

1 **HAINES LAW GROUP, APC**
Paul K. Haines (SBN 248226)
2 phaines@haineslawgroup.com
Tuvia Korobkin (SBN 268066)
3 tkorobkin@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
4 amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
5 El Segundo, California 90245
Tel: (424) 292-2350
6 Fax: (424) 292-2355

7 *Attorneys for Plaintiff*

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
12

13 LUIS SALINAS, as an individual and on
behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 MITSUBISHI MATERIALS U.S.A.
17 CORPORATION, a California Corporation;
and DOES 1 through 100,

18 Defendants.
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21
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Case No. 30-2020-01139886-CU-OE-CXC

*[Assigned for all purposes to Hon. James J. Di
Cesare, Dept. C-16]*

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFF'S NOTICE
OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: January 14, 2022

Time: 9:30 a.m.

Dept.: C-16

Reservation ID: 73624654

Action Filed: April 1, 2020

FAC Filed: June 8, 2020

Trial Date: No Date Set

DECLARATION OF PAUL K. HAINES

I, Paul K. Haines, declare as follows:

1. I am the principal of Haines Law Group, APC, and counsel for the named Plaintiff Luis Salinas (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated *cum laude*. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy, located in Encino, California. I also spent a semester in law school working as an extern for the Honorable Edward Rafeedie, District Judge for the United States District Court for the Central District of California.

3. Since graduating from law school, my practice has focused almost exclusively on employment litigation. In September 2007, I began working as an associate attorney at the international law firm of Littler Mendelson, P.C. at its Los Angeles office, which according to its website is the “largest U.S.-based law firm exclusively devoted to representing management in every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed on wage and hour class actions in both state and federal courts, and I also worked on a number of single and multi-plaintiff wage and hour matters as well.

4. During my employment at Littler Mendelson, I played a significant role in the class actions that I was staffed on, as I was often the only associate staffed on such cases. In particular, I received a wide array of wage and hour class action experience performing the following types of tasks: drafting demurrers, motions to strike, and motions to dismiss; removing actions from state court to federal court; drafting and responding to written discovery; drafting and opposing discovery related motions; arguing discovery related motions; drafting motions to consolidate related matters; interviewing putative class members and obtaining declarations in connection with class certification; drafting oppositions to motions for class certification; drafting motions for decertification following class certification; conducting exposure analyses to assess the strengths

1 and weaknesses of asserted claims, the likelihood of prevailing at class certification, and potential
2 damages resulting from such claims; drafting mediation briefs; serving as the primary contact to in-
3 house counsel; deposing named plaintiffs and putative class members; deposing retained expert
4 witnesses; and defending the depositions of corporate witnesses. In short, I played an integral role
5 in all aspects of litigation from the inception of a matter through and beyond class certification. I
6 also supervised the work of several junior attorneys who were staffed on the same wage and hour
7 class actions.

8 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
9 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP at its
10 Los Angeles office, where I began working in July 2011. During my employment at Morgan, Lewis
11 & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective actions.
12 For the vast majority of these cases, I was the only associate staffed on the matters, and I performed
13 the same job duties as described in the immediately preceding paragraph. In addition to working
14 on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a number of “hybrid”
15 actions asserting nationwide wage and hour claims under the Fair Labor Standards Act, as well as
16 California-specific claims under Rule 23 of the Rules of Civil Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016 as a Shareholder of Haines Law Group, APC. Currently, over ninety percent (90%)
20 of my practice is dedicated exclusively to the prosecution of wage and hour class actions, and my
21 law firm is currently responsible for prosecuting over fifty (50) wage and hour class actions filed
22 in both State and Federal courts throughout California. I have been appointed as Class Counsel in
23 hundreds of wage and hour class action settlements in state and federal courts within California.
24 Some examples of the matters in which I have been appointed as Class Counsel, all of which have
25 been granted final approval, include the following: *Shaw v. Conant Auto Retail, San Diego*, Case
26 No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San Diego, Hon. Judge
27 Joan M. Lewis, presiding; *Tirado v. Ricon Corp.*, Case No. BC537042, California Superior Court,
28 County of Los Angeles, Hon. John S. Wiley, presiding; *Horta v. Searles Valley Minerals, Inc.*,

1 Case No. CIVDS 1507615, California Superior Court, County of San Bernardino, Hon. Donald
2 Alvarez presiding; *Rodriguez v. Spartan, Inc.*, Case No. BCV-15-100007-DRL, California
3 Superior Court, County of Kern, Hon. David R. Lampe presiding; *Kostyuk, et al. v. Golden State*
4 *Overnight Delivery Service, Inc.*, Case No. RG14727191, California Superior Court, Alameda
5 County, Hon. Winifred Y. Smith presiding; *Leverage, et al v. Traeger Pellet Grills, LLC, et al*,
6 Case No. 16-cv-00784-KAW, United States District Court for the Northern district of California,
7 Hon. Kandis A. Westmore presiding; *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385,
8 California Superior Court, County of Los Angeles, Hon. John Shepard Wiley, Jr., presiding;
9 *Morales v. Caremeridian, LLC, et al.*, Case No. BC593191, California Superior Court, County of
10 Los Angeles, Hon. William F. Highberger presiding; *Rodrigues v. CP Kelco U.S., Inc.*, Case No.
11 37-2017-00004339-CU-OE-CTL, California Superior Court, County of San Diego, Hon. Joel R.
12 Wohlfeil, presiding; *Beach-Barrow, et al v. The Hertz Corp.*, Case No. RG17848833, California
13 Superior Court, County of Alameda, Hon. Ioana Petrou presiding; *Gooding v. Vita-Mix Corp., et*
14 *al*, Case No. 2:16-cv-03898-ODW (JEMx), United States District Court for the Central District of
15 California, Hon. Otis D. Wright II presiding; *Afa, et al v. Alliance Ground Int’l, LLC*, Case No.
16 BC661449, California Superior Court, County of Los Angeles, Hon. William F. Highberger
17 presiding.

18 7. I have also moved to certify and have received an order certifying a class action
19 and/or conditionally certifying a collective action in the following cases:

- 20 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-
21 CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler,
22 presiding (certifying a class of employees who were misclassified as independent
23 contractors);
- 24 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United
25 States District Court, Central District of California, Honorable Judge Beverly Reid
26 O’Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);

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- 1 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States
2 District Court, Central District of California, Honorable Judge John F. Walter, presiding
3 (certifying rest period class and conditionally certifying FLSA unpaid overtime class);
- 4 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court,
5 Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding
6 (conditionally certifying an unpaid FLSA overtime wage class);
- 7 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States
8 District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding
9 (conditionally certifying an unpaid FLSA overtime wage class);
- 10 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC,
11 California Superior Court, County of Orange, Honorable Judge William Claster, presiding
12 (certifying unpaid overtime wage class and waiting time penalty class);
- 13 • *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC,
14 California Superior Court, County of Orange, Honorable Glenda Sanders, presiding
15 (certifying piece rate pay plan classes, expense reimbursement class, wage statement class,
16 and waiting time penalties class);
- 17 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United
18 States District Court, Central District of California, Honorable Dolly M. Gee presiding
19 (certifying six classes of employees for rest period violations, wage statement violations,
20 meal period violations, and overtime and double-time violations);
- 21 • *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United
22 States District Court, Southern District of California, Honorable William Q. Hayes
23 presiding (certifying six classes of employees for unpaid wages, meal period violations,
24 wage statement violations, and waiting time penalties);
- 25 • *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA,
26 United States District Court, Northern District of California, Honorable William H. Alsup
27 presiding (certifying three classes of employees for unlawful wage deduction violations,
28 wage statement violations, and waiting time violations);

- 1 • *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIVDS1712267, California Superior Court,
2 County of San Bernardino, Honorable David Cohn presiding (certifying a wage statement
3 class);
- 4 • *Perez v Sunbelt Rentals, Inc.*, Case No. Case No. 37-2018-00026405-CU-OE-CTL,
5 California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon, presiding
6 (certifying wage statement class); and
- 7 • *Bowlin-Burdick et al v. Life Care Centers of America*, Case No. BC657139, Los Angeles
8 County Superior Court, Hon. Maren E. Nelson (certifying four classes for meal period
9 violations, rest period violations, wage statement violations, and waiting time penalties).

10 8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a top young attorney
11 in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an honor
12 awarded to no more than two-and-a-half percent of attorneys under the age of forty in Southern
13 California each year. In 2018, 2019, 2020, and 2021, Thomson Reuters recognized me as a “Super
14 Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than five percent of
15 all attorneys in Southern California each year.

16 9. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately
17 involved in all aspects of this litigation, and I believe that the proposed Stipulation of Settlement
18 (“Settlement”), a true and correct copy of which is attached hereto as **Exhibit 1**, is a favorable
19 result for the Settlement Class. The Class Notice, Notice of Estimated Individual Settlement, and
20 Request for Exclusion Form (together, the “Notice Packet”), are attached to the Settlement as
21 **Exhibits A, B, and C**, respectively.

22 10. I am not aware of any class, representative, or other collective actions in any other
23 court that assert similar claims to those asserted in this action on behalf of a class or group of
24 individuals who would also be members of the proposed Settlement Class. I asked the attorneys at
25 my office if they are aware of any similar actions, and the attorneys whom I have asked are not
26 aware of any such actions.

27 11. Defendant Mitsubishi Materials U.S.A. Corporation (“Mitsubishi”) manufacturers
28 cutting tools and other technology solutions for the manufacturing industry, with a facility in Costa

1 Mesa, California. Plaintiff and Settlement Class members are current and former non-exempt
2 hourly employees employed by Mitsubishi at any time in the State of California during the Class
3 Period. Plaintiff worked for Mitsubishi as a non-exempt customer service representative from
4 approximately July 2018 to February 19, 2020.

5 12. On April 1, 2020, Plaintiff filed a Class Action Complaint against Mitsubishi
6 alleging the following causes of action: (i) minimum wage violations, (ii) failure to pay all overtime
7 wages, (iii) failure to pay wages, (iv) wage statement violations, (v) waiting time penalties, and (vi)
8 unfair competition. On June 9, 2020, Plaintiff filed a First Amended Class Action and
9 Representative Complaint, adding a cause of action for civil penalties under the Private Attorneys
10 General Act (“PAGA”), Labor Code § 2698, *et seq.*

11 13. In connection with mediation, the parties engaged in extensive informal discovery,
12 including Mitsubishi’s production of timekeeping and payroll records for all California non-exempt
13 employees during the entire Class Period, its relevant wage and hour policies, and other relevant
14 data and information. Plaintiff, with the help of his expert economist who holds a Ph.D. in
15 economics, conducted a comprehensive analysis and extrapolation of the data to create a damages
16 model for mediation. This discovery allowed the parties to assess the merits and value of Plaintiff’s
17 claims, the chances of certification of Plaintiff’s claims, and Mitsubishi’s potential defenses.

18 14. On December 3, 2020, the parties attended a full day mediation with E. William
19 Klatte, Esq., a well-respected wage and hour class action mediator. During mediation, the parties
20 vigorously debated their opposing legal positions, the chances of certification, and the legal bases
21 for Plaintiff’s claims and Mitsubishi’s defenses. At the conclusion of mediation, Mr. Klatte issued
22 a mediator’s proposal for a class-wide settlement, which was ultimately accepted by both sides.
23 The parties memorialized their agreement in a Memorandum of Understanding, and over the
24 following months negotiated and finalized the long-form Settlement Agreement now before this
25 Court.

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1 15. After deducting amounts for a Court-approved enhancement payment,
2 administration costs, attorneys' fees and costs, and PAGA payment to the LWDA, Mitsubishi will
3 pay at least \$145,500.00 to the Settlement Class.

4 16. Based on data provided by Mitsubishi, there are approximately 43 total Settlement
5 Class members. Thus, the average individual Settlement Award is projected to be approximately
6 \$3,383.72.

7 17. As described in the accompanying Motion, Plaintiff alleges a direct claim for wage
8 statement violations premised on Mitsubishi's practice of paying employee wages in the wrong pay
9 period, thereby listing incorrect pay period dates on wage statements. Specifically, Plaintiff alleges
10 that Mitsubishi pays employee wages one pay period in arrears, such that the wages worked in a
11 given pay period are paid at the end of the following pay period, but the wage statements contain
12 the dates of the pay period in which the wages are paid. Plaintiff alleges that this practice has resulted
13 in a failure to list the correct dates of the pay period for which the employee is paid, and/or the
14 failure to list accurate number of hours worked and wages earned. Based on Plaintiff's expert's
15 analysis and extrapolation of the payroll records produced by Mitsubishi, there have been 1,208
16 wage statements issued to 36 Settlement Class members between April 1, 2019 and the present.
17 Therefore, and pursuant to Labor Code § 226(e) provision of a \$50 penalty for "initial" violations
18 and \$100 for "subsequent" violations, Plaintiff calculates Mitsubishi's potential exposure for wage
19 statement penalties as \$119,000 (36 "initial" violations * \$50) + (1,172 "subsequent" violations *
20 \$100). Mitsubishi argues that the wage statements always accurately reflected the amounts actually
21 paid to the employees, and thus Mitsubishi could not be found liable for wage statement penalties.
22 Moreover, to the extent that wage statements are inaccurate, Mitsubishi argues the violations could
23 not be shown to be "knowing and intentional," since Mitsubishi maintained a good-faith belief that
24 it was providing accurate wage statements. Mitsubishi further argues that Plaintiff cannot show he
25 or other employees "suffer[ed] injury" as a result of the alleged wage statement violations, as
26 required by Labor Code § 226(e) for the imposition of penalties, since employees were not
27 underpaid. Mitsubishi further argues that it started to list the correct information on its wage
28 statements beginning on April 24, 2020 by attaching employee punch records to their wage

1 statements. Finally, Mitsubishi argued this claim would not be suited for class certification, since it
2 would require individualized inquiries into whether each individual employee was “injured” on each
3 individual pay period, which would devolve into an unmanageable series of mini-trials.

4 18. Plaintiff alleges that Mitsubishi failed to pay all overtime wages to Plaintiff and other
5 Settlement Class members by failing to include the value of all non-discretionary remuneration,
6 including end-of-year bonuses, into the “regular rate” of pay. Based on Plaintiff’s expert’s analysis
7 and extrapolation of data provided by Mitsubishi, Plaintiff calculates a total underpayment of
8 approximately \$2,276 in overtime wages during the Class Period as a result of Mitsubishi’s failure
9 to include the bonuses discussed above into employees’ “regular rate” of pay. Mitsubishi contends
10 that the additional payments at the end of the year are discretionary holiday bonuses and thus do not
11 need to be included in the regular rate of pay for overtime purposes. Mitsubishi further contends
12 that the discretionary holiday bonuses were not tied to employees’ hours worked and therefore do
13 not need to be included in the regular rate. Moreover, Mitsubishi contends Plaintiff would be unable
14 to certify this claim given the differences and the individualized nature of frequency, type, and
15 amount of bonuses received by class members.

16 19. Plaintiff alleges that Mitsubishi rounded its employees’ time entries in quarter-hour
17 increments in a manner that consistently favored Mitsubishi, and that, as a result, its prior time-
18 rounding practice resulted in an underpayment of wages. Mitsubishi counters that its rounding
19 practice was lawful, since it was both neutral on its face and resulted, over time, in employees being
20 paid for all hours worked. Mitsubishi further argues that, at most, employees were under-paid due
21 to rounding on a minority of shifts (roughly 36%), and that overall, approximately 64% of time
22 entries were either neutral or rounded in favor of *employees*. Plaintiff’s expert analyzed employee
23 timekeeping records and his analysis revealed that Mitsubishi’s time-rounding practice appeared to
24 be neutral and actually resulted in many employees being *overpaid* during the Class Period. Because
25 Plaintiff’s expert’s review of employee timekeeping records revealed that Mitsubishi’s rounding
26 practice appeared to be neutral, Plaintiff did not anticipate a realistic recovery on this claim.

27 20. As a result of the unpaid overtime wages described above, Plaintiff alleges that
28 Mitsubishi failed to comply with their final pay obligations set forth in Labor Code §§ 201-203.

1 Mitsubishi's records reflect approximately 17 Class Members who separated from their employment
2 with Mitsubishi within the three-year statute of limitations period applicable to Labor Code § 203.
3 Based on an average hourly rate of \$24.77 (computed based on pay records produced by Mitsubishi),
4 Plaintiff estimated the average waiting penalty per former employee to be \$5,495 ($\$24.77 * 8 \text{ hours}$
5 $* 30 \text{ days}$). Therefore, Plaintiff estimates that Mitsubishi's maximum exposure for waiting time
6 penalties is approximately \$101,065 (17 waiting time penalty class members * \$5,495 avg. penalty).
7 Mitsubishi maintains that they possess strong, good faith defenses to Plaintiff's underlying claims,
8 thus precluding recovery of waiting time penalties, which are only available for the "willful" failure
9 to pay wages. Mitsubishi further maintains that, even assuming that Plaintiff would prevail on his
10 "regular rate" claim, not all former employees experienced an underpayment of wages since former
11 employees received the bonuses at issue.

12 21. As a further result of the alleged violations described above, Plaintiff alleges that
13 Mitsubishi is liable for civil penalties under the PAGA. Based on the data provided by Mitsubishi,
14 there are approximately 1,208 pay periods during the PAGA Period (i.e., April 3, 2019 through the
15 present). Based on the violations addressed above, Plaintiff contends that Mitsubishi is liable for a
16 PAGA civil penalty for each of the 1,208 pay periods worked during the PAGA period. Accordingly,
17 Plaintiff estimates Defendants' maximum potential PAGA exposure at \$120,800 (1,208 violations
18 * \$100 "initial" penalty under Labor Code § 2699(f)). Since Plaintiff's PAGA claim is derivative of
19 his underlying claims, Mitsubishi asserts the PAGA claim would fail with those claims. Mitsubishi
20 also maintains that given its good faith defenses, this Court would exercise its discretion to
21 substantially reduce any PAGA penalties if it were to find Mitsubishi liable for any of Plaintiff's
22 claims.

23 22. Therefore, if Plaintiff were entirely successful at trial on all claims described above,
24 Plaintiff calculates a maximum potential recovery for the Settlement Class (without any discounts
25 for the risks of non-certification or losing on the merits) to be approximately \$343,141. The
26 proposed recovery to the Settlement Class of \$300,000.00 therefore represents approximately 87%
27 of the Settlement Class's maximum recovery, while avoiding the further expense and serious risk
28 of proceeding towards class certification and trial.

1 23. My office will apply for an attorneys' fees award of one-third of the MSA, which is
2 currently estimated to be \$100,000, and up to \$17,500.00 in verified costs reimbursement. Plaintiff
3 submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
4 consuming litigation on a purely contingent fee basis. My office has incurred substantial attorney
5 fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research,
6 reviewing Mitsubishi's documents and policies, interviewing putative class members regarding their
7 work experiences with Mitsubishi, analyzing Class Members' relevant records, creating a
8 comprehensive damages model, preparing for and attending mediation, negotiating and preparing
9 the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. I also
10 anticipate my office incurring future attorney time in attending the hearing on this Motion,
11 overseeing the Notice process, fielding questions from Class Members, preparing the final approval
12 papers, and attending the Final Approval hearing.

13 24. Plaintiff will separately apply for an enhancement payment at the time of seeking
14 final approval of the proposed class action settlement in the amount of \$7,500 for his service to the
15 Settlement Class. I believe this is reasonable given Plaintiff's effort in this case and the risks he
16 undertook on behalf of the Settlement Class, including the risk that he could be liable for
17 Mitsubishi's costs if this case was unsuccessful. Plaintiff was integral in the prosecution of this
18 action, by, among other things, providing substantial factual information and documents to Class
19 Counsel, identifying potential witnesses, numerous discussions with counsel to discuss the claims
20 and theories at issue in the litigation, and otherwise actively participating in the prosecution of his
21 claims.

22 25. Although the parties engaged in informal discovery prior to reaching the proposed
23 Settlement, the parties had not yet begun formal written and deposition discovery, which would
24 have required the expenditure of substantial time and resources by all parties. The Settlement avoids
25 the attorneys' fees and costs associated with conducting formal discovery, moving for class
26 certification and summary judgment, and ultimately, trial, as well as the risks and the accompanying
27 burden of continued litigation on the Court.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct. Executed on October 11, 2021, at El Segundo, California.

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Paul K. Haines

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiff Luis Salinas (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendant Mitsubishi Materials U.S.A. Corporation (“Mitsubishi” or “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Tuvia Korobkin, and Alexandra R. McIntosh of Haines Law Group, APC and Sahag Majarian II of Law Offices of Sahag Majarian II (“Class Counsel”). Mitsubishi is represented by Teresa R. Tracy and Dawn B. Eyerly of Freeman, Freeman & Smiley LLP (“Defense Counsel”).

Plaintiff filed a class action complaint against Mitsubishi in Orange County Superior Court, titled *Luis Salinas v. Mitsubishi Materials U.S.A. Corporation*, Case No. 30-2020-01139886-CU-OE-CXC, on April 1, 2020 (the “Class Action”). On June 8, 2020, Plaintiff filed the operative First Amended Complaint (the “Action”). The Action alleges that Mitsubishi: (i) failed to pay all minimum wages; (ii) failed to pay all overtime wages; (iii) failed to pay all wages owed; (iv) failed to issue accurate, itemized wage statements; (v) failed to pay all final wages at termination; (vi) engaged in unfair unlawful business practices; and (vii) is liable for civil penalties under the Private Attorneys General Act (Labor Code § 2698 *et seq.*) (“PAGA”).

Given the uncertainty of litigation, the Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For purposes of this Settlement Agreement only, Plaintiff and Mitsubishi stipulate to the certification of a Settlement Class, which shall be defined as:

All current and former non-exempt hourly employees employed by Defendant at any time in the State of California from April 1, 2017 to the date of preliminary approval (the “Class Period”). Defendant represents there are approximately 43 Settlement Class members.

The Parties agree that certification for purpose of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure in a non-settlement context. If for any reason this Settlement is not approved or is terminated, 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.

2. **Releases.**

A. **Release by Settlement Class.** All Settlement Class members who do not opt-out (“Participating Settlement Class members”) will release and discharge Defendant, its present and former parent and affiliated companies, subsidiaries, shareholders, directors, officers, employees, agents, attorneys, insurers, successors and assigns (“Released Parties”) from any and all claims that were pled in the operative First Amended Complaint or which could have been pled in the Action based on the factual allegations in the Action, that arose during the Class Period (“Released Claims”) from Settlement Class members’ employment with Defendant. In

addition, all Participating Settlement Class members who cash their Settlement checks will release any claims under the Fair Labor Standards Act that could have been pled based on the facts alleged in the Action. The back of each settlement check sent to Participating Settlement Class members will include the following: "I understand that by signing and cashing this settlement check, I consent to opt-in to the Fair Labor Standards Act ("FLSA") collective action in the matter titled, in *Salinas v. Mitsubishi Materials U.S.A. Corporation*, Orange County Superior Court Case No. 30-2020-01139886-CU-OE-CXC, and will release and waive all claims under the FLSA as set forth in the Stipulation of Settlement and Notice of Class Action Settlement." Finally, all Settlement Class members (whether or not they opt out) will release Defendant from any and all claims under the PAGA that were pled in the operative First Amended Complaint and that arose during the PAGA Period (defined below) ("PAGA Released Claims").

- B. **Release by Plaintiff.** In light of Plaintiff's Representative Enhancement Payment (discussed below), Plaintiff has agreed to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal or state law, against Defendant, through the date this Settlement is signed by Plaintiff ("Plaintiff's Released Claims"). Plaintiff further confirms that, except for the Action and any workers compensation or unemployment claims, to his knowledge he has no other actions pending against the Released Parties, and covenants not to sue any of the Released Parties in the future for any of the claims released under this Settlement. Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, 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.

Specifically excluded from Plaintiff's Released Claims are any claims that cannot be released as a matter of law, such as claims for workers' compensation benefits or unemployment benefits.

3. **Maximum Settlement Amount.** As consideration, Mitsubishi agrees to pay a "Maximum Settlement Amount" or "MSA" of Three Hundred Thousand Dollars (\$300,000.00) in full and complete settlement of this matter, as follows:
- A. The Parties have agreed to engage Phoenix Settlement Administrators ("Phoenix") as the "Settlement Administrator" to administer this Settlement.
- B. Defendant will fund the Maximum Settlement Amount within sixty (60) calendar days after the entry of a final judgment, and when all appeals or other collateral attacks have lapsed or have been favorably resolved in favor of the Settlement Agreement. All appeals or collateral attacks will be deemed to have lapsed if no appeal or collateral attack is filed and served on both Parties within sixty (60) days

from the date the Court signs an Order granting Final Approval of the Settlement Agreement.

C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class;
- (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than \$7,000.00;
- (3) Up to \$7,500.00 for Plaintiff's Class Representative Enhancement Payment, in recognition of his contributions to the Actions and his service to the Settlement Class;
- (4) Up to one-third (33.33%) of the Maximum Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$100,000.00), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$17,500.00.
- (5) \$40,000.00 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$30,000.00, will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining 25%, or \$10,000.00, will be payable to certain of the participating Settlement Class members as the "PAGA Amount," as described below.

D. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include Employer Payroll Taxes, which shall be paid by Defendant separate and apart from, and in addition to, the Maximum Settlement Amount.

E. **Escalator Clause.** Defendant represents that there are an estimated 6,000 total aggregate workweeks worked by the Settlement Class members during the Class Period. If the actual number of workweeks during the Class Period is more than 10% greater than 6,000 (i.e., if there are 6,600 or more workweeks worked during the Class Period), Defendant shall increase the Maximum Settlement Amount on a proportional basis (i.e., if there was a 12% increase in the number of workweeks, Defendant shall increase the Maximum Settlement Amount by 12%).

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment from the Settlement ("Individual Settlement Payment").

Individual Settlement Payments will be determined and paid as follows:

A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative Enhancement Payment, the Settlement Administrator's administration costs, and the LWDA's

portion of the amount set aside as PAGA penalties. The remaining amount shall be known as the “Net Settlement Amount” or “NSA.”

- B. Payments from the Net Settlement Amount: The Settlement Administrator will calculate each Settlement Class member’s payment from the NSA based on the following formula:
- i. PAGA Amount: First, each Settlement Class member who was employed by Defendant at any time from April 3, 2019 to the date of preliminary approval (“PAGA Period”) shall receive a portion of the \$10,000 “PAGA Amount” described above, based on his/her proportionate number of pay periods that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member’s number of pay periods worked during the PAGA Period, and the denominator of which is the total number of pay periods worked by all Settlement Class members during the PAGA Period. Each Settlement Class member who worked for Defendant as a non-exempt employee during the PAGA Period will receive a portion of the PAGA Amount, regardless whether they opt out of the Settlement.
 - ii. Wage Statement Amount: Next, 45% of the remainder of the Net Settlement Amount (after the PAGA Amount has been deducted) shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendant at any time between April 1, 2019 to the end of the Class Period (“Wage Statement Period”), shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked for Defendant as a non-exempt employee during the Wage Statement Period.
 - iii. Waiting Time Amount: Next, 45% of the remainder of Net Settlement Amount (after the PAGA Amount has been deducted) shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time from April 1, 2017 to the date of preliminary approval.
 - iv. The final 10% of the remainder of the Net Settlement Amount (after the PAGA Amount has been deducted) will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remainder of the Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
 - v. For purpose of calculating settlement payments, if a Settlement Class member worked a portion of a workweek or a portion of a pay period, then

the Settlement Class member shall be credited with that portion of the workweek or pay period worked.

- C. Within seven (7) business days following Defendant's deposit of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Payments, as well as calculate the employer's share of payroll taxes, and provide the same to Class Counsel and Defense Counsel for review and approval. Within five (5) business days of approval by counsel, the Settlement Administrator will prepare and mail Individual Settlement Payments, less applicable taxes and withholdings, to participating Settlement Class members, as well as the Class Representative Enhancement Payment to Plaintiff, the PAGA payment to the LWDA, and attorneys' fees and costs to Class Counsel. The Settlement Administrator shall simultaneously pay all applicable withholdings to the applicable authorities with the necessary reports, submitting copies to Defense Counsel. Defendant shall also remit the employer's share of payroll taxes within this time frame to the Settlement Administrator, who shall promptly transmit such sum to the appropriate taxing authorities.
- D. For purposes of calculating applicable taxes and withholdings for payments to Settlement Class members, each Individual Settlement Payment shall be allocated as follows: for all amounts paid from the PAGA Amount, 100% penalties. For all other amounts paid, 5% as wages and 95% as penalties and interest. The Settlement Administrator will be responsible for issuing to Settlement Class members an IRS Form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated as penalties and interest. As stated above, Defendant is responsible for its share of the payroll taxes on the wages portion of the Individual Settlement Payments, and these taxes will not be deducted from the Maximum Settlement Amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement are to be treated as earnings, wages, pay, or compensation for any purpose of any applicable bonus, benefit or retirement plan, unless required by such plans.
- E. Each Settlement Class member who is mailed an Individual Settlement Payment must cash his/her Individual Settlement Payment check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to *cy pres* recipient, Community Legal Aid SoCal, an organization that provides legal services, including employment law services, to indigent residents of Orange and Los Angeles Counties.
- F. Neither Plaintiff nor Defendant, nor their respective counsel, shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Class Counsel will request a total award of attorneys' fees of one-third of the Maximum Settlement Amount (currently estimated at \$100,000.00), plus actual costs and expenses as supported by declaration in an amount not to exceed \$17,500.00. 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. The Settlement Administrator will mail Class Counsel the attorneys' fees and cost award when it mails the Individual Settlement Payments to Settlement Class members. The Settlement Administrator will issue Class Counsel IRS Forms 1099 when the Settlement Administrator pays the fee and cost award allowed by the Court.

6. **Class Representative Enhancement Payment.** Plaintiff will request a Class Representative Enhancement Payment of \$7,500.00 from the Maximum Settlement Amount for Plaintiff's general release of claims, his time and risks in prosecuting the Action, and his service to the Settlement Class. This award 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. The Settlement Administrator will mail Plaintiff the Class Representative Enhancement Payment and issue Plaintiff an IRS Form 1099 when it mails the Individual Settlement Payments to Settlement Class members.

7. **Settlement Administrator.** The parties will request the appointment of Phoenix as Settlement Administrator. Defendant will not object to Plaintiff's seeking permission to pay up to \$7,000.00 from the Maximum Settlement Amount for the Settlement Administrator's services. The Settlement Administrator shall be responsible for sending notices and for calculating Individual Settlement Payments and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines, Tuvia Korobkin, and Alexandra R. McIntosh of Haines Law Group, APC and Sahag Majarian II of Law Offices of Sahag Majarian as Class Counsel;
- C. Appointing Plaintiff as Class Representative for the Settlement Class;
- D. Approving Phoenix as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice, Notice of Estimated Settlement Award, and Request for Exclusion Form, attached hereto as Exhibits A, B, and C, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

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

- A. Within 10 business days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names; last known addresses; phone numbers; social security numbers; dates of employment; number of Workweeks worked during the Class Period; and number of pay periods, if any, worked during the PAGA Period. The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within 10 business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member, and receive approval of its preliminary calculations from all counsel; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Request for Exclusion. Any Settlement Class member who wishes to opt-out of the settlement must complete and mail a Request for Exclusion Form to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that a Settlement Class member who wishes to exclude themselves from the Settlement must submit the enclosed Request for Exclusion Form by the Response Deadline. The Request for Exclusion Form must: contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) be signed by the Settlement Class member; and (3) 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 Form does not satisfy the requirements listed in (1)-(3), it will not be deemed valid for exclusion from the 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 Form shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who timely requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for a portion of the PAGA Amount, if applicable) and will not be bound by the terms of the Settlement (except for the release of PAGA claims, if applicable) or have any right to object, appeal or comment thereon.
 - ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.

- D. Objections. Settlement Class members who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to file a response to the objections. Any written objection should: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Settlement Class members may also appear at the final approval hearing to orally object, even if they have not submitted a written objection.
- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used from Defendant's records in order to calculate it, including the Settlement Class member's number of Workweeks worked during the Class Period, whether the Settlement Class member's employment with Defendant ended during the time period of April 1, 2017 to the date of preliminary approval, and the number of pay periods worked during the PAGA Period. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. Should a Settlement Class member not agree with the Settlement Administrator's determination regarding the eligibility and/or amount of their Individual Settlement Payment, the Settlement Class member may submit the outstanding dispute and any supporting documentation to the Court for final resolution. To do so, the Settlement Class member should submit an outstanding dispute, in writing and accompanied by any supporting documentation, to the Settlement Administrator. The Settlement Administrator shall serve all outstanding disputes as received on Class Counsel and Defendant's counsel, as well as file all such disputes with the Court prior to the Final Approval Hearing.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline 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 Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet; however, the Settlement Administrator will perform address verifications as described above on any Notice Packet returned to it prior to the Response Deadline. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline, if applicable. If a Settlement Class member’s Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet need not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant’s Counsel to provide notice of the proposed settlement.

- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

10. **Notice to the LWDA.** Class Counsel shall be responsible for providing notice of the Settlement to the LWDA as required under the PAGA. If the LWDA objects to the Settlement, then the Parties shall respond to the objection as they would to objections from Settlement Class members. The Parties may also meet and confer and agree to modify the Settlement to address any concerns raised by the LWDA.

11. **Final Approval.** Following preliminary approval and the close of the period for submitting Request for Exclusion Forms, Objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

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

12. **Non-Admission of Liability.** 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. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code § 1152, this

Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code § 1152.

13. **Confidentiality.** Plaintiff and Class Counsel agree that, prior to Preliminary Approval, they will not disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein, and except to Plaintiff's spouse or to his attorneys or tax preparers as necessary for those professionals to provide their professional services to Plaintiff.

13. **Continuing Jurisdiction.** Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to construe, interpret and enforce this Settlement, to supervise all notices, the administration of the Settlement, and to hear and adjudicate any dispute arising from or related to the Settlement. The Parties agree that the Court has jurisdiction over the Settlement pursuant to California Code of Civil Procedure, Section 664.6.

14. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all of 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.

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

if to Mitsubishi: Teresa R. Tracy, Freeman, Freeman & Smiley, LLP, 1888 Century Park East, Suite 1500, Los Angeles, CA 90067; teresa.tracy@ffslaw.com

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, CA 90245; phaines@haineslawgroup.com

16. **Applicable Law.** All terms and conditions of this Settlement Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law or choice of law principles.

17. **Captions and Interpretations.** 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 Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

18. **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.

19. **Counterparts.** This Settlement Agreement may be executed by one or more of 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.

20. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by court order or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of this Settlement and will work together to make any nonmaterial modifications of the Settlement requested by the Court to obtain approval of the Settlement.

21. **Right of Mitsubishi to Rescind Settlement.** If more than ten percent (10%) of Class Members timely submit valid Requests for Exclusion, Mitsubishi will have the right to rescind the Settlement, and the Settlement and all actions taken in furtherance of it will be null and void. Mitsubishi must exercise this right within ten (10) days after the Settlement Administrator first notifies the Parties that more than 10% of Settlement Class members have validly opted out. If Mitsubishi exercises the right to rescind, it will be responsible for the costs of administration of the Settlement incurred through that time.

22. **Either Party's Option to Terminate the Settlement.** Subject to the obligation(s) of mutual full cooperation, either Party may terminate this Settlement if the Court: (1) enters an order denying Preliminary Approval with prejudice (without the possibility of submitting a new Motion for Preliminary Approval or modified Settlement); (2) enters an order denying Final Approval with prejudice; or (3) declines to enter the final judgment in substantially the same form submitted by the Parties. At all times relevant hereto, the Parties will use their best efforts to finalize the settlement, and to use any other efforts that may become necessary by the order of the court, the LWDA, or otherwise, to effectuate the settlement. In the event either Party elects to terminate the Settlement under this provision, the terminating Party shall give to the other Party (through its counsel) written notice of its decision to terminate no later than 10 business days after receiving notice that one of the enumerated events has occurred. In the event the Settlement is terminated, Defendants shall have no obligation to make any payments to any party, class member or attorney, except that the Parties shall pay the Settlement Administrator equally for services rendered up to the date the Settlement Administrator is notified that the settlement has been terminated.

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DATED: July 7th, 2021

Defendant Mitsubishi Materials U.S.A. Corporation

By: 

Masayuki Urata

Its: President & CEO

DATED: June 25th, 2021

Plaintiff Luis Salinas

By: 
Luis Salinas (Jun 25, 2021 11:35 PDT)

Plaintiff and Class Representative

APPROVED AS TO FORM:

DATED: 7/7/21, 2021

FREEMAN, FREEMAN & SMILEY, LLP

By: 

Teresa R. Tracy
Counsel for Defendant

DATED: June 25, 2021

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Attorneys for Plaintiff and the Settlement Class

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

LUIS SALINAS, as an individual and on behalf of all
others similarly situated,

Plaintiff,

vs.

MITSUBISHI MATERIALS U.S.A.
CORPORATION, a California Corporation ; and
DOES 1 through 100,

Defendants.

Case No. 30-2020-01139886-CU-0E-CXC

NOTICE OF CLASS ACTION SETTLEMENT

To: All current and former non-exempt hourly employees employed by Defendant Mitsubishi Materials U.S.A. Corporation (“Mitsubishi”) in California between April 1, 2017 to <<PRELIM APPROVAL DATE>> (the “Class Period”). Collectively, these employees will be referred to as “Settlement Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Orange County Superior Court (the “Court”) has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Luis Salinas v. Mitsubishi Materials U.S.A. Corporation*, Orange County Superior Court, Case No. 30-2020-01139886-CU-CXC (the “Lawsuit”). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from the Settlement. Mitsubishi’s records show that you were employed by Mitsubishi as a non-exempt employee in California between April 1, 2017 and <<PRELIM APPROVAL DATE>> (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Luis Salinas (“Plaintiff”) brought this lawsuit against Mitsubishi, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class Members, are known as “Class Counsel.”

In the Lawsuit, Plaintiff alleges that Mitsubishi: (1) failed to pay all minimum wages; (2) failed to pay all overtime wages; (3) failed to pay all wages due; (4) failed to issue accurate, itemized wage statements; (4) failed to timely pay all final wages at separation; (5) engaged in unfair unlawful business practices; and (6) is liable for civil penalties under the Private Attorneys General Act (“PAGA”).

Mitsubishi denies that it has done anything wrong and denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Mitsubishi, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in Mitsubishi's best interests and the interests of Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Mitsubishi provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Mitsubishi, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Mitsubishi, your decision about whether to participate in the Settlement will not affect your employment. California law and Mitsubishi's policy strictly prohibit unlawful retaliation. Mitsubishi will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / Settlement Class Members:	Attorneys for Mitsubishi:
HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Tuvia Korobkin (SBN 268066) tkorobkin@haineslawgroup.com Alexandra R. McIntosh (SBN 320904) amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	FREEMAN, FREEMAN & SMILEY Teresa R. Tracy (SBN 89609) teresa.tracy@ffslaw.com Dawn B. Eyerly (SBN 185074) dawn.eyerly@ffslaw.com 1888 Century Park East, Suite 1500 Los Angeles, California 90067 Tel: (310) 255-6100 Fax: (310) 255-6200 ffslaw.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees who worked for Mitsubishi in California during the Class Period. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Mitsubishi, as described below in the “Release” section.

Mitsubishi agreed to pay \$300,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Payment. The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$7,000.00 from the Maximum Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of

up to one-third of the Maximum Settlement Fund (currently estimated to be \$100,000.00) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$17,500.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award \$7,500.00 to Plaintiff as a Class Representative Enhancement Payment. This is meant to compensate Plaintiff for his service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$40,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$30,000.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$10,000.00) will be payable to the Settlement Class as the “PAGA Amount,” described below.

Calculation of Settlement Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above for attorneys’ fees and expenses, administration costs, Plaintiff’s enhancement payment, and the LWDA’s portion of PAGA civil penalties, the balance of the Gross Settlement Amount will form the “Net Settlement Amount,” which will be distributed to Settlement Class Members. The Net Settlement Amount will be divided as follows:

- (i) PAGA Amount: First, each Settlement Class member who was employed by Defendant at any time from April 3, 2019 to <<PRELIM APPROVAL DATE>> (“PAGA Period”) shall receive a portion of the \$10,000 “PAGA Amount” described above, based on his/her proportionate number of pay periods that he/she worked during the PAGA Period. Each Settlement Class member who worked for Defendant as a non-exempt employee during the PAGA Period will receive a portion of the PAGA Amount, regardless whether they opt out of the Settlement.
- (ii) Wage Statement Amount: Next, 45% of the remainder of the Net Settlement Amount (after the PAGA Amount has been deducted) shall be designated as the “Wage Statement Amount.” Each Participating Settlement Class member (i.e., those who do not opt out of the Settlement) who was employed by Defendant at any time between April 1, 2019 to <<PRELIM APPROVAL DATE>> (“Wage Statement Period”), shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked for Defendant as a non-exempt employee during the Wage Statement Period.
- (iii) Waiting Time Amount: Next, 45% of the remainder of Net Settlement Amount (after the PAGA Amount has been deducted) shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each Participating Settlement Class member who separated their employment from Defendant at any time from April 1, 2017 to <<PRELIM APPROVAL DATE>> (“Waiting Time Period”).
- (iv) The final 10% of the remainder of the Net Settlement Amount (after the PAGA Amount has been deducted) will be distributed to each participating Settlement Class member based on his/her proportionate number of workweeks worked during the Class Period.
- (v) For purposes of calculating Settlement payments, if a Settlement Class member worked a portion of a workweek or a portion of a pay period, the Settlement Class member will be credited with that portion of the workweek or pay period worked.

Individual Settlement Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class members. Each Settlement Class member who receives an Individual Settlement Payment must cash that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class members whose checks are not cashed within 180 calendar days after mailing will be distributed by the Settlement Administrator to cy pres recipient, Community Legal Aid SoCal, an organization that provides legal services, including employment law services, to indigent residents of Orange and Los Angeles Counties.

Allocation and Taxes. For tax purposes, each Settlement Award will be allocated as 95% penalties and interest issued pursuant to an IRS Form 1099; and 5% as wages issued pursuant to an IRS Form W-2. Settlement Class members are responsible for the proper income tax treatment of their Settlement payments. The Settlement Administrator, Mitsubishi and its counsel, and Plaintiff and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. All Participating Settlement Class members (i.e., those who do not opt-out of the Settlement) will release and discharge Mitsubishi, its present and former parent and affiliated companies, subsidiaries, shareholders, directors, officers, employees, agents, attorneys, insurers, successors and assigns (“Released Parties”) from any and all claims that were pled in the operative First Amended Complaint, or which could have been pled in the Action based on the factual allegations in the First Amended Complaint, that arose during the Class Period from Settlement Class members’ employment with Defendant. In addition, all Participating Settlement Class members who cash their Settlement checks will release any claims under the Fair Labor Standards Act that could have been pled based on the facts alleged in the Action. Finally, all Settlement Class members (whether or not they opt out) will release Defendant from any and all claims under the PAGA that were pled in the operative First Amended Complaint and that arose during the PAGA Period (defined below) (“PAGA Released Claims”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Settlement Award which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your payment is based on the proportionate number of workweeks or pay periods that you worked during the relevant time periods mentioned above, and whether your employment separated during the Waiting Time Period. The information contained in Mitsubishi’s records regarding this information, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator an executed Request for Exclusion Form no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. A Request for Exclusion Form is included with this Notice. Please note, however, that Settlement Class members may not exclude themselves from the PAGA portion of the Settlement. Thus, even if you submit a Request for Exclusion Form, you will still be bound by the PAGA Released Claims and will receive a portion of the PAGA Amount, if applicable.

Send the Request for Exclusion directly to the Settlement Administrator at **<<ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement, except that they will still be bound by the PAGA portion of the Settlement, as described above.

Objecting to the Settlement. If you do not exclude yourself from the Settlement, you also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection should include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. All objections or other correspondence must state the name and number of the case, which is *Luis Salinas v. Mitsubishi Materials U.S.A. Corporation*, Orange County Superior Court, Case No. 30-2020-01139886.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department C16 of the Orange County Superior Court, located at 700 W Civic Center Drive, Santa Ana, California 92702. The location, date, and time of the Final Approval Hearing may be changed without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department C16 of the Orange County Superior Court, located at 700 W Civic Center Drive, Santa Ana, California 92702. The location, date, and time of the Final Approval Hearing may be changed without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Enhancement Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing**, although any Settlement Class member is welcome to do so. If you wish to appear in person at the Final Approval Hearing, or otherwise wish to come to the Court in person, please visit www.occourts.org for information regarding COVID-19 protocols in effect at the Court.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Orange County Courthouse, located at 700 W Civic Center Drive, Santa Ana, California 92702, during regular business hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, MITSUBISHI, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

EXHIBIT B

NOTICE OF ESTIMATED SETTLEMENT AWARD

LUIS SALINAS v. MITSUBISHI MATERIALS U.S.A. CORPORATION
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2020-011398860-CU-OE-CXC

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Settlement Award:

According to Mitsubishi Materials U.S.A. Corporation's ("Mitsubishi") records:

- (a) You worked _____ workweeks as a non-exempt employee for Mitsubishi from April 1, 2017 and <<PRELIM APPROVAL DATE>>. (the Class Period);
- (b) You worked _____ pay periods as a non-exempt employee for Mitsubishi from April 1, 2019 and <<PRELIM APPROVAL DATE>>. (the Wage Statement Period);
- (c) You worked _____ pay periods as a non-exempt employee for Mitsubishi from April 3, 2019 and <<PRELIM APPROVAL DATE>>. (the PAGA Period); and
- (d) Your employment with Mitsubishi <<DID/DID NOT>> end between April 1, 2017 and <<PRELIM APPROVAL DATE>> (the Waiting Time Period).

Based on the above, your Individual Settlement Payment is estimated to be \$_____.

(IV) If you disagree with items (a) - (c) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Mitsubishi's records, those records will control unless you are able to provide documentation that establishes that Mitsubishi's records are mistaken. If there is a dispute about whether Mitsubishi's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____

Date: _____

EXHIBIT C

REQUEST FOR EXCLUSION FORM

***LUIS SALINAS v. MITSUBISHI MATERIALS U.S.A. CORPORATION
ORANGE COUNTY SUPERIOR COURT
CASE NO. 30-2020-011398860-CU-OE-CXC***

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:

PHOENIX SETTLEMENT ADMINISTRATORS <i>LUIS SALINAS v. MITSUBISHI MATERIALS U.S.A. CORPORATION</i> SETTLEMENT ADMINISTRATOR ADDRESS ADDRESS PHONE FAX
--

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I ***do not*** want to be included in the Settlement of the lawsuit entitled *Luis Salinas v. Mitsubishi Materials U.S.A. Corporation*, Orange County Superior Court Case No. 30-2020-011398860-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *LUIS SALINAS V. MITSUBISHI MATERIALS U.S.A. CORPORATION* LAWSUIT. I UNDERSTAND THAT IF I TIMELY SUBMIT THIS REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT (EXCEPT FOR ANY PORTION OF THE PAGA PAYMENT, IF APPLICABLE).

Name _____ Telephone Number _____

Address _____

Date _____ Signature _____

Last Four Digits of Social Security Number: _____