intended to interfere with Class Counsel's duties and obligations to  
21 faithfully discharge their duties as Class Counsel, including but not limited to, communicating  
22 with Class Members regarding the Settlement. This Settlement shall not be advertised or  
23 mentioned on any source, including Plaintiff's Counsels' personal or firm website(s).

24 The parties stipulate and agree, pursuant to California Code of Civil Procedure  
25 section 583.330(a), to extend the time within which this action must be brought to trial pursuant to  
26 Code of Civil Procedure sections 583.310 through 583.360, by that period of time from  
27 Preliminary Approval to the date of Final Approval or upon written notice from either party of an  
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1 intent to resume litigation, and that said period of time shall not be included in the computation of  
2 the five-year period specified in Code of Civil Procedure section 583.310.

3           20.     Warranties and Enforcement. The Parties warrant that they understand and  
4 have full authority to enter into this Settlement, intend that this Settlement Agreement will be fully  
5 enforceable and binding on all Parties, and agree that it will be admissible and subject to  
6 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality  
7 provisions that otherwise might apply under federal or state law. Plaintiff, and not his respective  
8 representative(s), must personally execute this Settlement Agreement.

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*The Settlement Agreement consists of 34 pages with signatures appearing below.*

**PLAINTIFF RAFAEL GUTIERREZ**

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

\_\_\_\_\_  
Plaintiff Rafael Gutierrez

**DEFENDANT M. ARGUESO & CO. INC., DBA  
PARAMELT**

Dated: June 26, 2023



\_\_\_\_\_  
Richard Kilpatrick, President of M. Argueso &  
Co. Inc., dba Paramelt

**APPROVED AS TO FORM**

**SANI LAW, APC**

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

\_\_\_\_\_  
Sam Sani  
Attorneys for Plaintiff Rafael Gutierrez

**SHEPPARD, MULLIN, RICHTER &  
HAMPTON LLP**

Dated: June 26, 2023




\_\_\_\_\_  
Jason W. Kearnaghan  
Attorneys for Defendant M. Argueso & Co. Inc.,  
dba Paramelt

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The Settlement Agreement consists of 34 pages with signatures appearing below.

**PLAINTIFF RAFAEL GUTIERREZ**

Dated: 06-29-2023

  
\_\_\_\_\_  
Plaintiff Rafael Gutierrez

**DEFENDANT M. ARGUESO & CO. INC., DBA  
PARAMELT**


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

\_\_\_\_\_  
Richard Kilpatrick, President of M. Argueso &  
Co. Inc., dba Paramelt

**APPROVED AS TO FORM**

**SANI LAW, APC**

Dated: 6/29/2023

  
\_\_\_\_\_  
Sam Sani  
Attorneys for Plaintiff Rafael Gutierrez

**SHEPPARD, MULLIN, RICHTER &  
HAMPTON LLP**

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

\_\_\_\_\_  
Jason W. Kearnaghan  
Attorneys for Defendant M. Argueso & Co. Inc.,  
dba Paramelt