

Roberto Rojas v. Applied Composite Structures, Inc.
Los Angeles County Superior Court Case No. 19STCV04652

JOINT STIPULATION OF SETTLEMENT

This Joint Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Roberto Rojas (“Plaintiff”), individually and on behalf of all members of the Settlement Class, defined below, and Defendant Applied Composite Structures, Inc. formerly known as Encore Composite Structures, Inc. (“Defendant”). Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Kevin Mahoney and John Young of Mahoney Law Group, APC (“Class Counsel”). Defendant is represented by Barbra Arnold and Desiree Ho of Jeffer Mangels Butler & Mitchell LLP (“Defense Counsel”).

On February 13, 2019, Plaintiff Roberto Rojas filed a class action lawsuit (“Complaint”) against Defendant in the Superior Court for the State of California, County of Los Angeles, Case Number 19STCV04652, alleging the following claims against Defendant: (1) failure to pay all wages, including overtime wages; (2) failure to provide rest periods; (3) failure to provide meal periods; (4) failure to timely pay all wages at separation; and (5) unfair competition (Business & Professions Code § 17200 et. seq.). On June 14, 2019, Defendant filed an answer to Plaintiff’s Complaint. The action pending in the Superior Court for the State of California, County of Los Angeles as Case Number 19STCV04652 is hereinafter referred to as the “Lawsuit”.

On April 21, 2020, Plaintiff filed a Notice with the California Labor Workforce and Development Agency (“LWDA”) alleging violations of the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”). The LWDA did not provide notice of any intent to investigate the alleged violations within sixty-five (65) calendar days of the postmark date of the Notice. Plaintiff thereafter filed a First Amended Complaint to include a cause of action for violations of the California Private Attorneys General Act (“PAGA claim”), all of which are premised on the facts, claims, causes of action, or legal theories presently asserted in the Lawsuit, as the PAGA representative on behalf of himself and all allegedly aggrieved employees. Defendant agrees that it will not challenge the statute of limitations applicable to 1) the notice required to be sent to the California Labor and Workforce Development Agency (“LWDA”) pursuant to PAGA; or 2) the PAGA claim that will be included in the Operative Complaint (as defined below). If the Court rejects Plaintiff as the PAGA representative, Defendant shall cooperate with Plaintiff in locating and securing one or more putative class members (“PAGA Representative(s)”) who have sufficient standing to assert the PAGA claim against Defendant and who further consent to joining the Lawsuit as named plaintiff(s) and asserting the PAGA claim against Defendant. Plaintiff shall promptly thereafter file an amended complaint adding the PAGA Representative(s) as named plaintiff(s) to bring the additional PAGA claim. The complaint, as amended, to include a PAGA representative acceptable to the Court for purposes of bringing the PAGA claim on behalf of himself and all allegedly aggrieved employees shall be hereinafter referred to as the “Operative Complaint.”

Given the risks and uncertainties of litigation, the Parties have agreed to settle this Action on the terms set forth herein and subject to the approval of Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability as the Settlement Agreement is intended solely to allow the Parties to buy their peace and resolve the disputed claims asserted in this Lawsuit.

1. Settlement Class. For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following classes (collectively referred to as the "Settlement Class"):

Class 1: All current and former hourly-paid or non-exempt employees employed by Defendant in the State of California at any time from February 13, 2015 through the date the Court grants preliminary approval of the settlement (the "Class Period") who are not a party to an arbitration agreement executed with Defendant.

Class 2: All current and former hourly-paid or non-exempt employees employed by Defendant in the State of California at any time from February 13, 2015 through the date the Court grants preliminary approval of the settlement (Class Period) who signed an arbitration agreement executed with Defendant.

"Class Members" comprise all members of the Settlement Class. The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement. Defendant expressly reserves its rights to oppose class certification should this Settlement not become final for any reason.

2. Releases.

A. Settlement Class Members. "Settlement Class Members" comprise all members of the Settlement Class who do not affirmatively opt out and exclude themselves from the Lawsuit in a timely manner, as defined herein.

B. Releases by Settlement Class Members. In exchange for the consideration set forth in this Settlement Agreement, each Settlement Class Member who does not validly opt-out, on behalf of themselves, and on behalf of all those who claim by and through them, including, but not limited to agents, representatives, predecessors, successors and assigns does hereby and forever release, acquit, and discharge, and covenant not to sue Defendant, as well as EnCore Composites Holdings, Inc., and each and all of their past, present, and future, whether direct or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers (collectively the "Released Parties" and

each a “Released Party” or “Releasee”) from liability for the following claims, which are being released for the time period February 13, 2015 through the date the Court grants preliminary approval of the settlement: All claims and causes of action alleged or that could have been alleged based on the facts and legal theories set forth in the Operative Complaint on file in this Action against Defendant. These claims include but are not limited to: (1) failure to pay all wages, including overtime wages and waiting time penalties; (2) failure to provide rest periods; (3) failure to provide meal periods; (4) failure to timely pay all wages at separation; and (5) violations of the California Business & Professions Code §§ 17200 *et seq.*) (6) violations of the California Private Attorneys General Act, California Labor Code §§ 2698 *et seq.*; and (7) any and all other claims under California common law, the California Labor Code, California Wage Orders, and the California Business and Professions Code, claims for restitution and other equitable relief, liquidated damages, civil penalties, statutory penalties, punitive damages, waiting time penalties, interest, as well as all similar provisions under the federal Fair Labor Standards Act, including 29 U.S.C. §§ 206, 207, and 216, and the National Labor Relations Act, asserted in or that could have been asserted based on the facts set forth in the Operative Complaint (“Released Claims”). This release is not effective until the date the Gross Settlement Amount is fully funded. Released Claims shall expressly exclude all claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation and claims outside of the Class Period.

Released Claims Extend to All Known and Unknown Claims. Plaintiff and the Settlement Class Members, and each of them, expressly waives and relinquishes all rights and benefits afforded by section 1542 of the Civil Code of the State of California and do so understanding and acknowledging the significance of such specific waiver of section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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.

Thus, subject to and in accordance with this Settlement Agreement, even if Plaintiff or any of the Settlement Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true, Plaintiff and each of the Settlement Class Members shall be deemed to have fully, finally, and forever settled and released any and all claims against Defendant that could have been alleged against it, as well as any other claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that now exist, upon any theory of law or equity, including without limitation, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

- C. **Defendant's Release of Claims Against Representative Plaintiff.** Defendant, as defined herein, do hereby, for themselves, and for their heirs, successors, predecessors, attorneys, agents, representatives and assigns, forever release the Representative Plaintiff 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 attorneys' fees and costs actually incurred) of any nature whatsoever, from the beginning of time through the date of their signature on this Settlement Agreement, known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Representative Plaintiff's employment with Defendant and related to this Lawsuit.

Released Parties expressly waive and relinquish all rights and benefits afforded by section 1542 of the Civil Code of the State of California and do so understanding and acknowledging the significance of such specific waiver of section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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.

Thus, subject to and in accordance with this Settlement Agreement, even if Released Parties may hereafter discover facts in addition to or different from those they now know or believe to be true, Released Parties shall be deemed to have fully, finally, and forever settled and released any and all claims against the Representative Plaintiff that could have been alleged against them, as well as any other claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that now exist, upon any theory of law or equity, including without limitation, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

This release is not effective until the date the Gross Settlement is fully funded.

3. **Settlement Payment.** In exchange for the releases set forth in this Settlement Agreement, Defendant agrees to pay Five Hundred Fifty Thousand Dollars (\$550,000.00) (the "Gross Settlement Amount") in full and complete settlement of this matter, as follows:

- A. The Gross Settlement Amount will be funded within forty-five (45) days of the later of the following:
- (1) If no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters an order granting final approval of the settlement;
 - (2) If an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed; and

(3) If any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the settlement.

- B. Defendant represents that there are approximately 9,448 workweeks worked by class members of Class 1 from February 13, 2015 to January 23, 2020. If the actual total number of collective workweeks worked for class members of Class 1 increases beyond ten percent (10%) (i.e., more than 10,393 workweeks) for the period of February 13, 2015 to January 23, 2020, Defendant shall increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of workweeks worked by the class members of Class 1 (i.e., if the number of workweeks increases by eleven percent (11%) to 10,487, the Gross Settlement Amount will increase by eleven percent (11%)).
- C. This is not a “claims made” settlement. This is a non-reversionary settlement. The Gross Settlement Amount includes:
- (1) All payments to the Settlement Class Members and their employee share of payroll tax withholdings;
 - (2) All fees and expenses of the Settlement Administrator associated with the administration of the settlement, which are anticipated to be no greater than Seven Thousand Five Hundred Dollars (\$7,500.00);
 - (3) Up to Five Thousand Dollars (\$5,000.00) for the Plaintiff’s enhancement payment (if Plaintiff is rejected as the PAGA representative and the Operative Complaint includes named plaintiff(s) other than Plaintiff, additional reasonable enhancement payments may be paid out of the Gross Settlement Amount), subject to Court approval, in recognition of Plaintiff’s time and risks in prosecuting this case, and his service to the Settlement Class. The enhancement payments to be paid, subject to Court approval, to Plaintiff and any other named plaintiff(s) shall collectively be referred to herein as the “Enhancement Payment.” In the event that the Court reduces or does not approve the requested Enhancement Payment, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, it shall remain binding, and any unapproved amount shall be reallocated among the class members who did not opt-out of the Settlement;
 - (4) The Parties agree that Five Thousand Five Hundred Dollars (\$5,500.00) (“PAGA Settlement Amount”) of the Gross Settlement Amount will be allocated to the resolution of any Class Member claims arising under the California Labor Code Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*, “PAGA”). Pursuant to PAGA, seventy-five percent (75%) or Four Thousand One Hundred Twenty-Five Dollars (\$4,125.00) of the PAGA Settlement Amount shall be paid to the California Labor and Workforce Development Agency (“LWDA Payment”), and twenty-five percent (25%) or One Thousand Three Hundred Seventy-Five Dollars

(\$1,375.00) of the PAGA Settlement Amount shall become part of the Net Settlement Fund; and

- (5) Up to thirty-five percent (35%) of the Gross Settlement Amount in attorneys' fees, which is estimated to be One Hundred Ninety-Two Thousand Five Hundred Dollars (\$192,500.00), plus up to Eleven Thousand Six Hundred Eighty-Five Dollars (\$11,685.00) in verified costs and expenses related to the Lawsuit, including all such fees and costs incurred in documenting the Settlement, securing Court approval of the Settlement, and administering the Settlement, as supported by declaration. In the event the Gross Settlement Amount is increased pursuant to Section (3)(B) above, the amount of attorneys' fees will also be adjusted pursuant to the adjusted Gross Settlement Amount. In the event that the Court reduces or does not approve Class Counsel's requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, it shall remain binding, and any unapproved amount shall revert to the Net Settlement Fund.
- (6) Defendant's required FICA, FUTA, and other payroll tax payments resulting from payment of the settlement payments to Settlement Class Members shall be paid separate and apart from the Gross Settlement Amount.
- (7) The recipients of payments out of the Gross Settlement Amount shall be exclusively responsible for all tax obligations other than the employer's share of payroll taxes allocated to unpaid wages.

D. **Confidential.** This settlement shall remain confidential until such time as the Motion for Preliminary Approval is filed with the Court.

4. **Settlement Payment Procedures.** Settlement Class Members are not required to submit a claim form to receive their individual settlement payment. Individual settlement payments will be determined and paid as follows:

- A. The Settlement Administrator, defined in Section 8 below, shall first deduct from the Gross Settlement Amount the amounts approved by the Court for the Settlement Administrator's fees and expenses, seventy-five percent (75%) of the PAGA Settlement Amount, Enhancement Payment, Class Counsel's attorneys' fees, and Class Counsel's costs and expenses. The remaining amount shall be known as the "Net Settlement Fund."
- B. From the Net Settlement Fund, the Settlement Administrator will calculate the individual settlement payments for the nonexempt Settlement Class Members based on Defendant's records and the gross wages paid to Settlement Class Members during the Class Period.
- C. Within seven (7) days following the funding of the Gross Settlement Amount with the Settlement Administrator by Defendant, the Settlement Administrator will calculate individual settlement payment amounts and will prepare and mail

individual settlement payments to Settlement Class Members. Defendant shall fully discharge its obligations to Settlement Class Members through the mailing of the settlement payments, regardless of whether such checks are actually received or negotiated by Settlement Class Members.

- D. For purposes of calculating applicable taxes and withholdings for the Settlement Class Members, twenty percent (20%) of each individual settlement payment shall be designated as wages subject to W-2 reporting and normal payroll withholdings; the remaining eighty percent (80%) of each individual settlement payment shall be designated as penalties and interest and subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans. Defendant shall have no responsibility for the tax treatment of the non-wage components of the settlement payments.
- E. Settlement payment checks issued to Settlement Class Members that remain uncashed one hundred and eighty (180) calendar days after such checks are mailed by the Settlement Administrator (“Check Expiration Date”) shall become void, and the funds associated with such voided checks, plus any accrued interest that has not otherwise been distributed (together, “Unused Funds”), shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §§ 1500 et seq., for the benefit of those Settlement Class Members who did not cash their checks until such time that they claim their property. Thirty (30) days prior to the expiration of the 180-day check validity period, the Settlement Administrator will send a reminder postcard to any Settlement Class Member whose check has not been cashed. The settling Parties agree that this disposition results in no “unpaid cash residue,” or “unclaimed or abandoned funds” under California Civil Procedure Code section 384, as amended effective June 27, 2018, as the entire Net Settlement Fund will be paid out to the Settlement Class Members, whether or not they all cash their payment checks. Therefore, Defendant will not be required to pay any interest on such amounts.
- F. The receipt of funds under this Settlement shall not entitle any Settlement Class Member to additional compensation or benefits of any kind under any of Defendant’s compensation or benefits plans, nor will it entitle any Settlement Class Member to any increased retirement or 401k plan benefits of any kind.
- G. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by her or its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Class Counsel's Attorneys' Fees and Litigation Costs.** Defendant will not object to a request for a total award of attorneys' fees to Class Counsel of up to thirty five percent (35%)% of the Gross Settlement Amount which is estimated to be one hundred ninety-two thousand five hundred dollars (\$192,500.00), plus up to eleven thousand six hundred eighty five dollars (\$11,685.00) in verified costs and expenses related to the Lawsuit as supported by declaration. In the event the Gross Settlement Amount is increased pursuant to Section (3)(B) above, the amount of attorneys' fees will also be adjusted pursuant to the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class counsel's application for attorneys' fees and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Lawsuit. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award as approved by the Court.

6. **Enhancement Payment.** Defendant will not object to a request for a class representative enhancement payment to Plaintiff of five thousand dollars (\$5,000.00) in total, in exchange for his time and risks in prosecuting this case, and his service to the Settlement Class. This payment will be in addition to Plaintiff's individual settlement payment as a Settlement Class Member and shall be reported on an IRS Form 1099 by the Settlement Administrator. It is the intent of the Parties that the enhancement payment to the Plaintiff is for his services in connection with this Lawsuit and is not wages, therefore the Settlement Administrator shall not withhold any taxes from the enhancement payment and shall report it on an IRS Form 1099, which shall be provided to Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the enhancement payment does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the enhancement payment constitute wages for income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant from the enhancement payment paid under this Settlement Agreement. In addition, Plaintiff shall hold Defendant, Released Parties, and Class Counsel harmless and indemnify Defendant, Released Parties, and Class Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendant by reason of any claims relating to the non-withholding of taxes from the enhancement payment.

8. **Settlement Administrator.** Phoenix Class Action Administration Solutions (also known as Phoenix Settlement Administrators) shall serve as Settlement Administrator and the Parties will seek Court approval to pay up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) from the Gross Settlement Amount for its services. The Settlement Administrator shall be responsible for sending all required notices, calculating the Net Settlement Fund, calculating each Class Member's individual settlement payment amount, preparing all checks and mailings and disbursing all residuals resulting from uncashed settlement checks as set forth in Section 4(E). The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after checks have been mailed to all Settlement Class Members.

9. Within thirty (30) days after execution of the Settlement Agreement, or as otherwise directed by the Court, Plaintiff shall apply to the Court for the entry of an Order:

- A. Appointing Kevin Mahoney and John Young of Mahoney Law Group, APC as Class Counsel;
- B. Appointing Roberto Rojas as Class Representative for the Settlement Class;
- C. Approving Phoenix Class Action Administration Solutions as Settlement Administrator;
- D. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- E. Approving the form and content of the Class Notice (which shall contain an estimated individual settlement payment, dates of employment, gross wages paid to the individual during the Class Period, instructions on how to opt out of the Settlement, and instructions on how to object to the Settlement) and Notice of Individual Settlement Share (collectively referred to as the “Notice Packet”), and directing the mailing of same; and
- F. Scheduling a Final Approval hearing.

10. **Notice Procedures.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) days after entry of an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with a class list including the names, last known addresses, and social security numbers (in electronic format) of Class Members, as well as the total gross wages paid to each member of the Settlement Class during the Class Period.
- B. Within seven (7) days from receipt of the class list information, the Settlement Administrator shall: (i) run the names of all Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Class Members; (ii) update the addresses of any Class Member for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet (attached hereto as Exhibits A and B) to each Class Member at their last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. The Settlement Administrator shall use its best professional efforts, including utilizing a “skip trace,” to track any Class Member’s mailing returned as undeliverable, and will re-send the Notice Packet promptly upon identifying updated mailing addresses through such efforts. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

- D. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Class member immediately, and in any event within three (3) business days of obtaining the updated address. Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion or objection.
- E. **Opt-Out/Request for Exclusion Procedures.** All Class Members will automatically participate in the Settlement unless they affirmatively opt-out by submitting a timely request for exclusion. Any Class Member who wishes to opt-out of the settlement must complete and mail a Request for Exclusion, in a form substantially similar to that attached hereto as Exhibit B, to the Settlement Administrator (who shall serve all Requests for Exclusion as received on Class Counsel and Defense Counsel) within sixty (60) days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
- i. The Request for Exclusion: (1) must contain the name, address, telephone number and the last four digits of the Social Security number of the Class Member; (2) must be signed by the Class Member; and (3) must be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion fails to comply with items (1)-(3), it will not be deemed valid for exclusion from this settlement, except a Request for Exclusion form not containing a Class Member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Class Member who timely requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement or have any right to object, appeal or comment thereon.
- F. **Objections.** Class Members who do not opt-out may object to this Settlement Agreement by mailing a written objection to the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defense Counsel as well as filing them with the Court). Objections must be postmarked on or before the Response Deadline. If Class Counsel and/or Defense Counsel receive an objection, they shall file any responses with the Court within five (5) business days of their receipt. Class Members will not be barred from appearing at the Final Approval hearing even if they have not complied with the objection procedures set forth herein.

G. **Challenges to Individual Settlement Payment Calculations.** Class Members will have the opportunity, should they disagree with Defendant's records regarding the amount of gross wages stated in their Notice Packet, to challenge the data provided. In order to challenge Defendant's data, the Class Member must provide documentation and/or an explanation demonstrating that Defendant's data is incorrect and evidencing the correct amount of gross wages that the Class Member believes they should have been credited with. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall provide a copy of the challenge and any supporting documentation to counsel for the Parties within five (5) days of receipt.

H. **Dispute Resolution.** The Settlement Administrator shall have the initial responsibility of resolving all disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of Individual Settlement Payments, the allocation of W-2 wages, and the amount of gross wages. Where the information submitted by Defendant from its records differs from the information submitted by the Class Member, the Settlement Administrator shall request a conference call between the Settlement Administrator, Class Counsel, and Defense Counsel to discuss and resolve the dispute. In advance of the conference call, the Settlement Administrator shall fax or email copies of all available information to all counsel. The Parties will resolve all disputes jointly, which shall be final and binding on any Class Member disputes, and shall thereafter instruct the Settlement Administrator how to proceed in processing the disputed claim. If the Parties cannot reach agreement, disputes shall be referred to the Court for a final determination at the Final Approval hearing.

11. **Right to Revoke.** Defendant shall have the right, at its sole discretion, to cancel the Settlement if more than five (5%) of Class Members opt out of the Settlement, by communicating that decision to both the Settlement Administrator and Class Counsel within thirty (30) calendar days of the Response Deadline, provided however, Defendant will be responsible for any costs and fees incurred to date by the Settlement Administrator. Defendant will confer with Plaintiff's counsel before any such cancellation. The Parties agree that they will not in any manner take any actions to encourage Class Members to opt-out or object.

12. **Final Approval Process.** Following preliminary approval and the close of Response Deadline under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's application for Settlement Administrator's fees and expenses, Enhancement Payment, PAGA Settlement Payment, Class Counsel's attorneys' fees, and Class Counsel's costs and expenses, and
- C. Entering judgment pursuant to California Rule of Court 3.769.

13. **Non-Admission.** Based upon a thorough review of the law and facts of this case, Defendant contends that there is no basis for wages, penalties, interest, costs, attorney's fees, liquidated damages, and/or any other damages to be assessed against it pursuant to federal or California state law because all amounts properly owed to Plaintiff and the Settlement Class were timely paid to Plaintiff and the Settlement Class. Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, that it has any liability to anyone under the claims asserted in the Lawsuit, and that but for this settlement a class should not be certified in this Lawsuit. Defendant denies that it failed to pay all wages, including overtime wages. Defendant denies that it failed to provide meal or rest periods, or that it failed to pay meal or rest period premium wages under applicable law. Defendant denies that it did not timely pay all wages owed upon separation of employment. Defendant denies that it engaged in unfair competition under California Business and Professions Code §§ 17200 *et seq.*, or that it owes any penalties under the California Private Attorneys General Act. Defendant denies that Plaintiffs and Class Members were harmed by the conduct alleged in the Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability, fault or wrongdoing by Defendant. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If the Court does not enter an order granting final approval of the settlement, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

14. **Appraisal and Certification By Settlement Administrator.** The Settlement Administrator shall keep Defendant, Defense Counsel, and Class Counsel apprised of all distributions from the Gross Settlement Amount (to the extent the Settlement Administrator is responsible for any such distribution) and ten (10) calendar days after completion of administration of that portion of the settlement, the Settlement Administrator shall provide written certification of such completion to the Court and counsel for all Parties with a final accounting of the payments to be made to each Settlement Class Member and other payments made from the Gross Settlement Amount.

15. **Privacy of Documents and Information.** Plaintiff and Class Counsel agree that none of the documents and information provided to them by Defendant as part of the settlement and approval thereof shall be used for any purpose other than in furtherance of the settlement of this Lawsuit. Within seventy-five (75) calendar days after the Court enters an order granting final approval of the settlement, Plaintiff shall destroy or return to Defendant or Class Counsel all materials in his possession pertaining to this Lawsuit. Class Counsel may retain archival copies for their records, which shall not be used for an purpose unrelated to this Lawsuit and shall not be disclosed to any third parties except as may be required by law.

16. **Limitation on Publicity.** Class Counsel shall not publicize this settlement in any way, nor shall they be permitted to contact or respond to any requests from the press (including, but not limited to, print, television, radio, internet, or any other media) regarding this settlement, except to refer them to the Court's file for further information, and except to put the total settlement amount and class counsel fees awarded (including individual attorneys' hourly rates approved and

any multiplier awarded) in court briefs. Except for the agreed-upon motions and notices and as otherwise stated in this Settlement Agreement, the Parties shall not at any time make any announcement of the settlement of this case or otherwise publicize such settlement. Class Counsel will keep strictly confidential all terms of the settlement in this Lawsuit prior to filing the Motion for Preliminary Approval, and will not disclose any information pertaining to the terms or conditions of this settlement or any other information concerning this settlement to any person or entity of any kind whatsoever, unless to the Court, if specifically authorized to do so in the notice or compelled to do so by a state or federal court having jurisdiction to so order. Class Counsel will be permitted to respond to questions from Class Members concerning the settlement and this Settlement Agreement. Plaintiff shall not respond to any inquiries directed to him by Class Members, but shall direct them to speak with Class Counsel. However, Plaintiff may disclose information regarding the settlement to his attorneys, spouses, or financial/tax advisors. Plaintiff must refer all inquiries to them by Class Members or anyone other than their attorneys, spouses, or financial/tax advisors to Class Counsel.

17. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

18. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery or by e-mail at the addresses set forth on the following page, or such other addresses as the Parties may designate in writing from time to time:

If to Defendant:

Barbra Arnold
Desiree Ho
Jeffer Mangels Butler & Mitchell LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
baa@jmbm.com
dho@jmbm.com

If to Plaintiff:

Kevin Mahoney
John Young
Mahoney Law Group, APC
249 E. Ocean Blvd., Suite 814
Long Beach, California 90802
kodenbreit@mahoney-law.net
jyoung@mahoney-law.net

19. **Voluntary Agreement.** The Parties acknowledge that they have entered into this Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress, or undue influence of any party, and not in reliance on any promises, representations, or statements made by the other Parties other than those contained in this Settlement Agreement.

Each of the Parties hereto expressly waives any right he/it might ever have to claim that this Settlement Agreement was in any way induced by fraud.

20. **Opportunity to Consult with Counsel.** Prior to execution of this Settlement Agreement, each Party has read this entire Settlement Agreement and has been given the opportunity to consult with independent counsel of their choosing and to have such independent counsel advise as to the meaning of this Settlement Agreement and its legal effect.

21. **Authorization to Act.** The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and to bind the Parties hereto to the terms and conditions hereof.

22. **Mutual and Full Cooperation.** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. The Parties shall use reasonable 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.

23. **Fair Settlement and Cooperation in Drafting.** The Parties agree that this Settlement Agreement is the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which that Party has participated in the drafting of this Settlement Agreement.

24. **Amendments or Modifications.** This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto as approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto as approved by the Court.

25. **No Reliance on Representations.** The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Settlement Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Settlement Agreement, or with respect to any such matters that would alter or change the terms of this Settlement Agreement. No representations, warranties, or inducements have been made to any party concerning this Settlement Agreement other than those expressly set forth or referred to herein.

26. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees

and costs to the prevailing party in any motion or action taken and based on an alleged violation of any material term of the Settlement Agreement.

27. **Settlement Agreement Binding on Successors.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors in interest of each of the Parties.

28. **Meet and Confer Regarding Disputes.** Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Settlement Agreement, a representative of Class Counsel and Defense Counsel shall meet and confer in good faith in an attempt to resolve such disputes prior to submitting such disputes to the Court.

29. **Headings.** The descriptive heading of any section or paragraph of this Settlement Agreement is inserted for convenience of reference only and does not constitute a part of this Settlement Agreement and shall not be considered in interpreting this Settlement Agreement.

30. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof.

31. **Counterparts and Fax or Electronic Signatures.** This Settlement Agreement may be executed by the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

32. **No Collateral Attack.** To the extent permitted by law, this Settlement Agreement shall not be subject to collateral attack by any Class Member or any recipient of the Class Notice after the Court enters an order granting final approval of the settlement and Defendant has fully funded the Gross Settlement Amount. Such prohibited collateral attacks shall include but not be limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of her or his Individual Settlement Payment.

33. **Governing Law.** This Settlement Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

EXECUTION BY PARTIES

DATED:

Applied Composite Structures, Inc.

By:  7/29/20

Name: DeAnna Perrotta Steinke

Its: SVP HR

DATED:

Roberto Rojas

By: _____
Plaintiff and Settlement Class Representative

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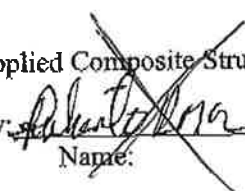
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EXECUTION BY PARTIES

DATED: 7-27-2020

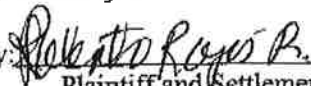
Applied Composite Structures, Inc.

By:  R.
Name:

Its:

DATED: 7-27-2020

Roberto Rojas

By:  R.
Plaintiff and Settlement Class Representative