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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LUIS LOPEZ YANEZ, KAYASONE
MUONGKHOT and JULIO RUBIO on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

HL WELDING, INC.,

Defendant.

Case No. 3:20-cv-01789-BEN-MDD

CLASS ACTION

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

I. INTRODUCTION

1. This Joint Stipulation of Class Action and Collective Action Settlement and Release (hereinafter “Settlement Agreement”) is made and entered into by and between the following Parties: Plaintiffs Luis Lopez Yanez, Kayasone Muongkhot and Julio Rubio (collectively “Plaintiffs”), individually and on behalf of all others similarly situated, and Defendant HL Welding, Inc. (“HL Welding” or “Defendant”), and their respective counsel of record. This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court. This Settlement Agreement supersedes any and all prior memoranda of understanding and sets forth the Parties’ class action settlement, collective action settlement and Private Attorneys General Act Settlement (“PAGA”), as detailed below, of all claims that were asserted or could have been asserted based on the facts alleged in, and relating to, the Action (as defined below).

II. DEFINITIONS

1. “Plaintiffs” or “Class Representatives” means Luis Lopez Yanez, Kayasone Muongkhot and Julio Rubio.
2. “Defendant” means HL Welding, Inc.
3. “Parties” means Plaintiffs and Defendant.
4. “Settlement Class” and “Settlement Class Members” shall mean all current and former employees of Defendant who were employed as Welders, Ship Fitters, Pipefitters, Sheet Metal workers, Electricians, Machinists, Riggers and Tackers at any time from October 1, 2015 and June 30, 2021 and who have not signed arbitration agreement with class/collective action waiver with Defendant and who fall within one of the following two sub-classes:
 - a. The “California Subclass” means all current and former employees of Defendant who were employed as Welders, Ship Fitters, Pipefitters, Sheet Metal workers, Electricians, Machinists, Riggers and Tackers by Defendant in California at any time between October 1, 2015 and June 30, 2021 (the “California Subclass Period”) and who have not signed arbitration agreement with class/collective action waiver with

1 Defendant (the “California Subclass”)¹. A list of the 74 California Subclass Members,
2 with names and unique employee number identifiers, is attached hereto as **Exhibit C.**²

3 b. The “FLSA Subclass” means all current and former employees of
4 Defendant who were employed as Welders, Ship Fitters, Pipefitters, Sheet Metal
5 workers, Electricians, Machinists, Riggers and Tackers by Defendant in states other
6 than California at any time between September 15, 2017 and June 30, 2021 (the “FLSA
7 Subclass Period”) and who have not signed arbitration agreement with class/collective
8 action waiver with Defendant (the “FLSA Subclass”). A list of the 24 FLSA Subclass
9 Members, with names and unique employee number identifiers, is attached hereto as
10 **Exhibit D.**

11 5. “PAGA Recipient(s)” means all current and former employees of Defendant who
12 were employed as Welders, Ship Fitters, Pipefitters, Sheet Metal workers, Electricians, Machinists,
13 Riggers and Tackers by Defendant in California at any time between February 13, 2019 and June 30,
14 2021 (the “PAGA Period”). A list of the 514 PAGA Recipients, with names and unique employee
15 number identifiers, is attached hereto as **Exhibit E.**

16 6. “Class Counsel” means Leonard Carder, LLP, 1999 Harrison, Suite 2700, Oakland,
17 California 94612.

18 7. “Defendant’s Counsel” means Procopio, Cory, Hargreaves & Savitch LLP, 525 B
19 Street, Suite 2200, San Diego, CA 92101.

20 8. “Notice of Settlement” or “Notice” means the Notice of Class Action and PAGA
21 Settlement in form to be approved by the Court, and attached hereto as **Exhibit A.**

22
23 ¹ Plaintiff Julio Rubio shall be included as a member of the California Subclass, even though he
24 signed an arbitration agreement, because the Settlement here requires him to execute a general release
of all claims that precludes him from bringing claims against Defendant in arbitration.

25 ² Because the names of the HL Welding employees listed in Exhibits C, D, and E may be private or
26 confidential to those employees, those names will be redacted for the version of this Settlement
27 Agreement that will be filed in the Court with Plaintiffs’ Motion for Preliminary Approval. Only the
28 unique employee identifier numbers will be included in the publically-filed version of Exhibits C, D,
and E. If the Court requests or orders that Exhibits C, D, and/or E be submitted to the Court for
review in connection with consideration and approval of the Settlement Agreement, Plaintiffs will
submit any requested exhibits under seal. Plaintiffs’ Counsel will not oppose or object to HL
Welding’s request for leave to file Exhibit Exhibits C, D, and/or E under seal.

1 9. “Estimated Settlement Share Form” means the form to be approved by the Court, and
2 attached hereto as **Exhibit B**.

3 10. “Notice Packet” means the documents to be mailed to the Settlement Class and
4 PAGA Recipients following preliminary approval, consisting of both the Notice of Settlement
5 (Exhibit A) and Estimate Share Form (Exhibit B”).

6 11. “California Subclass Period” means the time period from October 1, 2015 to June 30,
7 2021.

8 12. “FLSA Subclass Period” means the time period from September 15, 2017 to June 30,
9 2021.

10 13. “PAGA Period” means the time period from February 13, 2019 to June 30, 2021.

11 14. “Court” shall mean the District Court for the Southern District of California.

12 15. “Action” or shall mean *Yanez, et. al. v. HL Welding, Inc.*, filed in District Court for the
13 Southern District of California and designated as Case No 20CV1789 BEN MDD.

14 16. “*Muongkhot* Action” shall mean *Munogkhot, et. al. v. HL Welding, Inc.*, filed in the
15 San Diego County Superior Court and designated as Case No. 37-2019-00054150-CU-OE-CTL.

16 17. “Effective Date” means the later of: (a) the date of entry of the order granting final
17 approval of the Settlement, if no objection to the Settlement is submitted, (b) the date on which the
18 time for all appeals from objections to the Settlement has passed, if one or more objections to the
19 Settlement are filed, and (c) if an appeal is taken, the date on which any reviewing court issues a
20 decision, the time for further appeal has expired, the final judgment of such appellate court or courts
21 is no longer subject to any further appellate challenge or procedure, and the trial court re-acquires
22 jurisdiction and renders any decision approving the Settlement as final.

23 18. “Final Approval Date” means the date on which the Court enters an order approving
24 the Settlement, after having determined that the Settlement is fair, adequate, and reasonable to the
25 Class as a whole, following: (i) notice to the Class; (ii) an opportunity to submit timely objections
26 and/or opt out of the Settlement; and (iii) a hearing on the fairness of the terms of the Settlement.
27
28

1 19. “Final Approval Hearing” shall mean the final hearing held to determine the fairness,
2 reasonableness, and adequacy of the Settlement, at which time the Court will enter its order granting
3 final approval of the Settlement.

4 20. “Gross Settlement Amount” or “GSA” means the gross amount of Eight Hundred and
5 Fifty-Eight Thousand Dollars (\$858,000) that Defendant shall be obligated to pay under this
6 Settlement. The Gross Settlement Amount shall not be inclusive of employer’s share of payroll taxes
7 due to be paid on any portions of Individual Class Settlement Shares that are designated as wages.
8 These employer-side payroll taxes shall be paid in addition to the GSA.

9 21. “PAGA Settlement Amount” means \$100,000, deducted from the Gross Settlement
10 Amount and allocated to penalties pursuant to the Private Attorneys General Act and to be which will
11 be distributed as follows: 75% to the Labor and Workforce Development Agency (“LWDA”) and
12 25% to PAGA Recipients.

13 22. “PAGA Pay Periods” means the number of pay periods in which PAGA Recipients
14 worked during the period of February 13, 2019 through June 30, 2021.

15 23. “Individual PAGA Settlement Share” means the pro rata share of the PAGA
16 Settlement Amount that each PAGA Recipient is eligible to receive.

17 24. “Net Settlement Amount” or “NSA” means the Gross Settlement Amount minus
18 service awards to Plaintiffs (“Class Representative Service Awards”), awarded attorneys’ fees and
19 litigation costs/expenses to Class Counsel (“Class Counsel Fees and Costs Award”), the PAGA
20 Settlement Amount, and the third-party administrator’s fees and expenses to administer the settlement
21 (“Settlement Administration Fees and Expenses”).

22 25. “Individual Class Settlement Share” means the pro rata share of the Net Settlement
23 Amount that each Class Member is eligible to receive and is to be calculated in accordance with
24 paragraph 68.

25 26. “Released Parties” means HL Welding, Inc., and its respective parents, subsidiaries,
26 affiliates, shareholders, members, agents (including, without limitation, any investment bankers,
27 accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and
28

employees) predecessors, successors, and assigns, and their officers, directors, employees, shareholders, and members.

27. “Response Deadline” means the date that is forty-five (45) calendar days after the Class Notice is first mailed to Class Members, which is the deadline for Class Members to object to the Settlement, exclude themselves from the Settlement, or submit challenges to their estimated Individual PAGA Settlement Shares. In the case of a re-mailed Class Notice, this deadline shall be extended to the date that is fifteen (15) calendar days after the re-mailing of the Class Notice or the Response Deadline (as calculated based on the date on which the Class Notice was first mailed), whichever is later.

28. “First Amended Complaint” means the First Amended Class Action Complaint filed in the Action in or about May 2021.

29. “Settlement Administrator” means the third-party administrator that is jointly selected by the parties and approved by the Court, who will be responsible for administration of the Settlement and related matters. The parties agree to designate either Simpluris as the Settlement Administrator, based on an evaluation of the bids received.

III. LITIGATION BACKGROUND

30. On October 10, 2019, Plaintiff Kayasone Muongkhot filed the *Muongkhot* Action on behalf of himself and the putative class in San Diego County Superior Court. As the statute of limitations had run on several potential claims because of the date Muongkhot left his employment at HL Welding, his initial case was limit to a claim for violations of California’s Unfair Competition Law – Business and Professions Code 17200, et. seq. Muongkhot’s initial Complaint also only specifically named as putative class members the two categories of workers form Mr. Muongkhot’s two job titles – Welders and Shipfitters.

31. The gravamen of Muongkhot’s initial Complaint is the same core allegation that continued through to this Action: that Defendant used a pay scheme that deprived the Class Members of overtime pay by paying them with a “*per diem*” that was paid separately from their hourly rate of pay. Plaintiffs allege that the *per diem* amount was determined by the number of hours and days the employee worked, but Defendant did not consider the *per diem* rate in its calculation of overtime. As

1 a result of this scheme, Plaintiffs allege Defendant deprived workers of overtime compensation under
2 both the FLSA and California law. Defendant denies these allegations.

3 32. On February 10, 2020, Plaintiff's counsel was retained by Julio Rubio.

4 33. On February 12, 2020, following its answer and Plaintiff's initial discovery,
5 Defendant's counsel first contacted Plaintiffs' counsel to propose mediation. At that time Defendant's
6 counsel further revealed that many members of the putative class had signed arbitration agreements
7 with HL Welding that included a class action waiver which, in the view of Defendant, precluded their
8 participation in any class action as either a plaintiff or Class Member.

9 34. Following counsel's February 2020 telephone call, the litigation developed on several
10 fronts and the COVID-19 pandemic and related shutdowns / shelter-in-place protections began.

11 35. In late February 2020, Defendant produced a signed arbitration agreement for Mr.
12 Rubio that Plaintiffs' counsel determined would likely preclude him from serving as a class
13 representative, but he could serve as a representative plaintiff for a claim under the California Private
14 Attorneys General Act ("PAGA"). On February 13, 2021, Plaintiffs' counsel initiated the
15 administrative exhaustion requirements with the California Labor and Workforce Development
16 Agency (LWDA) that were required before Mr. Rubio could join the *Muongkhot* Action as a
17 representative plaintiff.

18 36. During the April to August 2020 period, the Parties continued to explore mediation
19 and negotiate informal discovery, as Plaintiffs provided extensions on formal discovery responses.
20 This period was complicated extensively by COVID-19. In this case, counsel contracted COVID and
21 the pandemic had a significant impact on Defendant and its business. This included several
22 outbreaks among Defendant's employees and significant other economic impacts. Plaintiffs' counsel
23 continued its investigation during this period and were retained by a number of additional employees
24 seeking to join the *Muongkhot* Action.

25 37. In June 2020, Plaintiff's counsel determined that the limitations that Defendant was
26 seeking for any potential settlement negotiations and the narrow informal discovery it was willing to
27 provide made mediation unproductive from Plaintiffs' perspective. As a result, on June 19, 2020
28 Plaintiffs decided to forgo mediation and continue the litigation.

1 38. In July 2020, Plaintiffs sought a stipulation in the *Muongkhot* Action to add additional
2 plaintiffs and provide an expanded class definition to explicitly include all class positions in addition
3 to Welders and Shipfitters. Defendant declined to stipulate, and Plaintiff filed a Motion for Leave in
4 the *Muongkhot* Action, but that motion could not be heard by the Court until October 23, 2020.

5 39. On September 11, 2021, Plaintiff Yanez, represented by Plaintiffs' counsel, filed the
6 instant action. While the allegations are almost identical to the *Muongkhot* Action, Plaintiffs' counsel
7 viewed this additional case as necessary for two reasons. The case explicitly expanded the class
8 definition to include all employees, in the event that the Court in the *Muongkhot* Action denied
9 Plaintiffs' Motion for Leave to Amend. This Action also expanded the claims to include HL Welding
10 employees outside California, asserting a collective action under the federal Fair Labor Standards Act
11 (FLSA).

12 40. The parties also engaged in significant meet and confer efforts regarding Defendants'
13 discovery responses and document productions during the June 2020 to October 2020 time period.

14 41. On October 22, 2020, the Court in the *Muongkhot* Action issued a tentative ruling
15 granting Plaintiff's Motion for Leave to Amend. Defendant did not contest the tentative. Following
16 this ruling, the parties again began discussing mediation.

17 42. During October and November 2020, the Parties negotiated the parameters for
18 mediation. They agreed to such parameters in early December 2020, including the selection of
19 mediator Scott Markus. Due to scheduling conflicts, the mediation was schedule for March 24, 2021.

20 43. The parameters for mediation included that negotiations would focus on three groups
21 of employees: (1) a California class who did not sign arbitration agreements and worked on or after
22 October 15, 2015; (2) an FLSA collective who did not sign arbitration agreements and worked on or
23 after September 15, 2017; and (3) a PAGA Representative Group who have worked on or after
24 February 13, 2019, irrespective of whether or not they signed an arbitration agreement.

25 44. Defendants provided all of its payroll data and tenure dates for these employees on
26 January 15, 2021, and a class list containing contact information for representative Class Members
27 and PAGA Recipients on February 25, 2021. This information was used to inform settlement
28 discussions and for the parties to prepare mediation briefs.

1 45. The Parties participated in a full day of mediation on March 24, 2021, at which each
2 side was represented by counsel. At the end of the mediation session, the Parties agreed upon a
3 settlement in concept and signed a Memorandum of Understanding. Further negotiation of the terms
4 of the settlement was required between April and May 2021, with the balance of the settlement terms
5 agreed upon through arms-length negotiations through the date that this Settlement Agreement was
6 signed by the Parties.

7 46. It is the desire of the Parties to fully, finally, and forever settle, compromise, resolve,
8 and discharge any and all claims, rights, demands, liabilities and causes of action of every nature and
9 description that were asserted or could have been asserted based on the facts alleged in, and relating
10 to the Action. It is the intention of the Parties that this Settlement Agreement shall constitute a full
11 and complete settlement of this Action and the *Muongkhot* Action.

12 47. Defendant has denied and continues to deny each of the claims and contentions
13 alleged by Plaintiffs in the Action and the *Muongkhot* Action. Defendant has repeatedly asserted and
14 continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing
15 or legal liability arising out of any of the facts or conduct alleged in the Action and the *Muongkhot*
16 Action. Neither this Agreement nor any document referred to or contemplated herein, nor any action
17 taken to carry out this Agreement, is, may be construed as, or may be used as an admission,
18 concession or indication by or against Defendant of any fault, wrongdoing or liability whatsoever.

19 48. NOW, THEREFORE, in consideration of the mutual covenants, promises, and
20 warranties set forth herein, the Parties agree, subject to the Court's approval, as follows:

21 **IV. APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

22 49. The Parties will cooperate in seeking approval of the Settlement described in this
23 Agreement, and, to that end, shall prepare a Motion for Approval of Settlement in the Action. The
24 Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings
25 reasonably necessary to be prepared or filed, including responding to challenges by any third parties,
26 and shall take all steps that may be requested by the Court relating to the approval and
27 implementation of the Settlement described in this Agreement.
28

1 50. The Parties will seek approval of the Settlement in this Action, not the *Muongkhot*
2 Action. The Parties will seek a stay in the *Muongkhot* Action during the settlement approval process,
3 in anticipation of dismissing the *Muongkhot* Action upon final approval of the Settlement in this
4 action. Should the Court in the *Muongkhot* Action not order the requested stay, the Parties will
5 stipulate to dismissal of the *Muongkhot* Action, without prejudice. Defendant agrees that in the event
6 of dismissal of the *Muongkhot* Action before final approval of this Action, Defendant will not dispute
7 that the applicable statute of limitations for all claims in this Action were tolled by the filing of the
8 *Muongkhot* Action and further by the tolling agreement for this action signed by the Parties in
9 November 2020.

10 51. The Plaintiffs will file a Motion for Approval of Settlement and for an Order
11 approving this Agreement, which will include approval of the amount from the Settlement Fund to be
12 allocated for payment of attorneys' fees and expenses to Class Counsel. If the Court does not grant
13 the request for approval and issue the Final Order, under the specific terms requested, the Parties
14 agree to meet and confer to address the Court's concerns and determine whether resolution of the
15 Action can be obtained in a manner consistent with the Court's concerns. But, under no
16 circumstances may a modified settlement be entered by the Court without a written agreement signed
17 by all Parties.

18 52. The Parties enter into this Agreement on a conditional basis. This Agreement is
19 expressly contingent upon the Court's approval of this Settlement and the terms and material
20 conditions of this Agreement. If Court approval is not given and the Final Order is not entered, under
21 the specific terms requested, this entire Agreement shall automatically be deemed null and void, shall
22 be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

23 53. Should the Court not approve the Settlement, the Parties agree that the litigation will
24 continue in this Action and Plaintiffs will seek dismissal of the *Muongkhot* Action, without prejudice.
25 Defendant agrees that in the event of non-approval and dismissal of the *Muongkhot* Action,
26 Defendant will not dispute that the applicable statute of limitations for all claims in this Action were
27 tolled by the filing of the *Muongkhot* Action and further by the tolling agreement for this action
28 signed by the Parties in November 2020.

1 54. Plaintiffs shall submit a copy of the Motion for Approval of Settlement, Judgment in
2 this Action, and a copy of any other order providing for or denying an award of civil penalties within
3 10 days after entry of the Judgment and/or order, in compliance with section 2699(1)(3) of the
4 California Labor Code. Following final approval and Judgment, Plaintiffs will seek dismissal of the
5 *Muongkhot* Action, with prejudice.
6

7 **V. TERMS OF SETTLEMENT**

8 **A. Certification.**

9 55. The Settlement Class and Subclasses may be preliminarily and conditionally certified
10 as a class action pursuant to Fed. R. Civ. Proc. Rule 23 and the FLSA, for the purposes of the relief
11 provided in this Settlement Agreement only. If for any reason the Settlement is not approved, the
12 class certification will have no force or effect and will be immediately revoked. The Parties further
13 agree that class certification for purposes of the Settlement is in no way an admission that class
14 certification is proper under the more stringent standards applied for litigation purposes and that this
15 Settlement will not be admissible in this or any other proceeding as evidence that (i) any class should
16 be certified as Plaintiffs proposed, or (ii) Defendant is liable to Plaintiffs or the Class and Subclasses
17 as Plaintiff alleged.

18 **B. Settlement Payments**

19 56. **Gross Settlement Amount.** The GSA shall not exceed or be less than the aggregate
20 sum of \$858,000 (eight hundred and fifty-eight thousand and 00/100 dollars). The GSA shall
21 constitute adequate consideration for the Agreement and will be made in full and final settlement of:
22 (a) the PAGA Settlement Amount, including the LWDA Payment; (b) the Released Claims, (c) the
23 Class Counsel Fees and Expenses; (d) the Service Awards; (e) amounts allocated to resolve the
24 overtime claims of the conditionally certified FLSA class; (e) the aggregate of all Individual
25 Settlement Amounts; (f) the Settlement Administrator Fees and Costs; (g) the *Cy Pres* Amount, if
26 any; and (h) any other obligation of Defendant under this Agreement. In addition to the GSA,
27 Defendant shall separately pay to the appropriate agency its share of all applicable payroll taxes on
28 amounts treated as wages.

1 57. **Service Awards for the Class Representatives.** The Class Representatives may
2 petition the Court to approve a Service Award to compensate each of them for their risk incurred
3 efforts on behalf of the Settlement Class in this Action, including assisting in the investigation,
4 participating in discovery, and consulting with Class Counsel regarding all aspects of the litigation
5 and settlement.

6 58. Each Service Award shall not exceed \$5,000 (five thousand and 00/100 dollars) for
7 each of the named plaintiffs, which amounts to \$15,000 (fifteen thousand and 00/100 dollars) in the
8 aggregate. Defendant shall not oppose any request by Class Representatives seeking Service Awards
9 in such amounts. Any Service Award approved by the Court shall be paid to the Class
10 Representatives from the GSA and shall be in addition to any distribution to which they may
11 otherwise be entitled as Settlement Class Members. Such Service Awards shall not be considered
12 wages, and the Settlement Administrator shall issue the Class Representatives a Form 1099 reflecting
13 such payment. Each Class Representative shall be responsible for the payment of any and all taxes
14 with respect to his Service Award and shall hold Defendant Releasees harmless from any and all
15 liability with regard thereto.

16 59. **Payment to Settlement Class Members.** Each Settlement Class Member shall be
17 eligible to receive payment of the Individual Settlement Amount, which is a share of the Net
18 Settlement Amount based on the distribution formula set forth in paragraph 68 below.

19 60. Each Settlement Class Member, including the Class Representatives, shall be
20 responsible for the payment of any and all taxes with respect to his or her Individual Settlement
21 Amount, except for the Defendant's share of any applicable payroll taxes on amounts treated as
22 wages. Defendant shall have no responsibility for deciding the validity of the Individual Settlement
23 Amounts or any other payments made pursuant to this Settlement, shall have no involvement in or
24 responsibility for the determination or payment of taxes and required withholdings, if any, and shall
25 have no liability for any errors made with respect to the calculation of any Individual Settlement
26 Amounts.

27 61. Settlement Class Members represent and understand that they shall be solely
28 responsible for any and all tax obligations associated with their respective Individual Settlement

1 Amounts. All Individual Settlement Amounts shall be deemed to be paid to Settlement Class
2 Members solely in the year in which such payments are actually received by the Settlement Class
3 Members. It is the intent of this Agreement that the Individual Settlement Amounts are the sole
4 payments to be made to the Settlement Class Members, and that the Settlement Class Members are
5 not entitled to any new or additional compensation or benefits as a result of having received the
6 Individual Settlement Amount.

7 62. **Class Counsel Fees and Expenses.** As part of the motion for final approval of the
8 Settlement or a separate Motion, Class Counsel may submit an application for an award of Class
9 Counsel Fees and Expenses not to exceed one-third of the GSA (or \$286,000 (two hundred and
10 eighty-six thousand and 00/100 dollars)), plus litigation expenses not to exceed \$10,000. Defendant
11 agrees not to object to any such fee, cost or expense application in these amounts. As a condition of
12 this Agreement, Class Counsel has agreed to pursue fees and expenses only in the manner reflected
13 by this Section. Any Class Counsel Fees and Expenses awarded by the Court shall be paid from the
14 GSA and shall not constitute payment to any Settlement Class Members. If Class Counsel fees are
15 reduced by the Court and Class Counsel Fees and Expenses is less than set forth above, the amount of
16 the reduction ordered by the Court will be added to the Net Settlement Fund and shall not revert to
17 Defendant.

18 63. **PAGA Settlement Amount.** A portion of the Settlement Fund shall be allocated for
19 the settlement and release of any and all claims for civil penalties that could have been made under
20 the California Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* by the PAGA
21 Recipients in this Action. The parties agree that \$100,000 (one hundred thousand and 00/100 dollars)
22 shall be allocated to this portion of the release. Seventy-five percent (75%) of the PAGA Settlement
23 Amount will be paid to the LWDA and the remaining twenty-five percent (25%) will be distributed
24 to the PAGA Recipients as described in paragraph 67, below. This division, and distribution to the
25 LWDA is made pursuant to California Labor Code § 2699. The parties acknowledge that that the
26 Agreement must be approved by the Court and Plaintiffs will provide a copy of the Agreement to the
27 LWDA at the time the Agreement is submitted to the Court for Approval.
28

1 64. **Payment to PAGA Recipients.** Each PAGA Recipients shall be eligible to receive
2 payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based
3 on the distribution formula set forth in paragraph 67.

4 65. **Settlement Administrator Fees and Costs.** The parties agree to designate,
5 Simpluris, Inc. as the Settlement Administrator, based on an evaluation of the bids received. From the
6 GSA, the fees and costs payable to the Settlement Administrator to effectuate the administration of
7 the settlement are not to exceed \$12,000. If, and to the extent that, the fees charged by the Settlement
8 Administrator are less than \$12,000, the balance will be added to the Net Settlement Fund and shall
9 not revert to Defendant.

10 66. As set out below, the Parties will employ the Settlement Administrator to administer
11 the sending of the Notice of Settlement and Estimate Share Form (collectively “Notice Packet”), to
12 the Settlement Class Members and PAGA Recipients, the receipt of disputes, requests for exclusion,
13 and objections to the settlement, if any, from Settlement Class Members, and the mailing of checks
14 for the appropriate portion of the Net Settlement Fund to Settlement Class Members and PAGA
15 Recipients. All costs of this administration process, including fees of the Settlement Administrator,
16 shall be paid from the GSA and subject to billing by the Settlement Administrator and approval by
17 Class Counsel.

18 67. The Settlement Administrator shall determine each PAGA Recipient’s final *pro rata*
19 portion of the PAGA Settlement Amount (as described in paragraph 63) as follows:

20 a. First, the Seventy-five percent (75%) of the PAGA Settlement Amount will be
21 paid to the LWDA and the remaining twenty-five percent (25%) will be distributed to the PAGA
22 Recipients;

23 b. Second, the Settlement Administrator shall divide the portion payable to
24 PAGA Recipients by the total number of pay period worked by all PAGA Recipients during the
25 PAGA Period according to Defendants’ records to calculate a value per pay period.

26 c. Third, for each PAGA Recipient, the Settlement Administrator shall multiply
27 his/her value per pay period times the number of pay periods the Settlement Administrator
28

1 determines that such PAGA Recipient was employed in California during the PAGA Period. The
2 resulting figure will be that PAGA Recipient's *pro rata* share of the PAGA Settlement Amount.

3 68. The Settlement Administrator shall determine each Settlement Class Member's
4 estimated and final *pro rata* portion of the Net Settlement Amount as follows:

- 5 a. First, the Settlement Administrator shall divide the Net Settlement Amount by the total
6 number of weeks worked by: (1) all California Subclass Members in California during the
7 California Subclass Period, and (2) all FLSA Subclass Members outside California during
8 the FLSA Subclass Period, all according to Defendant's records. This calculation shall
9 calculate a value per week.
- 10 b. Third, for each Settlement Class Member, the Settlement Administrator shall multiply
11 his/her value per week times the number of weeks the Settlement Administrator
12 determines that such Settlement Class Member was and member of the California
13 Subclass and the FLSA Subclass. The resulting figure will be that Settlement Class
14 Member's estimated *pro rata* share of the Net Settlement Amount, and shall be included
15 in the Settlement Share Form sent to each Settlement Class Member.
- 16 c. Fourth, the Settlement Administrator shall consider and finally resolve any challenges to
17 the information used to calculate the estimated or final amounts due to any Settlement
18 Class Member who makes such a challenge, according to procedures determined by the
19 Settlement Administrator.
- 20 d. Fifth, after resolving any challenges, the Settlement Administrator shall determine each
21 Eligible Settlement Class Member's "Individual Payment Amount" (his/her final *pro rata*
22 portion of the Net Settlement Fund) by repeating steps (a) – (c), above, using the
23 workweek and workweek value figures resulting from the challenge process.

24 69. Defendant shall transfer the settlement funds to the Settlement Administrator as
25 follows:

- 26 a. Deposit 1: No later than 10 calendar days after the date on which the Court
27 grants final approval of the settlement, Defendant shall deposit the money to fund \$286,000 of the
28 GSA and one-half of the employer side taxes, as calculated by the Settlement Administrator;

1 b. Deposit 2: No later than 150 calendar days after the date on which the Court
2 grants final approval of the settlement, Defendant shall deposit the money to fund \$286,000 of the
3 GSA and one-half of the employer side taxes, as calculated by the Settlement Administrator;

4 c. Deposit 3: No later than 300 calendar days after the date on which the Court
5 grants final approval of the settlement, Defendant shall deposit the money to fund the remaining
6 balance - \$286,000 of the GSA.

7 70. In the event Defendant fails to make one, or more of the three installment payments
8 described in Paragraph 69, above, the following procedure shall be followed to enforce the terms of
9 the Settlement Agreement:

10 a. Plaintiffs' counsel will notify Defendant's counsel, by email, of the default;

11 b. Defendant will have ten (10) calendar days to cure the default payment;

12 c. If Defendant fails to cure the default within the 10-day cure period, Plaintiff
13 shall have seek enforcement of the Settlement Agreement against Defendant in the amount equal to
14 all remaining unpaid payments in the GSA, plus outstanding employer payroll taxes. By way of
15 example, if Defendant fails to make the first \$286,000 payment, the full \$858,000 GSA, plus all
16 employer-side payroll taxes, shall be due and payable following the 10-day cure period and Plaintiffs
17 shall be able to seek immediate enforcement, and need not wait until after Deposit 3, above;

18 d. Plaintiffs shall be entitled to recover attorney's fees and costs incurred in
19 enforcing the Settlement Agreement.

20 e. Settlement Class Members will receive checks totaling their *pro rata* portion of
21 the Net Settlement Amount to which such Settlement Class Members are entitled under paragraph 68
22 of this Agreement. The payment will be made with a single check to minimize administrative costs
23 and potential unintended tax consequences that could occur if the Settlement Class Members
24 payments are made in installments or in separate calendar years. The Settlement Administrator will
25 issue Settlement Awards to Settlement Class Members following "Deposit 2" detailed above in
26 paragraph 69)(b), and shall make lawfully required withholdings from such payments.

27 f. "Deposit 3" detailed above in paragraph 69(c) shall be used for the payment of
28 attorney's fees (attorney's costs will be paid with Deposit 2). Should the Court award attorney's fees

1 of less than \$286,000, the balance of unawarded fees shall also be paid pro rata to Settlement Class
2 Members and in that event Settlement Class Members will receive checks following Deposit 3.

3 g. The Settlement Administrator will use reasonable means to attempt to locate
4 current contact information for any Settlement Class Members whose checks are returned as
5 undeliverable or who do not cash their checks, so that it may resend checks to any updated addresses.

6 h. Checks will carry an expiration date of 120 days after issuance.

7 71. All payments made to Settlement Class Members will be allocated as follows: twenty-
8 six percent (26%) of the Individual Payment Amounts will be allocated to wages (Reported on W-2),
9 thirty-four percent (34%) of the Individual Payment Amounts will be allocated to interest, from
10 which no taxes will be withheld (Reported on 1099-INT), and forty percent (40%) of the Individual
11 Payment Amounts will be allocated to penalties, from which no taxes will be withheld (Reported on
12 1099-MISC). The Settlement Administrator will issue to each Settlement Class Member the Internal
13 Revenue Service forms detailed herein.

14 72. Settlement Class Members shall be solely responsible for the reporting and payment of
15 the employee/Settlement Class Member's portion of any federal, state, and/or local income or other
16 tax and any other withholdings, if any, on the payments made pursuant to this Settlement Agreement.
17 It is understood and agreed that neither Defendants, Defendants' counsel, Plaintiffs, nor Plaintiffs'
18 Counsel makes or has made any representations as to the taxability of any portions of the payments
19 made to the Settlement Class Members, the impact of receipt of these payments on any prior tax
20 filings made by Settlement Class Members or the payment of any costs or award of attorneys' fees, or
21 any payments to the Class Representatives. The Notice of Settlement will advise Settlement Class
22 Members to seek their own tax advice prior to acting in response to that Notice, and the Class
23 Representatives and Class Counsel agree that Settlement Class Members will have an adequate
24 opportunity to seek tax advice prior to acting in response to the Notice of Settlement. Settlement
25 Class Members shall not be responsible for payment of the employer's share of any tax liabilities, if
26 any, that the IRS, California Franchise Tax Board, or other regulatory agency of court may determine
27 are owed by Defendants.
28

1 **C. Objections.**

2 73. Settlement Class Members who wish to object to this settlement must do so in writing
3 and sign any objection submitted. Written objections must state the basis for the objection and be
4 filed with the Court on or before a date forty-five (45) days after the mailing of the Notice Packet by
5 the Settlement Administrator, or other date ordered by the Court. Settlement Class members shall be
6 permitted to withdraw their objections in writing by submitting a withdrawal statement to the Court
7 not later than three (3) business days prior to the Court's final approval hearing, or as otherwise
8 ordered by the Court.

9 **D. Opt Outs.**

10 74. Any Settlement Class Member who wishes to request exclusion from the Class
11 Settlement, shall notify the Settlement Administrator in writing that he or she wants to be excluded.
12 The writing to the Settlement Administrator must be postmarked on or before a date forty-five (45)
13 days after the mailing of the Notice Packet by the Settlement Administrator, or by other date ordered
14 by the Court. Settlement Class Members shall be permitted to rescind their opt-out statements in
15 writing by submitting a rescission statement to the Settlement Administrator not later than three (3)
16 business days prior to the Court's final approval hearing, or as otherwise ordered by the Court.

17 **E. No Objection or Opt Out for PAGA Recipients.**

18 75. Because this settlement resolves claims and actions brought pursuant to PAGA by
19 Plaintiff acting as a proxy and as a Private Attorney General of and for the State of California and the
20 LWDA, the Parties agree that no PAGA Recipient has the right to exclude himself or herself from the
21 PAGA portion of this Settlement. PAGA Recipients will be bound by the terms of the PAGA portion
22 of this Settlement, upon its approval by the Court, regardless of whether he or she cashes any
23 Individual PAGA Settlement Share received as a result of this Settlement. The Parties also agree that
24 no Representative Action Member has the right to object to the terms of the PAGA portion of this
25 Settlement.

26 **F. Release.**

27 76. It is agreed by and among the Parties that the Class Representative and the Settlement
28 Class Members will release claims against Defendants, subject to the terms and conditions set forth in

1 this Settlement Agreement (including paragraphs 100 through 103, below) and Court approval of this
2 Settlement Agreement.
3

4 **VI. DUTIES OF SETTLEMENT ADMINISTRATOR**

5 77. The actions of the Settlement Administrator shall be governed by the terms of the
6 Settlement Agreement. Defendants or its counsel may provide relevant information needed by the
7 Settlement Administrator per this Settlement Agreement and engage in related communications with
8 the Settlement Administrator upon notice and with copies to Class Counsel, but without notice or
9 copies to any Settlement Class Member or the Court. Class Counsel may provide relevant
10 information needed by the Settlement Administrator per this Settlement Agreement upon notice and
11 with copies to Defendant's counsel, but without notice or copies to any Settlement Class Member, or
12 the Court.

13 78. The Settlement Administrator shall be responsible for: (a) preliminarily estimating the
14 amounts of the awards due to the Settlement Class Members and PAGA Recipients, as provided for
15 in this Agreement and communicating those amounts to the Parties' counsel; (b) preparing and
16 mailing Notice of Settlement and Estimated Share Forms (collectively "Notice Packet") as provided
17 for herein, to the Settlement Class Members and PAGA Recipients, including taking appropriate
18 steps to trace and locate any missing individuals; (c) receiving and independently reviewing and
19 resolving any challenges, and associated documentation, from the Settlement Class regarding the
20 number of weeks worked as an Settlement Class Member during the Class Period; (d) receiving and
21 serving upon the Parties' counsel, written objections and opt out statements and any withdrawals or
22 rescissions thereof; (e) determining the final amounts of awards due to the Settlement Class Members
23 after resolution of any challenges, and communicating those amounts to the Parties' counsel; (f)
24 depositing the Settlement Fund in an appropriate account; (g), and establishing and administering a
25 Qualified Settlement Fund for this account; (h) issuing checks to Settlement Class Members and
26 PAGA Recipients and making all other payments required by this Agreement; (i) establishing a toll-
27 free telephone line and responding to inquiries and requests for assistance from the Settlement Class
28 Members; (j) providing declarations to the Parties' counsel and the Court regarding the completion of

1 the tasks identified in this paragraph; (k) perform all applicable tax reporting for the settlement; and
2 (l) carrying out other related tasks in accordance with the terms of this Settlement Agreement.

3 79. All disputes relating to the Settlement Administrator's performance of its duties shall
4 be referred to the Court, which, except as otherwise provided herein, shall have continuing
5 jurisdiction over the terms and conditions of this Settlement Agreement. The Parties shall first meet
6 and confer in good faith and attempt to resolve any disputes prior to raising any such issue with the
7 Court.

8 **VII. NOTICE TO THE CLASS MEMBERS**

9 80. A Notice of Class Action and PAGA Settlement ("Notice of Settlement") in the form
10 attached hereto as **Exhibit A** and approved by the Court shall be sent by the Settlement Administrator
11 to all Settlement Class Members and PAGA Recipients by first class mail within twenty (20) days of
12 the Court's order granting preliminary approval, or other date ordered by the Court. Enclosed with
13 the Notice of Settlement will be an Estimated Settlement Share Form, in the form attached hereto as
14 **Exhibit B**. The Notice of Settlement and the Estimated Settlement Share Form are collectively
15 referred to as the "Notice Packet." The exterior of the mailing envelope for the Notice Packet will
16 include the following description of the Settlement Administrator as part of the return address: "HL
17 WELDING CLASS ACTION/PAGA ADMINISTRATOR."

18 81. Within five (5) business days of the Court's granting preliminary approval of the
19 Settlement Agreement, Defendant shall email to the Settlement Administrator the following
20 information for all Settlement Class Members and PAGA Recipients: Settlement Class Members'
21 and PAGA Recipients' social security numbers or ITIN, last known addresses and telephone
22 numbers, and dates worked as Settlement Class Member and pay periods as a PAGA Recipient.
23 Defendant shall provide this information in a format acceptable to the Settlement Administrator
24 consistent with its technical capabilities. This information is to be treated as private and confidential,
25 and to be used only to carry out the Settlement Administrator's duties as specified in this Agreement.
26 Defendant shall also provide this Settlement Class information to Class Counsel, except that the
27 social security numbers will not be shared with Class Counsel. This Settlement Class information
28

1 shall include only the 98 Settlement Class Members identified in **Exhibit C and D** hereto and the
2 514 PAGA Recipients identified in **Exhibit E**.

3 82. Prior to mailing the Notice Packet, the Settlement Administrator will update the
4 addresses for the Settlement Class Members using the results of the National Change of Address
5 database prior to mailing class notice.

6 83. In the event that, subsequent to the first mailing of a Notice Packet and prior to the
7 deadline for response, the Notice Packet is returned to the Settlement Administrator by the United
8 States Postal Service with a forwarding address for the recipient, the Settlement Administrator shall
9 re-mail the Notice Packet to that address, that Notice will be deemed mailed at that point, and the
10 forwarding address shall be deemed the updated address for that Settlement Class Member. In the
11 event that, subsequent to the first mailing of a Notice of Settlement, that Notice Packet is returned to
12 the Settlement Administrator by the United States Postal Service because the address of the recipient
13 is no longer valid, the Settlement Administrator shall perform a standard skip trace in an effort to
14 attempt to ascertain the current address of the Settlement Class Member or PAGA Recipient, and, if
15 such an address is ascertained, the Settlement Administrator will re-send the Notice Packet within (5)
16 days of receiving such information. If no updated address is obtained for that Settlement Class
17 Member or PAGA Recipient, the Notice Packet shall be not be sent again.

18 84. Class Counsel shall provide the Court, at least five (5) days prior to the final approval
19 and fairness hearing or as otherwise ordered by the Court, with a declaration by the Settlement
20 Administrator of due diligence and proof of mailing of the Notice Packet.

21 85. Class Counsel shall have the right to take appropriate steps to locate and assist
22 Settlement Class Members and PAGA Recipients during the notice and distribution process subject to
23 the confidentiality provisions set forth below.

24
25 **VIII. COMPUTATION OF SETTLEMENT SHARES AND**
DISTRIBUTION OF NET SETTLEMENT FUND

26 86. Each Estimated Settlement Share Form mailed to the Settlement Class and PAGA
27 Recipients will identify (1) the number of compensable weeks, calculated as specified in paragraph
28 68 above, that Defendant's records indicate the individual worked as an Settlement Class Member

1 during the Class Period, (2) the number of compensable PAGA pay periods, calculated as specified in
2 paragraph 67 above, that Defendant's records indicate the individual worked as a PAGA Recipient
3 during the PAGA Period, and (3) which subclass the Settlement Class Member belongs to or whether
4 the recipient is only a PAGA Recipient and not a Settlement Class Member. Each Estimated
5 Settlement Share Form will also provide a preliminary estimate of each Settlement Class Member's
6 *pro rata* share of the Net Settlement Fund and a preliminary estimate of each PAGA Recipient's *pro*
7 *rata* share of the PAGA Settlement Amount. Such estimated amounts are subject to adjustment
8 based on objections and requests for exclusion, and the challenge process provided for in paragraph
9 68, and the Estimated Settlement Share Form instructions shall so state.

10 87. The Settlement Class Members will have the right to challenge only the number of
11 weeks worked as shown on the Estimated Settlement Share Form by mailing, faxing, or e-mailing the
12 Estimated Settlement Share Form directly to the Settlement Administrator with evidence to
13 substantiate the challenge. No Estimated Settlement Share Form challenging the number of weeks
14 worked will be honored unless postmarked on or before the date ordered by the Court for challenges,
15 exclusions and objections. Additional time may be provided to Settlement Class Members for good
16 cause, but only if such additional time allows the Settlement Administrator to comply with paragraph
17 48; otherwise, the challenge is untimely and the Settlement Class Member shall be paid according to
18 the original Estimated Settlement Share Form.

19 88. The Settlement Administrator will certify jointly to Class Counsel and counsel for
20 Defendant any challenges that were timely filed, and the outcomes thereof.

21 89. Challenges will be resolved without hearing by the Settlement Administrator, who will
22 make a decision based on Defendant's records and evidence or documentation presented by the
23 claimant, subject to Court approval. The Settlement Administrator's determination is final and
24 binding without a right of appeal, subject to Court approval.

25 90. The Settlement Administrator shall (a) date-stamp all original requests for exclusion
26 that it receives; (b) serve copies on the Parties' counsel no later than five (5) business days after
27 receipt, or immediately upon receipt if received within five (5) business days of the Court's final
28 approval hearing.

1 91. Following the determination of timely requests for exclusion submitted and the
2 resolution of all timely challenges to the Settlement Forms, but in no event later than five (5) days
3 after the Final Effective Date, the Settlement Administrator shall make the final calculation of
4 payments from the Net Settlement Fund to be distributed to Settlement Class Members and PAGA
5 Recipients considering the documentation provided by Defendant, any written challenges, and any
6 requests for exclusion not rescinded by Settlement Class Members. The Settlement Administrator
7 shall compute the final Settlement Class Members' and PAGA Recipients' shares. Any and all
8 estimated settlement awards that would have been paid to Settlement Class Members who file timely
9 opt outs will not be credited back to Defendant or in any way revert back to Defendant. These
10 unclaimed funds will be reallocated to Settlement Class Members in proportion with each such
11 Settlement Class Member's *pro rata* share of the Net Settlement Fund. The Settlement Administrator
12 will conduct this accounting for the redistribution of unclaimed Settlement Class Member payments,
13 adding the proportionate amounts to each Settlement Class Member's payment before completing the
14 final calculation of payments.

15 92. Upon completion of its calculation of payments the Settlement Administrator shall
16 provide the Parties' Counsel with a report listing the amount of all payments to be made to Settlement
17 Class Members from the Net Settlement Fund.

18 93. On the back of each Individual Settlement Amount check that is issued to FLSA
19 Subclass Members, the following language shall appear that will be an agreement that he/she has
20 been paid in full for any and all FLSA and California State overtime claims he/she might have had
21 against Defendant: "By endorsing this check, I am providing opt-in consent to release all FLSA
22 claims covered by the Settlement in addition to the release of all claims covered by the Settlement."

23 94. The Settlement Administrator is responsible for preparing and mailing the checks and
24 IRS 1099 Form as required by this Settlement Agreement to Settlement Class Members, and for
25 filing all necessary tax reports and returns, except those which are the responsibility under law of
26 Defendant, as to which forms and returns, the Settlement Administrator shall provide Defendant with
27 the necessary information in its possession.
28

1 95. Settlement Class Members shall have one hundred twenty (120) calendar days after
2 mailing by the Settlement Administrator to cash their settlement checks. The Settlement
3 Administrator will use reasonable means to attempt to locate current contact information for any
4 Settlement Class Member whose checks are returned as undeliverable or who do not cash their first
5 round checks, so that it may resend checks to any updated addresses. Checks that are not cashed
6 within one hundred twenty days (120) days will be void and a stop payment will be placed on the
7 checks.

8 96. Should there remain any residual from the Net Settlement Fund after all payments are
9 made under this Settlement Agreement, for example, if any settlement checks are not cashed within
10 120 calendar days after mailing, all residual funds shall be paid to the Monarch School, a non-profit
11 organization that cares for homeless children, as *cy pres* beneficiary in compliance with section 384
12 of the California Code of Civil Procedure. If the Court does not approve of such, the amounts shall
13 revert to the Office of the Controller's Unclaimed Property Fund in the name of the Settlement Class
14 Member who did not cash his/her individual settlement payment check.

15 97. Any costs associated with administering the residual (e.g., bank stop payment charges,
16 settlement administration costs associated with the Settlement Fund, costs to issue and mail any
17 distribution checks) or payments to the *cy pres* beneficiary will be deducted from the residual before
18 redistribution to the Settlement Class Members and donation to the *cy pres* beneficiary. The
19 Settlement Administrator shall provide a declaration of *cy pres* distribution, which will be filed with
20 the Court and served on Class Counsel and counsel for Defendants, within ten (10) days of payment
21 of the residual.

22 a. No later than sixty (60) days after Deposit of all funds (i.e., Deposit 3, in
23 paragraph 69(c)), the Settlement Administrator shall distribute any residual fund to the *cy pres*
24 beneficiary or Office of the Controller's Unclaimed Property Fund by the process described above.

25 98. The Settlement Administrator shall provide a declaration of payment, certifying the
26 payments made, the date(s) and manner of sending payments, which will be provided to counsel for
27 the Parties, within ten (10) days of the expiration of the check-cashing period described above.
28

99. The Settlement Administrator shall cause to be timely and properly filed all informational and other tax returns, if any, necessary with respect to the Net Settlement Fund. Such returns shall be consistent with this paragraph. If any taxable income is generated by the Net Settlement Fund, in all events the tax returns filed shall reflect that all taxes payable on the taxable income of these funds, if any, shall be paid from the Net Settlement Fund. Any expenses consisting of the expenses and costs incurred in connection with the operation and implementation of this paragraph (including, without limitation, reasonable expenses of tax attorneys, accountants or other designees retained by the Settlement Administrator as required for the preparation and filing of tax returns described in this paragraph) shall be treated as, and considered to be, Administration Costs and paid from the Settlement Fund.

IX. RELEASE BY THE CLASS

100. The Settlement Class Members identified in **Exhibits C and D**, excluding those who submit timely and valid requests to opt out, shall, as of the Effective Date, fully and finally release and discharge the Released Parties, from any and all claims, rights, demands, liabilities and causes of action of every nature and description that were asserted or could have been asserted based on the facts asserted in the Action against Defendant, including, without limitation, statutory, constitutional, contractual or common law claims for actual damages, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, equitable relief, or any other relief based on the following categories of allegations and claims reasonably related to alleged violations of (1) California and Federal overtime laws; (2) Claims for alleged failures to furnish lawful itemized wage statements; (3) Claims for alleged failures to provide all wages upon termination of employment; (4) Claims under California Business and Professions Code Section 17200 et seq., related to alleged non-payment of overtime; and (5) any additional claims for damages, injunctive relief, penalties, attorneys' fees, interest or costs associated with the claims asserted in the Action during the Class Period. The release by Class Members is not a general release shall not extend to claims that could not have been asserted or related to the claims in the Lawsuit or claims that cannot be waived or released as a matter of law.

1 101. Further, any member of the FLSA Subclass shall not release any claims under the
2 FLSA unless and until he or she cashes his or her settlement payment check. Any member of the
3 FLSA Subclass who does not cash his or her settlement check will retain his or her rights and claims
4 under the FLSA, but shall still be deemed to have accepted and agreed to release any claims under
5 California law, unless he or she submits a timely written request for exclusion.
6

7 **X. RELEASE BY THE PAGA RECIPIENTS**

8 102. The PAGA Recipients identified in **Exhibit E**, shall, as of the Effective Date, fully
9 and finally release and discharge the Released Parties from all claims, demands, rights, obligations,
10 liabilities, actions, and causes of action (including attorneys' fees and costs) for PAGA penalties
11 under the California Labor Code, Industrial Welfare Commission Wage Orders, regulations, and/or
12 any other provisions of law alleged to have been violated in the Action or which could have been
13 alleged based on the facts in the First Amended Complaint during the PAGA Period. The release by
14 PAGA Recipients is not a general releases and shall not extend beyond claims under the PAGA or to
15 claims that cannot be waived or released as a matter of law.

16 **XI. GENERAL RELEASE BY NAMED PLAINTIFFS**

17 103. In addition to the release made by the Settlement Class Members set forth in
18 paragraph 100 above and in consideration for their Service Awards, the Class Representatives, as of
19 the Effective Date, make the additional following general release of all claims, known or unknown:
20 the Class Representatives release the Released Parties from all claims, demands, rights, liabilities and
21 causes of action of every nature and description whatsoever, known or unknown, asserted or that
22 might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule
23 or regulation arising out of, relating to, or in connection with any act or omission by or on the part of
24 any of the Released Parties committed or omitted prior to the execution hereof with the sole
25 exception of any claims which cannot be released as a matter of law. (The release set forth in this
26 Paragraph shall be referred to hereinafter as the "General Release").

27 The General Release includes any unknown claims that the Class Representative does not
28 know or suspect to exist in their favor at the time of the General Release, which, if known by him,
might have affected his settlement with, and release of, the Released Parties by the Class

Representative or might have affected his decision not to object to this Settlement or the General Release.

With respect to the General Release, Plaintiffs Yanez, Rubio and Muongkhot stipulate and agree that, upon the Settlement Effective Date, they shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at 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.

The General Release does not extend to Plaintiffs' claims that cannot be waived or released as a matter of law. By way of example only, the release does not extend to Plaintiffs' potential claims for workers' compensation benefits or unemployment insurance.

XII. SCHEDULE FOR EXECUTION OF SETTLEMENT

104. The preliminary schedule for execution of this settlement is as follows:

DESCRIPTION	EVENT
5 days after preliminary approval of settlement	Defendants to provide Settlement Administrator and Plaintiffs' Counsel a final spreadsheet, which lists each Class Member's first and last name, last known address and phone number, Social Security number or ITIN, the dates of employment and total workweeks. The version of the spreadsheet provided to Plaintiffs' counsel will include only the last four digits of each Class Member's Social Security number in lieu of the full number.
25 days after preliminary approval of settlement	Plaintiffs to file Motion for Approval of Attorney's Fees and Costs, and Plaintiff Service Awards.
30 days after preliminary approval of settlement	Mailing by first class mail of Class Action Settlement Notice and Estimated Settlement Share Form (collectively "Notice Packet") by Settlement Administrator.

No later than 25 days after mailing of Notice and Settlement Share Form	Settlement Administrator to conduct trace/search efforts and send a follow up mailing to Settlement Class Members whose Notice was returned as undeliverable or whose listed address is found to be inaccurate or outdated.
45 days after mailing of Notice and Settlement Share Form	Last day for Settlement Class Members to opt out, challenge dates of employment, or submit written objections (the "Objection/Exclusion Deadline").
10 days after the Objection/Exclusion Deadline	Settlement Administrator to provide counsel with opt outs and challenges received from Settlement Class Members, and also prepare a declaration for Plaintiffs' counsel and Defendant's counsel review and approval certifying the completion and results of the class notice and related processes.
30 days before final approval hearing	Last day for filing and service of papers in support of final settlement approval and requests for attorneys' fees and expenses, and class representative service award. Including declaration from Settlement Administrator.
Date to be set by Court at Preliminary Approval hearing	Hearing for Final Approval
Date Court Grants Final Approval of the Settlement ³	Settlement Effective Date
Within five (5) days of the Settlement Effective Date	Settlement Administrator to make the final calculation of payments from the Net Settlement Fund to be distributed to the Settlement Class Members and PAGA Recipients and provide all Counsel with a report listing the amount of all payments to be made to each Settlement Class Member from the Net Settlement Fund. Plaintiffs to file a Dismissal of the <i>Muongkhot</i> Action.
Within Ten (10) days of the Settlement Effective Date	Defendant shall deposit the money to fund \$286,000 of the GSA and one-half of the employer side taxes with the Settlement Administrator ("Deposit 1")
Within One Hundred and Fifty (150) days of the Settlement Effective Date	Defendant shall deposit the money to fund a further \$286,000 of the GSA and one-half of the employer side taxes with the Settlement Administrator ("Deposit 2")

³ Assumes no objections to the Settlement.

Within five (5) business days of Deposit 2, above	Settlement Administrator to distribute and pay from the Settlement Fund each of the following: (1) Settlement share checks to all Settlement Class Members and PAGA Recipients; (2) awarded attorney reimbursed litigation expenses to Plaintiffs' counsel; (3) check for the class representatives' service awards; and (4) administration costs paid to the Settlement Administrator.
120 days after distribution of checks to Eligible Settlement Class Members	Expiration / void date for checks distributed to Eligible Settlement Class Members and PAGA Recipients.
Within Three Hundred (300) days of the Settlement Effective Date	Defendant shall deposit the money to fund the balance of the GSA - a further \$286,000 ("Deposit 3")
Within five (5) business days of Deposit 3, above	Settlement Administrator to distribute and pay from the Settlement Fund all awarded attorneys' fees to reimbursed litigation expenses to Plaintiffs' counsel.
Within 10 days of final payment of attorney's fees	Class Counsel to submit final Settlement Administrator's report regarding status of payments, and request for distribution of any residual to Court-approved <i>cy pres</i> beneficiary.
Date to be set by Court at Preliminary Approval	Final Accounting Hearing to be held. Plaintiffs' Counsel will request Court approval of disposition of residual funds from Reserve Fund, including, but not limited to payment to <i>cy pres</i> beneficiary, and will submit a declaration in support of their request from the Settlement Administrator.
Within sixty (60) days of Deposit 3	Settlement Administrator to pay any residual funds in the settlement fund to or the <i>cy pres</i> beneficiary.
10 days after payment of residual funds to <i>cy pres</i> beneficiary	Class Counsel to file and serve final Settlement Administrator's report regarding all payments and the <i>cy pres</i> distribution, if any.

XIII. DUTIES OF THE PARTIES PRIOR TO FINAL COURT APPROVAL

105. The Parties shall promptly submit this Settlement Agreement to the Court together with Plaintiffs' Motion for Preliminary Approval of Settlement and Certification of Settlement Class and subclasses. That motion shall seek entry of a preliminary order which includes the following procedures and steps: scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the members of the Settlement Class; approving as to form and content the proposed Notice of Settlement providing Settlement Class Members information about the settlement terms, their right to opt out or object to

1 the settlement, and notice of the final approval hearing; approving as to form and content the
2 proposed Estimated Settlement Share Form and instructions; directing the mailing of the Notice
3 Packet by first class mail to all Settlement Class Members; preliminarily approving the Settlement
4 Agreement; preliminarily and conditionally certifying the Settlement Class and subclasses for
5 purposes relating to consummating this Settlement Agreement, and appointing the Class
6 Representatives and Class Counsel as representatives of the Settlement Class for purposes of
7 settlement; preliminarily approving the appointment and compensation of up to \$12,000 to Simpluris,
8 Inc. to perform the settlement administration services required under this Settlement Agreement;
9 preliminarily approving the application for payment of reasonable attorneys' fees and litigation costs
10 to Class Counsel; and preliminarily approving the Service Awards to the Class Representative.

11 106. Following the submission of the Motion for Preliminary Approval and up to the Final
12 Approval hearing, the Parties shall cooperate with the Settlement Administrator and each other to
13 expedite and facilitate the giving of notice to Settlement Class Members, fair and impartial responses
14 to Settlement Class Members' inquiries or questions, receipt and review of objections, opt-outs, or
15 other responses by Settlement Class Members to the Notice of Settlement, and the presentation to the
16 Court of all information necessary and sufficient for its consideration of final approval of the
17 Settlement Agreement.

18 **XIV. DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

19 107. Class Counsel will submit a proposed final order and judgment at or expeditiously
20 after the final approval hearing, to include: approving the settlement; adjudging the terms thereof to
21 be fair, reasonable and adequate; directing consummation of the Settlement Agreement's terms and
22 provisions; and approving Class Counsel's application for an award of attorneys' fees and
23 reimbursement of costs, and the Service Awards to the Class Representatives.

24 **XV. VOIDING THE SETTLEMENT AGREEMENT**

25 108. In the event that five percent (5%) or more of the Settlement Class elect to opt out of
26 the settlement and do not timely rescind their opt out statements, as described above, Defendant, at its
27 sole discretion, may withdraw from this Settlement Agreement, which such withdrawal will render
28

1 this Settlement Agreement null, void and unenforceable. To exercise this option, written notice must
2 be provided to Class Counsel within fourteen (14) business days of Defendants' counsel being
3 advised in writing that at least five percent (5%) of the Class Members submitted requests to opt out.
4

5 **XVI. NO ADMISSION OF LIABILITY**

6 109. Nothing contained herein, nor the consummation of this Settlement Agreement, is to
7 be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
8 of Defendant. Each of the Parties hereto has entered into this Settlement Agreement with the
9 intention to avoid further disputes and litigation with the attendant inconvenience, uncertainty and
10 expenses.

11 **XVII. NO ADMISSION IN EVIDENCE**

12 110. This Settlement Agreement is a settlement document and shall be inadmissible in
13 evidence in any proceeding except an action or proceeding to approve, interpret, or enforce this
14 Settlement Agreement.

15 **XVIII. PUBLIC COMMENT**

16 111. The Parties and their counsel agree that they will not issue any press releases, initiate
17 any contact with the press, respond to any press inquiry or have any communication with the press
18 about this case and/or the fact, amount or terms of the settlement prior to preliminary approval. Any
19 communication about the Settlement to Settlement Class Members or aggrieved employees prior to
20 the court-approved mailing will be limited to a statement that a settlement has been reached and the
21 details will be communicated in a forthcoming Court-approved notice. Class Counsel may
22 communicate the settlement terms to their clients.

23 **XIX. CONSENT TO MAGISTRATE JURISDICTION**

24 112. The Parties agree to consent to magistrate jurisdiction for all purposes, including
25 review and approval of this Settlement, within two (2) days of the execution of this Agreement.

26 **XX. MUTUAL FULL COOPERATION**

27 113. The Parties agree to cooperate with each other to accomplish the terms of this
28 Settlement Agreement, including but not limited to, executing such documents and taking such other
action as may reasonably be necessary to implement the terms of this Settlement Agreement. The

Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's final approval of this Settlement Agreement.

XXI. MISCELLANEOUS PROVISIONS

A. Notices

114. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Class Counsel:

David Pogrel
LEONARD CARDER, LLP
1999 Harrison, Suite 2700
Oakland, CA 94612

To Defendant:

Marie Burke Kenny
Clint Engleson
PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP,
525 B Street, Suite 2200
San Diego, CA 92101

B. Captions and Interpretations

115. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

C. Construction of Agreement

116. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties supervised by an

1 experienced employment law mediator and that this Settlement Agreement shall not be construed in
2 favor of or against any Party by reason of the extent to which any Party or his, her or its counsel
3 participated in the drafting of this Settlement Agreement.

4 **D. Modification and Discharge of Agreement**

5 117. This Settlement Agreement may not be changed, altered, or modified, except in a
6 writing signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not
7 be discharged except by performance in accordance with its terms or by a writing signed by the
8 Parties hereto.

9 **E. Complete Agreement**

10 118. This Settlement Agreement and the Confidential Finances Agreement contains the
11 entire agreement between the Parties relating to the settlement and transaction contemplated hereby,
12 and all prior or contemporaneous agreements, understandings, representations, and statements,
13 whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No
14 rights hereunder may be waived except in writing.

15 **F. No Prior Assignments**

16 119. This Settlement Agreement shall be binding upon and inure to the benefit of the
17 Parties hereto and their respective heirs, trustees, executors, administrators and successors. The
18 Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned,
19 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
20 portion of any liability, claim, demand, action, cause of action or rights herein released and
21 discharged except as set forth herein.

22 **G. Governing Laws**

23 120. The Settlement Agreement shall be governed by the laws of the State of California
24 without regard to that state's conflict of laws provisions.

25 **H. Class Counsel May Sign for Class**

26 121. It is agreed that, because the members of the Settlement Class are so numerous, it is
27 impossible or impractical to have each member of the Settlement Class execute this Settlement
28 Agreement. The Notice of Settlement will advise all Settlement Class members of the binding nature

of the release contained in this Settlement Agreement and shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

I. Counterparts

122. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or electronic signature. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. A facsimile signature shall have the same force and effect as the original signature, if and only if it is transmitted from counsel for one Party to the other. Such transmissions shall be interpreted as verification by the transmitting counsel that the signature is genuine and that the Party signing has authorized and reviewed this Settlement Agreement.

DATED: June 3, 2021

By _____
LUIS LOPEZ YANEZ
Plaintiff/Class Representative

DATED: June 3, 2021

By _____
JULIO RUBIO
Plaintiff/Class Representative

DATED: June 3, 2021

By _____
KAYASONE MUONGKHOT
Plaintiff/Class Representative

DATED: June 3, 2021

LEONARD CARDER, LLP

By _____
DAVID POGREL
Attorneys for Plaintiffs Yanez, Rubio, Muongkhot and
the Settlement Class

DATED: June 3, 2021

By _____
HL WELDING, INC.
Defendant

DATED: June 3, 2021

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

By _____
MARIE BURKE KENNY
CLINT ENGLESON
Attorneys for Defendant

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