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Attorneys for Plaintiff and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BERTHA PENA, individually, on behalf of
all others similarly situated,

Plaintiff,

v.

CANYON PLASTICS, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 20STCV34161

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

This Joint Stipulation of Settlement and Release of Class Action (“Settlement Agreement”) is made and entered into by Plaintiff Bertha Pena (“Plaintiff”), individually and as a representative of the Settlement Class, as defined below, and Defendant Canyon Plastics, Inc. (“Defendant”) (Plaintiff and Defendant are collectively referred to as “the Parties”). This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e), and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Class Settlement, as defined below, or the conditions precedent are not met for any reason, this Stipulation is void and of no force or effect whatsoever.

I. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Stipulation are not specifically defined below, but are defined elsewhere in this Stipulation, they are incorporated by reference into this definition section.

1. Action. “Action” shall mean the following civil action: *Bertha Pena v. Canyon Plastics, Inc., et al.*, Case No. **20STCV34161** filed on **September 3, 2020** in the Superior Court of California for the County of Los Angeles.

2. Administrative Expenses. “Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party Settlement Administrator, which are anticipated not to exceed \$15,000.00.

3. Claims. “Claims” shall mean the claims asserted in the Action.

4. Class or Settlement Class. “Class” or “Settlement Class” shall mean *all California residents who are or were employed by Defendant as hourly workers at any time from February 14, 2019 through the date of preliminary approval.* Defendant represents that the Class consists of approximately **268 Class Members** that worked a total of approximately **6,500 workweeks** during the Class Period. The terms “Class Member” or “Settlement Class Member” shall mean any person who is a member of the Settlement Class, or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir or successor-in-interest.

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1 **5. Class Counsel.** “Class Counsel” shall mean Jonathan Melmed and Laura M. Supanich of
2 Melmed Law Group P.C.

3 **6. Class Attorney Fees and Expenses.** “Class Attorney Fees and Expenses” shall mean
4 Class Counsel’s attorney fees and expenses as set forth in Section IV, Paragraph 6.

5 **7. Class Notice.** “Class Notice” shall mean the Notice of Proposed Class Action Settlement
6 and Hearing Date for Court Approval, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise
7 approved by the Court, which is to be mailed to Class Members along with the Share Form.

8 **8. Share Form.** “Share Form” shall mean the Share Form, as set forth in the form of **Exhibit**
9 **2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members along
10 with the Class Notice.

11 **9. Class Participants.** “Class Participants” shall mean any and all Class Members who do
12 not timely Opt-Out of the Class Settlement.

13 **10. Class Period.** “Class Period” shall mean the period from February 14, 2019 through the
14 date of preliminary approval.

15 **11. Class Representative.** “Class Representative” shall mean Plaintiff Bertha Pena.

16 **12. Class Settlement.** “Class Settlement” shall mean the settlement embodied in this
17 Stipulation, which is subject to Court approval.

18 **13. Complaint.** “Complaint” shall mean the operative Complaint in the Action.

19 **14. Court.** “Court” shall mean the Superior Court of Los Angeles County.

20 **15. Defense Counsel.** “Defense Counsel” shall mean **Michael Fostakowsky of Poole**
21 **Shaffery & Koegle, LLP.**

22 **16. Effective Date.** “Effective Date” shall be the date the Court’s order approving the
23 settlement and judgment thereon (“Judgment”) becomes final. For purposes of the Settlement Agreement,
24 the Court’s Judgment “becomes final” upon the later of: (i) if no appeal is filed, the date that the court
25 enters its order granting final approval; (ii) if an appeal is filed, the date affirmance of an appeal of the
26 Judgment becomes final; or (iii) if an appeal is filed, the date of final dismissal of any appeal from the
27 Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to
28 the Judgment. In the event no objections are filed, the Effective Date shall be the date that the Court enters

its order granting final approval.

17. Employee's Taxes and Required Withholding. "Employee's Taxes and Required Withholding" shall mean the employee's share of any and all applicable federal, state or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act ("FICA"), FUTA and/or SUTA on the portion of any Class Participant's Individual Settlement Amount that constitutes wages as set forth in section IV, paragraph 4. The Employee's Taxes and Requirement Withholdings will be withheld from and paid out of the Net Settlement Amount.

18. Employer's Taxes. "Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g. UI, ETT, Social Security and Medicare taxes) that is owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages as set forth in section IV, paragraph 4. The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross Settlement Amount or Net Settlement Amount.

19. Final Approval and Fairness Hearing. "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

20. Defendant. "Defendant" shall mean Canyon Plastics, Inc.

21. Hearing on Preliminary Approval. "Hearing on Preliminary Approval" shall mean the hearing held on the motion for preliminary approval of the Class Settlement.

22. Individual Settlement Amount. "Individual Settlement Amount" shall mean the amount which is ultimately distributed to each Class Participant, net of any Employee's Taxes and Required Withholdings.

23. Plaintiff. "Plaintiff" shall mean the named Plaintiff Bertha Pena.

24. Net Settlement Amount. "Net Settlement Amount" shall mean the Gross Settlement Amount minus Administrative Expenses, Class Attorney Fees and Expenses, 75% of the Private Attorney General Act (PAGA) Payment payable to the California Labor and Workforce Development Agency ("LWDA"), and Plaintiff's Incentive Award.

25. Opt-Out(s). "Opt-Out(s)" shall mean any and all persons who timely and validly request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

1 **26. Parties.** “Parties” shall mean Plaintiff and Defendant.

2 **27. Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon
3 which the Court enters an order preliminarily approving this Stipulation.

4 **28. Released Claims.** “Released Claims” shall mean those claims alleged in the operative
5 Complaint arising out of or related to allegations set forth in the operative Complaint or PAGA Notice to
6 the LWDA, including but not limited to: claims for minimum wage violations; failure to pay overtime
7 wages, rest period violations; failure to timely pay wages; itemized wage statement violations; waiting
8 time penalties; failure to provide suitable seating; claims for violation of Sections 11 and 12 of IWC Wage
9 Order No. 1; unfair competition based on the foregoing; and claims for PAGA penalties pursuant to the
10 California Private Attorneys General Act based on the foregoing Labor Code violations; including, but
11 not limited to, California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 1194, 1194.2,
12 1197, and Labor Code §§ 2698-2699.5; liquidated damages, penalties; interest; fees; costs; and all other
13 claims and allegations made or which could have been made in the Action from February 14, 2019 through
14 the date of preliminary approval of the Settlement (the “Released Claims”).

15 Plaintiff and all other class members will release Defendant and all of its subsidiaries, affiliates,
16 shareholders, members, agents, predecessors, successors, and assigns (the “Released Parties”) from those
17 claims alleged in the operative Complaint and those claims that could have been alleged in the operative
18 Complaint, including claims under. The Release Period shall be the Class Period. No other claims are
19 released other than those claims specifically plead in the operative Complaint.

20 **29. Released Parties.** “Released Parties” shall mean Defendant and all of its subsidiaries,
21 affiliates, shareholders, members, agents, predecessors, successors, and assigns.

22 **30. Response Deadline.** “Response Deadline” shall mean the date forty-five (45) days
23 following the date on which the Settlement Administrator first mails Class Notice to the Settlement Class
24 Members and the last day on which Settlement Class Members may submit a request for exclusion and/or
25 objection to Settlement.

26 **31. Incentive Award.** “Incentive Award” shall mean any additional monetary payment
27 provided to the Class Representative for her efforts and risks on behalf of the Settlement Class in this
28 Action.

1 **32. PAGA Payment.** “PAGA Payment” means the penalties pursuant to California Labor
2 Code sections 2698, et seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”), that the
3 Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the
4 Action, which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code
5 section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e. \$15,000) to the LWDA
6 and twenty-five percent (25%) (i.e. \$5,000) to the Class Members. Class Counsel shall give timely notice
7 of the Class Settlement to the LWDA under Labor Code section 2699(1)(2).

8 **33. Settlement.** “Settlement” shall mean the settlement between the Parties, which is
9 memorialized in this Stipulation and subject to approval by the Court.

10 **34. Settlement Administrator.** “Settlement Administrator” shall mean ILYM Group, Inc.,
11 or CPT Group, Inc. (or another administrator to be agreed upon by the parties) which the Parties have
12 agreed will be responsible for administration of the Settlement and related matters.

13 **35. Gross Settlement Amount.** “Gross Settlement Amount” is the agreed upon non-
14 reversionary settlement amount totaling \$375,000.00 to be paid by Defendant in full settlement of the
15 Released Claims asserted in this case, including the Administrative Expenses, Employee’s Taxes and
16 Required Withholdings, Class Attorney Fees and Expenses, Incentive Award, and PAGA Payment.
17 Defendant shall separately pay its share of the Employer’s Taxes in addition to the Gross Settlement
18 Amount on the portion of each Individual Settlement Amount allocated as wages.

19 **36. Stipulation.** “Stipulation” shall mean this Joint Stipulation of Settlement and Release of
20 Class Action, including any attached exhibits.

21 **II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

22 **1. Plaintiff’s Claims.** On behalf of the Settlement Class, Plaintiff alleged the following
23 causes of action: (1) failure to pay minimum wage; (2) failure to provide off-duty rest breaks and pay
24 missed rest break premiums; (3) failure to pay overtime wages; (4) waiting time penalties; (5) failure to
25 provide complete/accurate wage statements; (6) failure to timely pay all wages owed; (7) failure to provide
26 suitable seating; (8) unfair business practices based on the foregoing; and (9) PAGA penalties based on
27 the foregoing.

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1 **2. Discovery, Investigation, Research, and Mediation.** Class Counsel has conducted
2 significant informal discovery during the prosecution of the Action. This discovery, investigation, and
3 prosecution has included, among other things, (a) over a dozen telephonic conferences with Plaintiff; (b)
4 inspection and analysis of thousands of pages of documents and other information produced by Plaintiff
5 and Defendant; (c) analysis of employment data from a sample of Class Members; (d) an analysis of the
6 legal positions taken by Defendant; (d) investigation into the viability of class treatment of the claims
7 asserted in the Action; (e) analysis of potential class-wide damages, including information sufficient to
8 understand Defendant's potential defenses to Plaintiff's claims; (f) research of the applicable law with
9 respect to the claims asserted in the Complaint and the potential defenses thereto; and (g) assembling and
10 analyzing of data for calculating damages.

11 Plaintiff's counsel and the Class Representative have vigorously prosecuted this case, and
12 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and discovery
13 to assess the relative merits of the claims of the Class Representative and of Defendant's defenses to them.
14 On March 25, 2021, the Parties attended a full-day mediation with experienced employment law mediator
15 Lynn Frank, which culminated in a settlement in principal, the terms of which are elaborated in this
16 Agreement.

17 **3. Allegations of the Class Representative and Benefits of Class Settlement.** The
18 document and data exchange in this matter, as well as discussions between counsel, have been adequate
19 to give the Class Representative and Class Counsel a sound understanding of the merits of their positions
20 and to evaluate the value of the claims of the Settlement Class. The informal discovery conducted in this
21 Action and the information exchanged by the Parties through pre-mediation discussions are sufficient to
22 reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and
23 equitable basis.

24 Plaintiff and Class Counsel believe that the claims, causes of action, allegations and contentions
25 asserted in the Action have merit. However, Plaintiff and Class Counsel recognize and acknowledge the
26 expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendant
27 through trial and through appeals. Class Counsel has taken into account the uncertain outcome of the
28 litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and

delays inherent in such litigation, and the potential difficulty of obtaining certification of the Action as well as trying the claims of the class. Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims alleged in the Action.

Class Counsel believes that the Settlement set forth in this Stipulation confers substantial benefits upon Plaintiff and the Settlement Class Members and that an independent review of this Stipulation by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel has determined that the Settlement set forth in the Stipulation is in the best interests of Plaintiff and the Settlement Class Members.

4. Defendant's Denials of Wrongdoing and Liability. Defendant has denied and continues to deny each and all allegations, claims, and contentions alleged by Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged in the Action. Defendant contends that it complied with California and federal wage and hour laws and has dealt legally and fairly with Plaintiff and Settlement Class Members. Defendant further denies that, for any purpose other than settling this Action, these claims are appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further proceedings in the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation in order to dispose of burdensome and protracted litigation, to permit the operation of Defendant's respective businesses without further expensive litigation and the distraction and diversion of their personnel with respect to matters at issue in the Action. Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation.

5. Intent of the Class Settlement. The Class Settlement set forth herein intends to achieve the following: (1) entry of an order approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge of Released Parties from liability for any and all of the Released Claims; and (4) discharge of Defendant from liability for any and all claims arising out of the Action.

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1 **III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS**
2 **COUNSEL**

3 **1. The Settlement Class.** For the purposes of this Stipulation and the Class Settlement of
4 this Action only, the Parties stipulate to conditional class certification of the Settlement Class. Defendant's
5 counsel believes this conditional certification is appropriate because the Released Claims are being
6 compromised without need to establish the elements of those claims on which liability turns. The
7 certification of the Settlement Class for settlement purposes only shall not constitute, in this or any other
8 proceeding, an admission of any kind by Defendant, including without limitation, that certification of a
9 class for trial purposes is or would be warranted, appropriate or proper; or that Plaintiff could establish
10 any of the requisite elements for class treatment of any of the claims in the Action. In the event that the
11 Agreement is not finally approved by the Court, a Final Effective Date is not achieved, or the settlement
12 is rejected, terminated or otherwise rendered null and void as set forth herein, then certification of the
13 Settlement Class shall be automatically vacated, shall be void *ab initio*, of no force or effect, and shall not
14 constitute evidence or a binding determination that the requirements for certification of a class for trial
15 purposes in this Action or in any other action which have been, are or can be, satisfied. Further, if the
16 Agreement does not reach a Final Effective Date, Plaintiff agrees that it will not argue, claim, reference
17 or otherwise raise any preliminary approval of the Settlement Class in connection with any later
18 proceeding before the Court

19 **2. Appointment of Class Counsel.** For purposes of this Stipulation and subject to the
20 Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the Class
21 and the effectuation of the Class Settlement pursuant to this Stipulation.

22 **IV. CLASS SETTLEMENT CONSIDERATION**

23 **1. Settlement Amount.** The Parties agree to settle this Action for the Gross Settlement
24 Amount of \$375,000.00. There shall be no reversion to Defendant. Defendant shall pay the Gross
25 Settlement Amount in full. The Gross Settlement Amount and other actions and forbearances taken by
26 Defendant shall constitute adequate consideration for the Class Settlement and will be made in full and
27 final settlement of: (a) the Released Claims, (b) Class Attorney Fees and Expenses, (c) Administrative
28 Expenses, (d) Incentive Award, (e) PAGA Payment; and (f) any other obligation of Defendant under this

1 Stipulation (other than the Employer's Taxes on the portion of the Net Settlement Amount allocated to
2 the payment of wages). After the court issues an order preliminarily approving this Class Settlement, the
3 Settlement Administrator will distribute the Class Notice to the Settlement Class Members, which shall
4 describe the terms of the Class Settlement and procedures to opt out, object or participate in the Class
5 Settlement as well as the Share Form, which shall identify the Settlement Class Member, the number of
6 workweeks worked by each Settlement Class Member ("Workweeks"), as well as the estimated amount
7 of the Individual Settlement Amount the Settlement Class Member can expect to receive once the Class
8 Settlement becomes Effective. Settlement Class Members shall be given the opportunity to challenge their
9 workweeks worked information.

10 **2. Incentive Award for Plaintiff.** Plaintiff may petition the Court to approve an Incentive
11 Award in an amount up to \$7,500.00 for Plaintiff's efforts on behalf of the Settlement Class in this Action,
12 including assisting in the investigation and consulting with Class Counsel and providing crucial
13 documents to Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive Award
14 in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross
15 Settlement Amount and shall be in addition to any distribution to which she may otherwise be entitled as
16 a Class Participant. The Incentive Award shall not be considered wages, and the Settlement Administrator
17 shall issue Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be responsible for the
18 payment of any and all taxes with respect to her Incentive Award and shall hold Defendant harmless from
19 any and all liability with regard thereto.

20 **3. Payment to Class Participants.** Each Class Participant shall be eligible to receive
21 payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on
22 the pro rata number of weeks worked by the Settlement Class Members during the Class Period as a
23 proportion of all weeks worked by all Settlement Class Members. The Individual Settlement Amount for
24 each Settlement Class Member shall be calculated in accordance with section VII, paragraph 2. Each Class
25 Participant, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and
26 Required Withholding with respect to his or her Individual Settlement Amount and shall hold Defendant
27 harmless from any and all liability with regard thereto.

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1 **4. Tax Treatment and Payment.** For the purpose of calculating Employee's Taxes and
2 Required Withholding for the Individual Settlement Amounts for Class Participants (including any
3 payments to the Class Representative but exclusive of her Incentive Award), the Parties agree that 20%
4 of each Individual Settlement Amount shall constitute payment in the form of wages (and each Class
5 Participant will be issued an IRS Form W-2 for such payment to him or her), and 80% of each Individual
6 Settlement Amount shall constitute penalties and interest (and each Class Participant will be issued an IRS
7 Form 1099 for such payment to him or her). Prior to final distribution, the Settlement Administrator shall
8 calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of
9 Class Participants' anticipated Individual Settlement Amounts and such actual amount will be deducted
10 from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement Sum and final
11 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage
12 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant to
13 separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the Class
14 Participants who receive any payment pursuant to this Stipulation shall be solely responsible for any and
15 all other individual tax obligations associated with this Class Settlement.

16 **5. No Effect on Employee Benefit Plans.** Neither the Class Settlement nor any amounts
17 paid under the Class Settlement will modify any previously credited hours, days, or weeks of service under
18 any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form
19 the basis for additional contributions to, benefits under, or any other monetary entitlement under
20 Defendant's sponsored benefit plans, policies or bonus programs. The payments made under the terms of
21 this Stipulation shall not be applied retroactively, currently, or on a going forward basis, as salary,
22 earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plan,
23 policy or bonus program. Defendant retains the right to modify the language of their benefits plans,
24 policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this
25 Stipulation are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term
26 as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit
27 accrual, or any other purpose, and that additional contributions or benefits are not required by this
28 Stipulation. Defendant does not consider the Class Settlement payments "compensation" for purposes of

determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs, or any other plan sponsored by Defendant.

6. Class Attorney Fees and Expenses. As part of the motion for final approval of the Class Settlement, Class Counsel may submit an application for an award of Class Attorney Fees and Expenses with the fee portion not to exceed one third of the Gross Settlement Amount (*i.e.*, \$125,000.00) and the award of costs and expenses of up to an additional \$15,000.00. Defendant agrees not to object to any such fee, cost or expense application in those amounts. As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the manner reflected by this Section. Any Class Attorney Fees and Expenses awarded by the Court shall be paid from the Gross Settlement Amount in arriving at the Net Settlement Amount and shall not constitute payment to any Settlement Class Members. If Class Counsel voluntarily reduces the request for Class Attorney Fees or Expenses or the Court's award of Class Attorney Fees or Expenses is less than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class Attorney Fees and Expenses awarded.

The Class Attorney Fees and Expenses approved by the Court shall encompass: (a) all work performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent the Settlement Class through the date of this Stipulation; (b) all work to be performed and costs to be incurred in connection with approval by the Court of the Class Settlement; (c) all work to be performed and costs and expenses, if any, incurred in connection with administering the Class Settlement through the Effective Date and dismissal of the Action, with prejudice; and (d) may be based on the Catalyst Theory and/or Common Fund Doctrine.

V. CLAIMS ADMINISTRATION COSTS AND EXPENSES

1. The Settlement Administrator's Costs and Expenses. All costs and expenses due to the Settlement Administrator in connection with its administration of the Class Settlement, including, but not limited to, providing the Class Notice, locating Settlement Class Members, processing Opt-Out requests and objections, distributing the portion of the PAGA Payment payable to the LWDA, and calculating, administering and distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and shall not exceed \$15,000.00.

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1 **2. Payment by Defendant.** Defendant shall deposit the GSA in a lump sum payment plus
2 the employer-side payroll taxes to the Administrator within 15 days of the effective date of the Settlement
3 In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator more than
4 \$375,000.00 plus Employer Taxes, except where the Escalator Provision is triggered.

5 **VI. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

6 **1. The Settlement Administrator.** The Settlement Administrator will be responsible for
7 mailing the Class Notice and Share Form (**Exhibits 1 and 2**) to Settlement Class Members, posting notice
8 of entry of final order and judgment certifying the Class and approving this Stipulation, handling inquiries
9 from Settlement Class Members concerning the Class Notice, determination of Individual Settlement
10 Amounts, maintaining the settlement funds in an appropriate interest bearing account, preparing,
11 administering and distributing Individual Settlement Amounts to Class Participants, issuing a final report
12 and performing such other duties as the Parties may direct. Additionally, the Settlement Administrator
13 will handle all tax document preparation and reporting, including state and federal tax forms, if any.

14 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense
15 Counsel with summary information updating them as to the number of validated and timely objections
16 and Opt-Out Requests. The Settlement Administrator will serve on Class Counsel and Defense Counsel
17 via e-mail date-stamped copies of the original Opt-Outs and objections no later than seven days after their
18 receipt. The Settlement Administrator will provide Class Counsel with proof of mailing of the Class
19 Notice, without listing individual Class Member names which the Settlement Administrator will file with
20 the Court at the time Class Counsel files its motion in support of the Court's Final Approval and Fairness
21 Hearing. No later than seven days prior to the Final Approval and Fairness Hearing, the Settlement
22 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
23 information regarding (a) the total amount of final Individual Settlement Amounts of each Class
24 Participant, without any identifying information, (b) the number of Class Participants to receive such
25 payments, and (c) the final number of Opt-Outs and objections.

26 Administrative Expenses are not anticipated to exceed \$15,000.00. Prior to the calculation and
27 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the total
28 Administrative Expenses through the conclusion of their services and such actual amount will be deducted

from the Gross Settlement Amount prior to the final calculation of the Individual Settlement Amounts.

2. **Notice to Settlement Class Members.** Notice shall be provided to Settlement Class Members in the following manner: Within 14 days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an updated list of Class Members containing names, social security numbers, dates of employment, last-known addresses and phone numbers (the “Database”). The Database shall be marked “Confidential –Settlement Administrator’s Eyes Only.” Class Counsel shall not receive a copy of this list.

Within 28 days following the Preliminary Approval Date, the Settlement Administrator shall determine the number of workweeks for each Settlement Class Member, populate the Settlement Class for each accordingly, and send each Settlement Class Member the Class Notice via first-class, United States mail. The Class Notice shall also contain an easily understood statement alerting the Class Members that, unless they elect to Opt-Out of the Class Settlement, the Settlement Class Member is releasing and waiving all Released Claims against the Released Parties.

The Class Notice will inform Settlement Class Members of his/her estimated share of the settlement and the number of workweeks he/she worked during the Class Period. Class Members may dispute their workweeks if they believe they worked more weeks in the Class Period than Defendant’s records show by submitting information to the Settlement Administrator no later than 45 days after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the workweeks to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Settlement Class Member and Defendant.

3. **Opt-Out Procedure.** Settlement Class Members who do not timely Opt-Out of the Class Settlement will be deemed to participate in the Class Settlement and shall become a Class Participant without having to submit a claim form or take any other action. In order to Opt-Out of the Class Settlement, the Settlement Class Member must submit a letter or postcard to the Settlement Administrator by the Response Deadline. The Opt-Out request must state the Settlement Class Member’s name, address, telephone number, and signature. The Opt-Out request should state something to the effect of: “I WISH

1 TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE PENA V. CANYON PLASTICS,
2 INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
3 CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS
4 LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.” Any Opt-Out request
5 that is not postmarked by the Response Deadline will be invalid. In the event that, prior to the Response
6 Deadline, any Class Notice mailed to a Settlement Class Member is returned as having been undelivered
7 by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an
8 address correction for such Settlement Class Member(s), and a second Class Notice will be sent to any
9 new or different address obtained. Such Settlement Class Member(s) shall have an additional 14 days in
10 which to Opt-Out.

11 It will be presumed that, if an envelope containing the Class Notice has not been returned within
12 28 days of the mailing, the Settlement Class Member received the Class Notice. At least 30 days prior to
13 the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class Counsel and
14 Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard to the mailing of
15 the Class Notice and its attempts to locate Class Members. The declaration shall specify the number of
16 Settlement Class Members to whom Class Notices were sent and the number of Settlement Class Members
17 to whom Class Notices were not delivered, as well as information relating to the number of Opt-Outs and
18 objectors. Class Counsel shall file this declaration with the Court.

19 If the Settlement Administrator determines that an Opt-Out request returned by a Settlement Class
20 Member before the Response Deadline is deficient, then the Settlement Administrator shall mail a
21 deficiency letter to that Settlement Class Member identifying the problem. If a Settlement Class Member
22 submits both a dispute and an Opt-Out request, the Settlement Administrator shall make reasonable
23 attempts to clarify as if the Opt-Out request were deficient. If the Class Member fails to cure the
24 deficiency, the Opt-Out request shall be disregarded and the claim will be paid, and the Class Member
25 will become bound by the judgment.

26 Those Settlement Class Members who do not timely Opt-Out will be bound by the Release of
27 Released Claims set forth in Section I, Paragraph 29 of this Stipulation.

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1 **4. Objections.** The Class Notice shall inform the Settlement Class Members of their right to
2 object to the Class Settlement. Any Settlement Class Member who wishes to object to the Class Settlement
3 must submit a written objection to the Settlement Administrator no later than the Response Deadline and
4 must file with the Court, and serve on all parties a written statement of objection. Only Settlement Class
5 Members who do not opt out of the Settlement may object to the Settlement. The objection must include
6 the case name and number and must set forth, in clear and concise terms, a statement of the reasons why
7 the objector believes that the Court should find that the proposed Class Settlement is not in the best interest
8 of the Settlement Class and the reasons why the Class Settlement should not be approved, including the
9 legal and factual arguments supporting the objection. If an objector also wishes to appear at the Final
10 Approval and Fairness Hearing, in person or through an attorney, he or she *must also* file a notice of
11 intention to appear at the same time as the objection is filed. The Settlement Administrator will promptly
12 serve copies of any objection or notice of intention to appear on Class Counsel and Defense Counsel.
13 Unless otherwise ordered by the Court, Settlement Class Members shall not be entitled to appear and or
14 object at the Final Approval Hearing unless they have submitted a timely written objection and notice of
15 intention to appear pursuant to this Section. Settlement Class Members who have properly and timely
16 submitted objections may appear at the Final Approval Hearing, either in person or through a lawyer
17 retained at their own expense.

18 **5. Notice of Final Judgment.** Within 10 days after the Court has held a Final and Fairness
19 Approval Hearing and entered a final order certifying the Class for settlement purposes only and
20 approving the Class Settlement, the Settlement Administrator will give notice of judgment to Settlement
21 Class Members pursuant to California Rules of Court, rule 3.771(b) by posting a copy of said order and
22 final judgment on its website at a web address to be included in the Class Notice.

23 **VII. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

24 **1. Allocation of the Gross Settlement Amount.** The claims of all Settlement Class
25 Members are settled for the Gross Settlement Amount of \$375,000.00, which will be allocated as follows:

- 26 a. The Administrative Expenses, not to exceed \$15,000.00;
- 27 b. The Class Attorney Fees not to exceed \$125,000.00;
- 28 c. The Class Attorney expenses not to exceed \$15,000.00;

d. The Incentive Award, not to exceed \$7,500.00; and

e. PAGA Payment to LWDA of \$15,000.00.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values in Section 1(a-e) prior to sending Notice to the Settlement Class Members. Prior to final distribution, the Settlement Administrator shall calculate the final Net Settlement Amount based on the actual values in Section 1 (a-e).

2. Calculation of the Individual Settlement Amounts. Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a “checks cashed” basis based on the proportional number of weeks worked by each Class Member during the Class Period.

Defendant will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of workweeks for each Settlement Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. Defendant shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Stipulation, shall have no involvement in or responsibility for the determination or payment of Employee’s Taxes and Required Withholding, and shall have no liability for any errors made with respect to such Employee’s Taxes and Required Withholding. Although the Settlement Administrator will calculate and pay the standard Employee’s Taxes and Required Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants represent and understand that they shall be solely responsible for any and all tax obligation associated with their respective Individual Settlement Amounts and Incentive Awards.

3. Time for Payment of Attorney Fees and Expenses to Class Counsel. The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses approved by the Court to Class Counsel no later than 20 days after the Effective Date.

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1 **4. Time for Payment of Incentive Award to Class Representative.** The Settlement
2 Administrator shall distribute to Plaintiff the Incentive Award approved by the Court no later than 20 days
3 after the Effective Date.

4 **5. Time for Payment of PAGA Payment to the LWDA.** The Settlement Administrator
5 shall distribute to the LWDA the portion of the PAGA Payment due to it and approved by the Court no
6 later than 20 days after the Effective Date.

7 **6. Time for Payment of Taxes and Required Withholding and Individual Settlement**
8 **Amounts.** The Settlement Administrator shall make every effort to pay the Employee's Taxes and
9 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
10 the Individual Settlement Amount to each Class Participant, by first-class U.S. mail, to the last-known
11 address no later than 20 days after the Effective Date. If the Settlement Administrator is not able to do so
12 within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and provide
13 an approximate date by which the Employee's Taxes and Required Withholding shall be paid and the
14 Individual Settlement Amounts will be mailed. Under no circumstances shall the Settlement Administrator
15 distribute checks to Class Participants until all Individual Settlement Amounts have been considered,
16 calculated, and accounted for, and all of the remaining monetary obligations have been calculated and
17 accounted for. Within 120 days of mailing the Individual Settlement Amounts to Class Participants, the
18 Settlement Administrator shall file with the Court and provide to Class Counsel a declaration of payment.
19 In the event that any Class Participant is deceased, payment shall be made payable to the estate of that
20 Settlement Class Member and delivered to the executor or administrator of that estate, unless the
21 Settlement Administrator has received an affidavit or declaration pursuant to Cal. Probate Code § 13101,
22 in which case payment shall be made to the affiant(s) or declarant(s).

23 **7. Non-Cashed Settlement Checks.** Any funds associated with checks that have not been
24 cashed within 90 days, will become void and the Individual Settlement Amount associated with the in-
25 cashed check will be distributed pursuant to Code of Civil Procedure section 384 (a *cy pres* to be agreed
26 upon by the parties and approved by the Court). For the purposes of determining whether Defendant has
27 met their financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to have
28 fulfilled its obligation upon the mailing of the check to the Settlement Class Member, regardless of

whether such Settlement Class member subsequently negotiates the check.

8. Disputes Regarding Settlement Class Member's Workweeks Data or Payment of Individual Settlement Share. Settlement Class Member Workweeks and Weekly Share and corresponding Individual Settlement Amount shall be calculated using the employment and payroll records of Defendant, which presumptively shall be deemed to be full, complete and accurate for purposes of this Settlement. To overcome that presumption, any Settlement Class member objecting to the accuracy of the number of Workweeks, Weekly Share or amount of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other written employment records, to the Settlement Administrator. Each Settlement Class Member may dispute the number of Workweeks, Weekly Share or estimated Individual Settlement Amount contained on his or her Class Notice ("Workweeks Dispute"). Any such disputes must be mailed or faxed to the Settlement Administrator by the Settlement Class Member, postmarked or fax-stamped on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for Defendant, shall inform Class Counsel of the dispute without disclosing the identity of the Settlement Class Member making the dispute, and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendant and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the Administrator for its final, non-appealable decision. The Administrator shall use its best efforts to resolve all such disputes prior to the Final Effective Date. However, if a dispute arises or is not resolved until after all of the Settlement Amount has been distributed, the initial calculation shall stand (as Defendant shall be under no obligation to pay *any* amounts in excess of the Settlement Amount under this Agreement).

VIII. NULLIFICATION OF THIS STIPULATION

1. Non-Approval of the Stipulation. If (a) the Court should for any reason fail to approve this Stipulation in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment with prejudice of the Action, or (c) the approval of the Class Settlement and judgment is reversed, modified or declared or rendered void, then the Class Settlement and conditional class certification shall be considered null and void, and neither the Class Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class

Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Stipulation to facilitate approval.

2. **Parties' Rights to Void Class Settlement; Escalator Provision.** If 10% or more members of the Settlement Class timely Opt-Out, Defendant shall have the right (but not the obligation) to void this Class Settlement. If the number of workweeks is greater than 7,150, then the GSA shall be increased proportionately for each additional week worked.

3. **Invalidation.** Invalidation of any material portion of the Class Settlement shall invalidate the Class Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions of the Class Settlement are to remain in full force and effect.

4. **Stay Upon Appeal.** In the event of a timely appeal from the approval of the Class Settlement and judgment, the judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any other actions required by this Stipulation until all appeal rights have been exhausted by operation of law.

IX. MOTION FOR COURT APPROVAL

1. **Preliminary Approval.** As soon as practicable after execution of this Stipulation, Class Counsel will submit this Stipulation to the Court along with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary approval in a timely fashion.

2. **Final Approval.** The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the Class for settlement purposes only and approving the Class Settlement as being fair, reasonable and adequate to the Class Participants within the meaning of California Rules of Court, Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the Action consistent with the terms of the Class Settlement and California Rule of Court 3.769(h). Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

X. RELEASES AND WAIVERS

1. **Release of Claims by Settlement Class.** Upon the Effective Date, each Settlement Class Member who has not submitted a timely Opt-Out request, and Plaintiff, on her own behalf and as Class

Representative, Plaintiff and all Persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity (Releasing Parties) each releases the Released Parties, and each of them, of and from any and all Released Claims during the Class Period.

It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever settle, compromise, and discharge the Released Claims.

Each of the Releasing Parties, including the each Settlement Class Member, except those who timely Opt-Out, will be bound to the release of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.

Settlement Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Amount. That section provides in pertinent part as follows:

“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

2. Release of Claims by Plaintiff. Plaintiff, on behalf of herself and her dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity, shall and does hereby forever release, discharge and agree to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity, which she may now have or may have after the signing of this Stipulation, arising out of or in any way connected with her employment with either Defendant including, the Released Claims, claims that were asserted or could have been asserted in the Complaint, and any and all

1 transactions, occurrences, or matters between the Parties occurring prior to the date this Stipulation is fully
2 executed. Without limiting the generality of the foregoing, this release shall include, but not be limited to,
3 any and all claims under the (a) Americans With Disabilities Act, as amended; (b) Title VII of the Civil
4 Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e)
5 the Age Discrimination in Employment Act, as amended; (f) the Fair Labor Standards Act, as amended;
6 (g) the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i) the
7 Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and
8 Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair Employment and Housing
9 Act; (n) the California Constitution; (o) the California Labor Code; (p) the California Government Code;
10 (q) the California Civil Code; and (r) any and all other federal, state and local statutes, ordinances,
11 regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law
12 or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge,
13 breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or
14 negligent infliction of emotional distress, or damages under any other federal, state or local statutes,
15 ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated,
16 including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious
17 damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and
18 costs, and Plaintiff hereby forever releases, discharges and agrees to hold harmless Defendant and the
19 Released Parties from any and all claims for attorney fees and costs arising out of the matters released in
20 this Stipulation.

21 Plaintiff specifically acknowledge that she is aware of and familiar with the provisions of
22 California Civil Code Section 1542, which provides as follows:

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

26 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits
27 she may have under Section 1542 as well as any other statutes or common law principles of a similar
28 effect. Plaintiff may hereafter discover facts in addition to or different from those which she now knows

or believes to be true with respect to the subject matter of all the claims referenced herein, but stipulates and agrees that, upon the Effective Date, Plaintiff shall and hereby does fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts.

Plaintiff's Initials: _____

3. Circular 230 Disclaimer. Each party to this Agreement (for purposes of this section, the "Acknowledging Party"; and each party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon her or its own independent legal and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not entered into this agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or advisor to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

XI. DUTIES OF THE PARTIES

1. Mutual Full Cooperation. The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Class Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Stipulation and any other efforts that may become necessary by court order or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after

1 execution of this Stipulation, Class Counsel, with the cooperation of Defendant and Defense Counsel,
2 shall take all necessary and reasonable steps to secure the Court's final approval of this Stipulation.

3 **2. Duty to Support and Defend the Class Settlement.** The Parties agree to abide by all of
4 the terms of the Class Settlement in good faith and to support the Class Settlement fully and to use their
5 best efforts to defend this Class Settlement from any legal challenge, whether by appeal or collateral
6 attack.

7 **3. Duties Prior to Court Approval.** Class Counsel shall promptly submit this Stipulation
8 to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and
9 reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall apply to the Court for
10 the entry of a preliminary order substantially in the form filed concurrently herewith as **Exhibit 3**,
11 scheduling a hearing on the question of whether the proposed Class Settlement should be approved as fair,
12 reasonable, and adequate as to the Settlement Class Members, approving as to form and content the
13 proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**, respectively, and
14 directing the mailing of the Class Notice to Settlement Class Members. While Defendant can reserve their
15 right to object to facts or assertions made in the moving papers, Defense Counsel shall file a notice of non-
16 opposition to the granting of the motion for preliminary approval or join in the motion.

17 **XII. MISCELLANEOUS PROVISIONS**

18 **1. Voiding the Stipulation.** Pending Court approval and other than as provided in Section
19 VIII herein, if any of the conditions set forth in this Stipulation are not met and satisfied, this Stipulation
20 shall, at the option of either Plaintiff or Defendant, be ineffective, void, and of no further force and effect,
21 and shall not be used or be admissible in any subsequent proceeding, either in this Court or in any other
22 court or forum. If either Party decides to void the Settlement, then the Settlement and conditional class
23 certification shall be considered void, and neither the Settlement Agreement, conditional class
24 certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the
25 Parties shall stand in the same position, without prejudice, as if this Stipulation had been neither entered
26 into nor filed with the Court. Should any Party choose to void the Class Settlement under this paragraph,
27 such Party shall be responsible for all Settlement Administrator fees and costs actually incurred.

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1 **2. Different Facts.** The Parties hereto, and each of them, acknowledge that, except for
2 matters expressly represented herein, the facts in relation to the dispute and all claims released by the
3 terms of this Stipulation may turn out to be other than or different from the facts now known by each party
4 and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore expressly
5 assumes the risk of the existence of different or presently unknown facts, and agrees that this Stipulation
6 shall be in all respects effective and binding despite such difference.

7 **3. No Prior Assignments.** The Parties represent, covenant, and warrant that they have not
8 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
9 any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein
10 released and discharged except as set forth herein.

11 **4. Non-Admission.** Nothing in this Stipulation shall be construed as or deemed to be an
12 admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or
13 any other person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
14 toward the each other or any other person. Each of the Parties has entered into this Stipulation with the
15 intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and
16 contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or
17 of the truth of any factual allegations in the Action. Nothing herein shall constitute any admission by either
18 Defendant regarding the merits of the Claims in this Action, including but not limited to claims for unpaid
19 wages or violations under California and/or federal law. Nothing herein shall constitute an admission by
20 either Defendant that the Action was properly brought as a class or representative action other than for
21 settlement purposes. To the contrary, Defendant have denied and continue to deny each and every material
22 factual allegation and all Claims. To this end, the Class Settlement of the Action, the negotiation and
23 execution of this Stipulation, and all acts performed or documents executed pursuant to or in furtherance
24 of this Stipulation or the Class Settlement are not, shall not be deemed to be, and may not be used as, an
25 admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the
26 factual allegations in the Complaint in the Action; and are not, shall not be deemed to be, and may not be
27 used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal
28 or administrative proceeding in any court, administrative agency or other tribunal.

1 **5. Non-Evidentiary Use.** Neither this Agreement nor any of its terms, nor any statements
2 or conduct in the negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class
3 Member (including any individual who requested to be excluded from the Class), Defendant, or its, her,
4 his, or their respective counsel, in the Action, except as is reasonably necessary to effectuate the
5 Agreement's purpose and terms. This Agreement may be used by Defendant and the Released Parties to
6 prove or defend against any claim released herein by any Class Member in any judicial, quasi-judicial,
7 administrative, or governmental proceeding.

8 **6. Media or Press.** Plaintiff and Defendant, and their respective counsel, recognize, and
9 accept that the Parties to this Stipulation desire that the terms of this Stipulation, the fact of the Class
10 Settlement embodied in this Stipulation, the disposition of the Action, the Action, and all matters relating
11 to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the
12 course of the Action, shall not be discussed with or presented to the media or press.

13 **7. Non-Retaliation.** Defendant understands and acknowledges that it has a legal obligation
14 not to retaliate against any Settlement Class Member who elects to participate in the Class Settlement or
15 elects to Opt-Out of the Class Settlement. Defendant will refer any inquiries regarding this Class
16 Settlement to the Settlement Administrator or Class Counsel and will not discourage Settlement Class
17 Members who are employees, directly or indirectly, from making claims, opting out or objecting to the
18 Class Settlement. None of the Parties, or their respective attorneys or agents, shall solicit or encourage
19 any Settlement Class Members, directly or indirectly, to opt out of the Class Settlement.

20 **8. Construction.** The Parties hereto agree that the terms and conditions of this Stipulation
21 are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that
22 this Stipulation is not to be construed in favor of or against any party by reason of the extent to which any
23 party or its counsel participated in the drafting of this Stipulation. If any of the dates in the Stipulation fall
24 on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

25 **9. Governing Law.** This Stipulation is intended to and shall be governed by the laws of the
26 State of California, without regard to conflict of law principles, in all respects, including execution,
27 interpretation, performance, and enforcement.

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1 **10. Notices.** Except for Settlement Class Member notices required to be made by the
2 Settlement Administrator, any and all notices or other communications required or permitted under this
3 Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their
4 counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the
5 address of the party appearing in this Stipulation.

6 **11. Captions and Interpretations.** Section titles or captions contained herein are inserted as
7 a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope
8 of this Stipulation or any provision thereof.

9 **12. Modification.** This Stipulation may not be changed, altered, or modified, except in
10 writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except
11 by performance in accordance with its terms or by a writing signed by the Parties.

12 **13. Integration Clause.** This Stipulation contains the entire agreement between the Parties
13 relating to the Class Settlement of the Action and the transactions contemplated thereby, and all prior or
14 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
15 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
16 Stipulation may be waived except in writing as provided above.

17 **14. Successors and Assigns.** This Stipulation shall be binding upon and inure to the benefit
18 of the Parties and Settlement Class Members (excluding only persons who timely Opt-Out) and their
19 respective present and former heirs, trustees, executors, administrators, representatives, officers, directors,
20 shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension
21 and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint
22 ventures, predecessors, successors, and assigns.

23 **15. Corporate Signatories.** Any person executing this Stipulation or any such related
24 document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises,
25 for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or
26 partnership to execute this Stipulation or any such related document.

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1 **16. Execution in Counterparts.** This Stipulation shall become effective upon its execution
 2 by all of the undersigned. The Parties may execute this Stipulation in counterparts, and execution of
 3 counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

4 **17. Attorney Fees, Costs and Expenses.** Except as otherwise specifically provided for
 5 herein, each party shall bear her or its own attorney fees, costs and expenses, taxable or otherwise, incurred
 6 by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to
 7 this Stipulation.

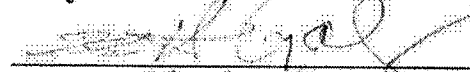
8 **18. Action to Enforce Agreement.** In any suit or court action to enforce the terms of this
 9 Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

10 **IN WITNESS WHEREOF,** the Parties and their counsel have executed this Stipulation on the
 11 date below their signatures or the signature of their representatives. The date of the Stipulation shall be
 12 the date of the latest signature.

13 **Bertha Pena** DocuSigned by:

14 
 15 94181C72A2C44FA
 16 Dated: 7/13/2021

Canyon Plastics, Inc.

17 
 18 Printed: Karit Galen
 19 Title: President
 20 Dated: 07/12/2021

21 

22 Jonathan Melmed, Esq.
 23 **Melmed Law Group P.C.**
 24 Attorneys for Plaintiff
 25 Dated: July 13, 2021

26 
 27 Michael Fostakowsky, Esq.
 28 **POOLE, SHAFFERY & KOEGLE, LLP**
 Attorneys for Defendant
 Dated: 7/12/2021