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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ERNESTO DELGADO,

Plaintiffs,

vs.

KLOECKNER METALS
CORPORATION, et al.

Defendants.

Case No. 2:20-cv-07405-GW-SK

Assigned to Hon. Judge George H. Wu

**DECLARATION OF NICHOLAS
ROSENTHAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

Date: January 3, 2022

Time: 8:30 a.m.

Courtroom: 9D, 9th Floor

1 **DECLARATION OF NICHOLAS ROSENTHAL**

2 I, Nicholas Rosenthal, hereby declare and state as follows:

3 1. I am an attorney at law, duly licensed to practice before all Courts in
4 the State of California, and am with the law firm Diversity Law Group, P.C.,
5 counsel of record for Plaintiff Ernesto Delgado (“Plaintiff”). I have personal
6 knowledge of the facts set forth below and if called to testify I could and would do
7 so competently.

8 2. Plaintiff and his counsel conducted an extensive investigation of the
9 factual allegations involved in this case since the inception. Specifically, Plaintiff’s
10 counsel propounded special interrogatories and requests for production of
11 documents, obtained and reviewed discovery responses and Defendant’s document
12 production, and took the depositions of Defendant’s FRCP 30(b)(6) witnesses
13 regarding its meal and rest break and payroll policies and procedures. Defendant
14 also took the deposition of Plaintiff. Plaintiff’s counsel also communicated with
15 various class members regarding the claims in this lawsuit.

16 3. On Plaintiff’s claim for rest periods, Plaintiff alleged that there was a
17 company policy prohibiting employees from leaving the work premises during rest
18 periods, which in turn amounted to employer control of the employee during a
19 break that is supposed to be completely unencumbered per the *Augustus v. ABM*
20 *Services, Inc.* decision. Plaintiff testified at his deposition that he had specifically
21 been told that employees were not permitted to leave the premises for rest breaks.
22 A true and correct copy of Plaintiff’s deposition transcript is attached hereto as
23 Exhibit B.

24 4. Subsequent thereto, the Parties conducted a mediation with
25 experienced class action mediator Steven J. Serratore on March 22, 2021. In
26 connection with the mediation, Defendant Kloeckner Metals Corporation
27 (“Defendant”) produced data for the entire class, which allowed my office to
28 conduct damage analysis. Counsel also performed extensive damages calculations

1 prior to mediation and went so far as to retain an expert statistician to assist in
2 performing those calculations.

3 5. Based on the data provided by Defendant, there are approximately
4 339 Settlement Class Members. Thus, the class is ascertainable based on
5 Defendant's records.

6 6. After a full day of negotiations, the Parties were unable to reach an
7 agreement. The Parties continued their negotiations over the course of several
8 months, and with the assistance of Mr. Serratore, ultimately reached an agreement
9 to resolve the case on a class-wide basis. The terms of the Parties' agreement are
10 memorialized in the Amended Stipulated Settlement Agreement and Release of
11 Claims ("Settlement Agreement" or "Stipulation"), a true and correct copy of
12 which is attached hereto as Exhibit A.

13 7. The negotiations leading to the execution of the Settlement
14 Agreement have been adversarial, non-collusive, and conducted at arm's-length.
15 Pursuant to the terms of the Settlement Agreement, the Net Settlement Amount
16 ("NSA") (after deduction of attorneys' fees in the amount of up to \$155,000.00,
17 litigation costs up to \$25,000.00, service award in the amount of up to \$10,000.00,
18 PAGA penalties in the amount of \$30,000.00 to the Labor and Workforce
19 Development Agency (the "LWDA"), or 75% of \$40,000.00), and settlement
20 administration costs in the amount of approximately \$11,000.00) is approximately
21 \$234,000.00.

22 8. Each side has apprised the other of their respective factual
23 contentions, legal theories and defenses, resulting in extensive arm's-length
24 negotiations taking place among the Parties. Although Plaintiff's counsel are
25 certain that they can prevail on class certification, as well as on the merits, they
26 recognize the inherent risks in drawn-out litigation, including that Plaintiff could
27 fail to establish liability. Based on their own independent investigation and
28 evaluation, the Parties and their respective counsel are of the opinion that the

1 settlement for the consideration and on the terms set forth in the Joint Stipulation
2 of Class and Representative Action Settlement Agreement and Release
3 (“Settlement Agreement”) are fair, reasonable, and adequate and the settlement is
4 in the best interests of the class and Defendant in light of all known circumstances
5 and the expenses and risks inherent in litigation.

6 9. As the Court may recall, this matter settled after Plaintiff’s Motion for
7 Class Certification had already been filed, which demonstrates not only the time
8 and effort put into this matter by Class Counsel, but also that provides some
9 indication that Defendant felt pressure to resolve this matter before a ruling was
10 issued on class certification. Plaintiff’s counsel have maintained and continue to
11 maintain an adversarial relationship with Defendant throughout the course of this
12 litigation

13 10. Plaintiff also believes in the fairness of the settlement that is based on
14 factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one
15 or more of the causes of action or theories alleged in the operative Complaint and
16 the possibility of appeals.

17 11. Because this is a non-reversionary settlement, all monies resulting
18 from Settlement Class Members who elect to opt-out will be redistributed to the
19 Net Settlement Amount for payment to Participating Class Members. The amount
20 each person could receive may increase or decrease depending on a number of
21 factors, including whether there are any opt-outs and the amounts awarded for fees,
22 costs, and the class representative service award. The approximate amount each
23 person will be entitled to will not be known until the class data is transferred to the
24 Settlement Administrator for processing.

25 12. Based on all of the evidence and data, Plaintiff’s counsel was able to
26 perform calculations based on the allegations and value the maximum damages and
27 penalties at issue. The class consists of approximately 339 individuals. Based on
28 the data produced, it was calculated that the realistic damages for the Class was

1 approximately, \$5,584,862, which is based on approximately \$1,559,572 owed due
2 to the improper meal and breaks, approximately \$3,602,033 owed due to
3 noncompliant rest breaks, approximately \$ 174,567 for potential waiting time
4 penalties, and approximately \$ 248,600 for inaccurate wage statements. With
5 respect to the PAGA penalties, which are discretionary and subject to reduction by
6 this Court, the potential maximum is approximately \$ 2,364,500. If this Court
7 reduced the PAGA penalties by 90%, as the trial court did in *Carrington*, then the
8 total exposure would be only \$236,450. Although Plaintiff believes that he can
9 prevail on liability, given the uncertainty of litigation, Plaintiff submits that this
10 settlement is fair, adequate, and reasonable.

11 13. I am one of the primary attorneys on this matter. My qualifications are
12 as follows: I received my JD from University of Southern California Gould School
13 of Law in 2009. Upon graduation, I practiced law as an associate at Seyfarth Shaw
14 LLP, representing corporate clients in both single-plaintiff and wage hour class
15 actions. In 2014, I began as an associate at Diversity Law Group.

16 14. I have handled a number of wage and hour matters including class
17 actions and multiple-plaintiff actions. I have been named as Class Counsel in a
18 number of class actions that have been granted certification or preliminary or final
19 approval by the Superior Courts of Los Angeles County, Orange County, Alameda
20 County, and Monterey County, the United States District Court for the Central
21 District of California, and the United States District Court for the Northern District
22 of California. These cases include, but are not limited to: *Diller v. Under Armour*
23 *Retail, Inc.*, Santa Clara County Superior Court Case No. 114-CV-265729, *Dall v.*
24 *Post Alarm Systems*, Los Angeles County Superior Court Case No. BC598528,
25 *Lopez v. Imperial Body Shop, Inc.*, Orange County Superior Court Case No. Case
26 No. 30-2015-00816193-CU-OE-CXC, *Hughes v. Lincare, Inc., et al.*, Monterey
27 County Superior Court Case No. M124764, *Pittman v. Martinez Steel Corporation*,
28 San Bernardino County Superior Court Case No. CIVDS1823132, *Della Maggiora*

1 *v. Watsonville Community Hospital*, Santa Cruz County Superior Court Case No.
2 18CV00191, *Randolph v. Pacific Racing Association*, Alameda County Superior
3 Court Case No. RG18908139, *Morones v. Bimbo Bakeries USA, Inc.*, Sacramento
4 County Superior Court Case No. 34-2018-00245481-CU-OE-GDS, *Chavez v.*
5 *Converse, Inc.*, United States District Court – Northern District of California Case
6 No. 15-cv-03746-NC, and *Rodriguez v. Nike Retail Services, Inc.*, United States
7 District Court – Northern District of California Case No. 5:14-CV-1508 BLF.

8 15. The Parties have agreed upon using Phoenix Settlement
9 Administrators (“Phoenix”) as the settlement administrator for this matter. Further,
10 notice by U.S. mail, along with the National Change of Address search, has been
11 approved by numerous courts and, therefore, the Parties agreed to notice by U.S.
12 mail.

13 I declare under penalty of perjury under the laws of the State of California
14 and the United States that the foregoing is true and correct.

15 Executed on December 20, 2021, at Los Angeles, California.

16 

17 _____
18 Nicholas Rosenthal
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EXHIBIT A

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ERNESTO DELGADO, as individuals
and on behalf of all others similarly
situated,

Plaintiff,

v.

**KLOECKNER METALS
CORPORATION,** a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendant.

CASE NO. 2:20-cv-07405-GW-SK

Assigned to Hon. Judge George H. Wu

CLASS ACTION

**AMENDED STIPULATED
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This Stipulated Settlement Agreement and Release of Claims is entered into by and between Plaintiff Ernesto Delgado ("Plaintiff"), individually and on behalf of all others similarly situated, and Defendant Kloeckner Metals Corporation ("Defendant" or "Kloeckner") and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers to the case entitled *Ernesto Delgado v. Kloeckner Metals Corporation*, United States District Court for the Central District of California, Case No. 2:20-cv-07405-GW-SK.

2. "Agreement," "Stipulation," "Stipulation of Settlement," or "Settlement Agreement," or shall mean this Stipulated Settlement Agreement and Release of Claims, including any attached Exhibits.

3. "Class Counsel" refers to Larry W. Lee, Kristen M. Agnew and Nicholas Rosenthal of Diversity Law Group, P.C.

4. "Class List and Data" means information regarding all Settlement Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator, subject to the Parties' Stipulated Protective Order in this matter (ECF No. 15), within fifteen (15) days after entry of the Preliminary Approval Order. The Class List and Data shall be formatted as an Excel spreadsheet and shall include the Settlement Class Members' full names; last known addresses; telephone numbers (if any); Social Security Numbers; and the total Weeks Worked during the Class Period for each Settlement Class Member.

5. "Class Period" or "Released Period" means the period of April 6, 2016 through October 4, 2021.

6. "Class Representative" and/or "Plaintiff" means and refers to Plaintiff Ernesto Delgado.

7. "Complaint" refers to the operative Class and Representative Action Complaint originally filed on or about June 10, 2020, in the matter of *Ernesto Delgado*

1 *v. Kloeckner Metals Corporation, et al.*, in the Superior Court of California, County
2 of Los Angeles, Case No. 20STCV22503 and which subsequently removed to this
3 court on August 17, 2020 (U.S. District Court for the Central District of California,
4 Case No. 2:20-cv-07405-GW-SK.)

5 8. "Court" or "Judge" means the United States District Court for the Central
6 District of California.

7 9. "Defendant" means and refers to Defendant Kloeckner Metals
8 Corporation.

9 10. "Defendant's Counsel" or "Defense Counsel" means and refers to Daniel
10 B. Chammas and Min K. Kim of Ford & Harrison, LLP.

11 11. "Effective Date" means the later of the following: (1) the date the Court
12 grants Final Approval of the Settlement if no valid objections have been filed; (2) if one
13 or more valid objections have been filed but no appellate proceedings have been initiated,
14 thirty (30) days after the date the Court enters an order granting Final Approval of the
15 Settlement; or (3) if one or more valid objections have been filed, and an appeal, writ, or
16 other appellate proceeding has been initiated, the date on which any appeal, writ, or other
17 appellate proceedings has been finally and conclusively dismissed.

18 12. "Final" means that the Settlement has been finally approved by the
19 Court, and the Judgment has been entered by the Court.

20 13. "Final Approval Hearing" means the hearing to be conducted by the
21 Court to determine whether to approve finally and implement the terms of this
22 Agreement.

23 14. "Gross Settlement Amount" means the maximum settlement amount of
24 Four Hundred Sixty-Five Thousand Dollars and Zero Cents (\$465,000.00) to be paid
25 by Defendant as a result of this Agreement. The Gross Settlement Amount excludes
26 any appropriate and lawfully required employer-side payroll taxes owed by Defendant
27 as a result of the Individual Settlement Payments, which Defendant shall be separately
28 responsible for apart from the Gross Settlement Amount.

1 15. “Judgment” means the Court entering a final order granting approval of
2 the Settlement and a judgment of dismissal.

3 16. “Individual Settlement Amount” means the amount payable from the Net
4 Settlement Amount to each Participating Class Member, pursuant to Paragraph 41(c)
5 below.

6 17. “Net Settlement Amount” shall have the meaning ascribed to it in
7 Paragraph 41(b) below.

8 18. “Notice” means the notice of proposed class settlement and setting of a
9 Final Approval Hearing that will be sent to the Settlement Class Members,
10 substantially in the form attached as Exhibit A.

11 19. “Objecting Settlement Class Member” means a Settlement Class
12 Member, other than Plaintiff, who submits a valid and timely objection to the terms
13 of this Agreement, pursuant to Paragraph 59(c) below.

14 20. “PAGA Period” means the period of May 20, 2019 through October 6,
15 2021.

16 21. “Participating Class Member” or “Participating Class” means any and all
17 Settlement Class Members -who have not submitted a valid and timely Request for
18 Exclusion.

19 22. “Parties” or “Settling Parties” mean Plaintiff, on behalf of himself and
20 the Participating Class, and Defendant, collectively.

21 23. “Preliminary Approval Date” means the date the Court approves the
22 Stipulation of Settlement, and the exhibits thereto, and enters the Preliminary
23 Approval Order.

24 24. “Preliminary Approval Order” means the judicial Order to be entered by
25 the Court, upon the application or motion of the Plaintiff, preliminarily approving this
26 Settlement and providing for the issuance of the Notice to the Settlement Class, an
27 opportunity to opt out of the Settlement, an opportunity to submit timely objections
28 to the Settlement, and setting a hearing on the fairness of the terms of Settlement,

1 including approval of attorneys' fees and costs. Defendant will not object to Plaintiff's
2 motion for preliminary approval, but will be provided with an opportunity to review
3 and comment upon the motion before it is filed.

4 25. "QSF" means the Qualified Settlement Fund set up by the Settlement
5 Administrator for the benefit of the Participating Class, and from which the settlement
6 payments shall be made.

7 26. "Released Claims" by the Participating Class Members means:

8 a. All claims, including penalties, costs and attorneys' fees related
9 thereto, that were or could have been brought under the facts and allegations made in
10 the operative Complaint for violation of Labor Code sections 226.7 and 512, that
11 accrued during the Class Period;

12 b. All claims, including penalties, costs and attorneys' fees related
13 thereto, that were or could have been brought under the facts and allegations made in
14 the operative Complaint for violation of Labor Code section 226, that accrued during
15 the period of April 6, 2019 through October 4, 2021;

16 c. All claims, including penalties, costs and attorneys' fees related
17 thereto, that were or could have been brought under the facts and allegations made in
18 the operative Complaint for violation of Labor Code sections 201, 202 and 203, that
19 accrued during the period of June 26, 2018 through October 4, 2021;

20 d. All claims for penalties under the California Private Attorneys'
21 General Act, including costs and attorneys' fees related thereto, predicated on the
22 violation of Labor Code sections 201, 202, 203, 212, 213, 226(a), 226.3, 226.7 and
23 512, that accrued during the PAGA Period.

24 The Parties expressly acknowledge that the Released Claims encompass all claims
25 alleging that Defendant improperly rounded meal periods, that Defendant improperly
26 rounded time generally, that employees were not permitted to leave the work site
27 during their rest periods, and that separated employees received their final wages on
28 a pay card that necessitated them paying a fee in order to retrieve their wages.

1 27. "Released Parties" means Defendant and their present and former
2 officers, directors, members, managers, shareholders, agents, subsidiaries, insurers,
3 operators, partners, professional employment organizations, successors and
4 assignees.

5 28. "Request for Exclusion" shall have the meaning ascribed to it in
6 Paragraph 59(a) below.

7 29. "Response Deadline" is 45 calendar days from the date the Notice is
8 mailed to the Settlement Class Members.

9 30. "Service Payment" or "Service Award" means the amount approved by
10 the Court to be paid to the Class Representative in addition to his Individual
11 Settlement Amount as a Participating Class Member.

12 31. "Settlement Administrator" means and refers to Phoenix Class Action
13 Administration Solutions.

14 32. "Settlement Administration Costs" means the costs payable from the
15 Gross Settlement Amount to the Settlement Administrator for administering this
16 Settlement, including, but not limited to, printing, distributing, and tracking
17 documents for this Settlement, tax reporting, distributing the Gross Settlement
18 Amount, and providing necessary reports and declarations, as requested by the
19 Parties. The Settlement Administration Costs shall be paid from the Gross Settlement
20 Amount, including, if necessary, any such costs in excess of the amount represented
21 by the Settlement Administrator as being the maximum costs necessary to administer
22 the Settlement. Any portion of the Settlement Administration Costs not used or
23 approved by the Court shall be added to the Net Settlement Amount.

24 33. "Settlement Class" or "Settlement Class Members" means all persons
25 employed by Defendant in California as an hourly non-exempt employee during the
26 Class Period.

27 34. "Weeks Worked" for each Settlement Class Members means any
28 workweek in which the Settlement Class Member worked at least one (1) shift during

the Class Period.

B. General Terms

35. The Class and Representative Action Complaint was filed on June 10, 2020, in Los Angeles County Superior Court and alleges claims for: (1) violation of Labor Code §§ 226.7 and 512 (failure to provide an off-duty 30-minute meal break to employees who worked 5 hours or longer in one shift, and a second off-duty 30-minute meal breaks to employees who worked more than 10 hours in one shift); (2) violation of Labor Code §226.7 (failure to provide off-duty 10-minute rest breaks to employees who worked 3.5 hours or longer in one shift); (3) violation of Labor Code § 226(a) (failure to provide accurate and complete wage statements); (4) violation of Labor Code §§ 201-203 (failure to pay final wages in a timely manner to separated employees); (5) violation of Cal. Labor Code §§2698, *et seq.* under the Private Attorneys General Act (“PAGA”); and (6) violation of Business and Professions Code § 17200, *et seq.*

36. Defendant denies Plaintiff's claims and allegations and contend that the Action is not suitable for class certification.

37. The Class Representative believes he can proceed with his representative and class claims, that the Action is meritorious, and that class certification is appropriate.

38. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of discovery, including Defendant's written policies and practices and the production of payroll and timekeeping records for Settlement Class Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendant. Based on the foregoing data and on their own independent investigation and

1 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
2 consideration and on the terms set forth in this Stipulation of Settlement is fair,
3 reasonable, and adequate and is in the best interest of the Class Members in light of
4 all known facts and circumstances, including the risk of significant delay and
5 uncertainty associated with litigation, various defenses asserted by Defendant, and
6 numerous potential appellate issues.

7 39. On March 22, 2021, Plaintiff and Defendant participated in mediation in
8 Los Angeles, California before Steven Serratore, who is one of the most experienced
9 class action mediators in California. Although the parties were unable to reach a
10 settlement following a full-day mediation, the Parties subsequently reached a
11 settlement after accepting a mediator's proposal that was issued on August 5, 2021 by
12 Steven Serratore.

13 40. The Parties agree that neither the Parties' Settlement, this Agreement,
14 nor the acts to be performed or judgments to be entered pursuant to the terms of the
15 Settlement and Agreement, shall be construed as an admission by Defendant of any
16 wrongdoing or violation of any statute or law or liability on the claims or allegations
17 in the Action.

18 **C. Terms of Settlement**

19 41. The financial terms of the Settlement are as follows:

20 (a) Gross Settlement Amount: The Parties agree to settle this Action
21 for Four Hundred Sixty-Five Thousand Dollars and Zero Cents (\$465,000.00). The
22 Gross Settlement Amount is the maximum amount that will be paid, and includes
23 Individual Settlement Amounts, attorneys' fees of Class Counsel of up to
24 \$155,000.00, costs and expenses not to exceed \$25,000.00, the Service Payment to
25 the Class Representative, reasonable Settlement Administration Costs, and payment
26 to the California Labor & Workforce Development Agency ("LWDA") for PAGA
27 penalties. Notwithstanding the foregoing, Defendant shall separately pay its share of
28 payroll taxes and withholdings on the portion of the Individual Settlement Amounts

1 that are allocated and treated as wages.

2 (b) Net Settlement Amount: The "Net Settlement Amount" is defined
3 as the Gross Settlement Amount less attorneys' fees and litigation costs as approved
4 and awarded by the Court, the Service Payment to the Class Representative as
5 awarded by the Court, the Settlement Administration Costs, and payment to the
6 LWDA for PAGA penalties. In the event that the Court reduces the attorneys' fees,
7 costs, expenses or Service Award, the difference shall be placed in the Net Settlement
8 Amount and allocated to the Participating Class.

9 (c) Individual Settlement Amounts for the Settlement Class: The
10 Individual Settlement Amount for each Settlement Class Member will be calculated
11 by the Settlement Administrator using the Class List and Data provided by Defendant
12 as follows. The Settlement Administrator will determine the aggregate number of
13 Weeks Worked by Settlement Class Members during the Class Period ("Total Weeks
14 Worked"). The Settlement Administrator will then divide the Net Settlement Amount
15 by the Total Weeks Worked to determine a per workweek value ("Workweek Value").
16 The Workweek Value will be multiplied by the number of Weeks Worked by each
17 Settlement Class Member during the Class Period to determine the distribution, prior
18 to legal deductions, for each Settlement Class Member. If there are any timely
19 submitted Requests for Exclusion, the Settlement Administrator shall proportionately
20 increase the Individual Settlement Amounts for each Participating Class Member so
21 that the amount actually distributed to Participating Class Members equals 100% of
22 the Net Settlement Amount.

23 (d) Allocation of Individual Settlement Amounts: The Individual
24 Settlement Amounts will be allocated based on the allegations in the Action as
25 follows: twenty percent (20%) percent will be paid as wages subject to withholding
26 of all applicable local, state and federal taxes; and eighty percent (80%) will be paid
27 as interest and as penalties from which no taxes will be withheld. The Settlement
28 Administrator will issue to each Participating Class Member an Internal Revenue

1 Service Form W-2 and comparable state forms with respect to the wage allocation
2 and a Form 1099 with respect to the penalties and interest allocations.

3 (e) Service Payment to Class Representative: The amount, if any,
4 awarded to the Class Representative as Service Payment will be set by the Court in
5 its discretion, not to exceed \$10,000. Defendant agrees not to oppose this request.
6 The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount.
7 The Class Representative will be bound by a General Release, set forth below, in
8 exchange for this payment and will be issued IRS Form 1099 in connection with this
9 payment. Plaintiff shall be solely and legally responsible to pay any and all applicable
10 taxes on these payments. The Parties agree that any amount awarded as the Service
11 Payment to Plaintiff less than the requested amount shall not be a basis for Class
12 Counsel to void this Stipulation. Should the Court approve a lesser amount for the
13 Service Payment, the difference shall be added to the Net Settlement Amount to be
14 distributed to the Participating Class Members.

15 (f) Attorneys' Fees and Costs: Class Counsel will seek an award of
16 attorneys' fees of up to one-third (33.33%) of the Gross Settlement Amount, plus
17 reasonable litigation costs and expenses not to exceed \$25,000. Should the Court
18 approve a lesser amount than what is sought by Class Counsel, the difference shall be
19 added to the Net Settlement Amount to be distributed to the Participating Class
20 Members. Any Court order awarding less than the amount sought by Class Counsel
21 shall not be grounds to rescind the Settlement Agreement or otherwise void the
22 Settlement. The Settlement Administrator shall issue to Class Counsel an IRS Form
23 1099 reflecting the amount of attorneys' fees and costs awarded by the Court.

24 (g) Settlement Administration Costs: The fees and other charges of
25 the Settlement Administrator will be paid from the Gross Settlement Amount not to
26 exceed \$11,000.

27 (h) PAGA Penalties: The Parties agree that \$40,000 is allocated to
28 PAGA penalties, and is to be paid from the Gross Settlement Amount, subject to Court

1 approval. Of this amount, \$30,000 (75%) shall be paid to the LWDA in satisfaction
2 of Plaintiff's claims for penalties under the Private Attorney General Act of 2004
3 ("PAGA") and \$10,000 (25%) will be included in the Net Settlement Amount,
4 payable to the Participating Class Members.

5 (i) Tax Liability: Class Counsel and Defendant make no
6 representations as to the tax treatment or legal effect of payments called for hereunder,
7 and Plaintiff and the Settlement Class Members are not relying on any statement or
8 representation by Class Counsel or Defendant in this regard. Plaintiff and
9 Participating Class Members understand and agree that they will be solely responsible
10 for their own tax obligations. In accordance with both State and Federal tax laws, the
11 Settlement Administrator shall withhold such sums from each Participating Class
12 Member's Individual Settlement Amount as is required in order to comply with the
13 Participating Class Member's and Defendant' tax obligations. Portions of any
14 Individual Settlement Amount not subject to withholding will be issued with a 1099
15 form. After appropriate tax withholding from Individual Settlement Amounts, the net
16 payment to be received by each Participating Class Member shall be designated as
17 the "Net Payment", and the sum shall be paid as provided in this Agreement. The
18 Settlement Administrator shall report the taxes withheld from the wages of each
19 Participating Class Member as required by law via a W-2 form, and shall immediately
20 pay over all such withheld funds to the appropriate State and Federal taxing
21 authorities. The Settlement Administrator shall provide each Participating Class
22 Member with appropriate documentation setting forth the amount of any of the
23 Participating Class Member's tax or other payment withheld in accordance with State
24 and Federal tax requirements. Participating Class Members shall be responsible for
25 remitting to State and/or Federal taxing authorities any applicable other taxes due and
26 shall hold Defendant harmless and indemnify them for any liabilities, costs and
27 expenses, including reasonable attorneys' fees, assessed or caused by any such taxing
28 authority relating in any way to the tax treatment of the payments made pursuant to

1 this Agreement.

2 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
3 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
4 “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
5 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
6 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
7 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
8 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
9 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
10 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR
11 BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED
12 STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
13 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
14 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND
15 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION
16 WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT
17 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
18 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
19 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY
20 ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
21 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING
22 PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS
23 IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
24 ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS
25 OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
26 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX
27 TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
28 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

1 42. “Non-Reversionary” Settlement. This is a “non-reversionary”
2 settlement. Under no circumstances will any portion of the Gross Settlement Amount
3 revert to Defendant. Participating Class Members will not have to make a claim in
4 order to receive an Individual Settlement Amount. Distributions, in the form of
5 Individual Settlement Amounts, will be made directly to each Participating Class
6 Member.

7 43. Class Counsel and Plaintiff believe that the Settlement is fair, adequate,
8 and reasonable settlement of the Action, and will so represent the same to the Court.

9 **D. Release by the Settlement Class**

10 44. Upon payment of the Gross Settlement Amount by Defendant, and
11 except as to such rights or claims as may be created by this Stipulation of Settlement,
12 each Participating Class Member will forever completely release and discharge the
13 Released Parties from the Released Claims for the Release Period. Each Participating
14 Class Member will be deemed to have made the foregoing release as if by manually
15 signing it.

16 45. Plaintiff and Defendant intend that the Settlement described in this
17 Agreement will release and preclude any further claim, whether by lawsuit,
18 administrative claim or action, arbitration, demand, or other action of any kind, by
19 each and all of the Participating Class Members to obtain a recovery for any and all
20 of the Released Claims. The Settlement Class Members shall be so notified in the
21 Notice. This paragraph does not apply to any Settlement Class Member who timely
22 and validly opts out of the Settlement.

23 46. Class Representative, on behalf of himself and the Settlement Class,
24 acknowledges and agrees that the claims for unpaid wages in the Action, and untimely
25 payment of wages in the Action, are disputed, and that the payments set forth herein
26 constitute payment of all sums allegedly due to him. Class Representative, on behalf
27 of himself and the Settlement Class, acknowledges and agrees that California Labor
28 Code Section 206.5 is not applicable to the Parties hereto. That section provides in

1 pertinent part as follows:

2 An employer shall not require the execution of any release
3 of any claim or right on account of wages due, or to become
4 due, or made as an advance on wages to be earned, unless
5 payment of those wages has been made.

6 **E. Release by Class Representative**

7 47. As a material inducement to Defendant to enter into this Settlement
8 Agreement, Class Representative does hereby, for himself and for his respective
9 spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators,
10 trustees, conservators, guardians, personal representatives, and assigns forever and
11 completely release and discharge the Released Parties from any and all charges,
12 complaints, claims, liabilities, obligations, promises, agreements, controversies,
13 damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and
14 expenses (including back wages, statutory penalties, civil penalties, liquidated
15 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature
16 whatsoever, from the beginning of time through the execution of this Stipulation,
17 whether known or unknown, suspected or unsuspected, including but not limited to
18 all claims arising out of, based upon, or relating to Class Representative's
19 employment with Defendant or the remuneration for or termination of such
20 employment (collectively, the "Plaintiff's Released Claims").

21 48. Without limiting the generality of the foregoing, Class Representative
22 expressly releases all claims or rights against Released Parties arising out of or
23 relating to alleged violations of any contracts, express or implied (including but not
24 limited to any contract of employment); any contract or covenant of good faith and
25 fair dealing (express or implied); any tort, including any claim for improper or
26 unauthorized wage deductions, failure to pay the applicable wage, unpaid wages,
27 unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and
28 alleged "off the clock" work under federal and state law, including California Labor

1 Code Sections 204 and 558, waiting time penalties pursuant to California Labor
2 Section 203, damages or penalties pursuant to California Labor Code Section 226,
3 meal period and rest break payments and penalties pursuant to California Labor Code
4 Sections 226.7 and 512, failure to provide itemized wage statements pursuant to
5 California Labor Code Section 226, statutory or civil penalties pursuant to California
6 Labor Code Sections 210, unfair competition and unfair business practices pursuant
7 to Business and Professions Code Section 17200 et seq., interest and costs pursuant
8 to California Civil Code Section 3287 and California Labor Code Section 218.6,
9 statutory or common law rights to attorneys' fees and costs, including those pursuant
10 to California Labor Code Section 1194 et seq.; claims under the Private Attorneys
11 General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged violation or
12 breach of any other state or federal statute, rule and or regulation; including all
13 applicable Industrial Welfare Commission Wage Orders, and all similar causes of
14 action, including but not limited to, any claim for restitution, equitable relief, interest,
15 penalties, costs or attorneys' fees in connection with any of the foregoing, negligent
16 infliction of emotional distress, intentional infliction of emotional distress, and
17 defamation; any "wrongful discharge," "constructive discharge," and "retaliation"
18 claims; any claims relating to any breach of public policy; any legal restrictions on
19 Defendant's right to discharge employees; and any federal, state, or other
20 governmental statute, regulation, or ordinance, including, without limitation: (1) Title
21 VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin
22 discrimination or harassment, including retaliation for reporting discrimination or
23 harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. §
24 209(d)(1) (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq.
25 (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et
26 seq. (family/medical leave); (6) California Fair Employment and Housing Act, Cal.
27 Government Code § 12900 et seq. (discrimination or harassment in employment
28 and/or housing, including discrimination or harassment based on race, religious creed,

1 color, national origin, ancestry, disability, marital status, sex (including pregnancy),
2 or age, including retaliation for reporting discrimination or harassment); (7)
3 California Family Rights Act, Cal. Government Code § 12945.1 et seq.
4 (family/medical leave); (8) California Labor Code, including Section 1720 et seq., or
5 any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race,
6 color, religion, sex, and national origin discrimination or harassment); (10) Executive
7 Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation
8 Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; (13)
9 Employee Retirement Income Security Act, 29 U.S.C. § 1000 et seq. (employee
10 benefits); (14) the California Business & Professions Code; (15) the California
11 Workers' Compensation and Insurance Act, claims arising under the Worker
12 Adjustment and Retraining Notification Act, and any other claim based upon any act
13 or omission of the Defendant and the Released Parties occurring prior to the Effective
14 Date of this Agreement. Class Representative agrees that there is a risk that any injury
15 that he may have suffered by reason of the Released Parties' relationship with him
16 might not now be known, and there is a further risk that said injuries, whether known
17 or unknown at the date of this Settlement Agreement, might possibly become
18 progressively worse, and that as a result thereof further damages may be sustained.
19 Nevertheless, Class Representative agrees to forever and fully release and discharge
20 the Released Parties, and understands that by the execution of this Settlement
21 Agreement no further claims for any such injuries that existed at the time of the
22 execution of this Settlement Agreement may ever be asserted by Class Representative
23 with respect to claims arising in the time period from the beginning of time to the
24 execution of this Settlement Agreement.

25 49. The Plaintiff's Released Claims include all claims, whether known or
26 unknown. Even if Plaintiff discovers facts in addition to or different from those that
27 he now knows or believes to be true with respect to the subject matter of Plaintiff's
28 Released Claims, those claims will remain released and forever barred. Thus, Plaintiff

1 expressly waives and relinquishes all rights and benefits afforded by Section 1542 of
2 the Civil Code of the State of California and does so understanding and
3 acknowledging the significance of the waiver of Section 1542. Section 1542 of the
4 Civil Code of the State of California states:

5 **A GENERAL RELEASE DOES NOT EXTEND TO**
6 **CLAIMS THAT THE CREDITOR OR RELEASING**
7 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST**
8 **IN HIS OR HER FAVOR AT THE TIME OF**
9 **EXECUTING THE RELEASE AND THAT, IF**
10 **KNOWN BY HIM OR HER, WOULD HAVE**
11 **MATERIALLY AFFECTED HIS OR HER**
12 **SETTLEMENT WITH THE DEBTOR OR**
13 **RELEASED PARTY.**

14
15 **F. Interim Stay of Proceedings**

16 50. Pending completion of all of the prerequisites necessary to effectuate this
17 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in
18 the Action except such as are necessary to effectuate the Settlement.

19 **G. Notice Process**

20 51. Appointment of Settlement Administrator. The Parties have agreed to
21 the appointment of the Settlement Administrator to perform the duties of a settlement
22 administrator. The Settlement Administrator shall provide the following services:

- 23 a. Establish and maintain a Qualified Settlement Fund account;
- 24 b. Calculate the Total Weeks Worked and Workweek Value;
- 25 c. Verify the last known address for each Settlement Class Member
26 through a generally utilized, national address update database prior to mailing the
27 Notice;
- 28 d. Print and mail the Notice;

1 e. Conduct additional address searches for mailed Notices that are
2 returned as undeliverable and, to the extent new and more current addresses are found,
3 also reprint and re-mail the Notice accordingly;

4 f. Establish and maintain a toll-free informational telephone support
5 line to assist Settlement Class Members who have questions regarding the Notice;

6 g. Field inquiries from Settlement Class Members, and administer
7 any Requests for Exclusion;

8 h. Provide weekly status reports to counsel for the Parties, including:
9 (a) the number of Notices mailed (including information regarding undeliverable
10 and/or emailed Notices); (b) the number of disputes received (and sending copies of
11 said disputes); (c) the number of objections received; and (d) the number of Requests
12 for Exclusion received;

13 i. Calculate Individual Settlement Payments;

14 j. Distribute and pay the Service Payment, Individual Settlement
15 Payments, the PAGA penalties to the LWDA, and fees and costs awarded to Class
16 Counsel;

17 k. Set up all necessary tax accounts and forwarding all payroll taxes
18 and penalties to the appropriate government authorities;

19 l. Issue tax forms and addressing employer and employee-side
20 payroll taxes as provided in Paragraph 41(i); and

21 m. Provide declarations and/or other information to the Court as
22 requested.

23 52. Disputes Regarding Settlement Administration. Any and all disputes
24 relating to administration of the Settlement by the Settlement Administrator (except
25 for disputes regarding Class List and Data) shall be referred to the Court, if necessary,
26 which will have continuing jurisdiction over the terms and conditions of this
27 Stipulation of Settlement, until Plaintiff and Defendant notify the Court that all
28 payments and obligations contemplated by this Stipulation of Settlement have been

1 fully carried out. Prior to presenting any issue to the Court, counsel for the Parties
2 will confer in good faith to resolve the dispute without the necessity of Court
3 intervention.

4 53. Class Data. Within fifteen (15) days after entry of the Preliminary
5 Approval Order, Defendant shall provide the Class List and Data, subject to the
6 Stipulated Protective Order, to the Settlement Administrator. Pursuant to the
7 Stipulated Protective Order, the Class List and Data provided to the Settlement
8 Administrator will remain confidential and will not be used or disclosed to anyone,
9 except as required by applicable tax authorities or by order of the Court, or pursuant
10 to Defendant's express written consent.

11 54. Notice. The Notice as approved by the Court, shall be sent by the
12 Settlement Administrator to the Settlement Class Members, by first class mail, in
13 English, within ten (10) calendar days following the Settlement Administrator's
14 receipt of the Class List and Data. The Settlement Administrator shall use standard
15 devices, including a skip trace, to obtain forwarding addresses of Settlement Class
16 Members if any envelopes are returned.

17 55. Returned Notice. The Settlement Administrator will take steps to ensure
18 that the Notice is received by all Settlement Class Members, including utilization of
19 the National Change of Address Database maintained by the United States Postal
20 Service to review the accuracy of and, if necessary, update a mailing address. Notices
21 will be re-mailed to any Settlement Class Member for whom an updated address is
22 located within ten (10) calendar days following both the Settlement Administrator
23 learning of the failed mailing and its receipt of the updated address. The Notice shall
24 be identical to the original Notice, except that it shall notify the Settlement Class
25 Member that the exclusion (opt-out) request or objection must be returned by the later
26 of the Response Deadline or fifteen (15) days after the re-mailing of the Notice.

27 56. Presumption Regarding Receipt of Notice. It will be conclusively
28 presumed that if an envelope has not been returned within thirty (30) days of the

1 mailing that the Settlement Class Member received the Notice.

2 57. Disputes Regarding Class Data. Settlement Class Members are deemed
3 to participate in the Settlement, unless they opt-out. The Notice will inform Settlement
4 Class Members of his/her estimated Individual Settlement Amount and the number of
5 Weeks Worked he/she worked during the Class Period. Settlement Class Members
6 may dispute their Weeks Worked if they feel they worked more workweeks in the
7 Class Period in California than Defendant's records show by timely submitting
8 evidence to the Settlement Administrator. Defendant's records will be presumed
9 determinative absent reliable evidence to rebut Defendant's records, but the
10 Settlement Administrator will evaluate the evidence submitted by the Settlement
11 Class Member and provide the evidence submitted to Class Counsel and Defense
12 Counsel who agree to meet and confer in good faith about the evidence to determine
13 the Settlement Class Member's actual number of workweeks and estimated Individual
14 Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they
15 agree to submit the dispute to the Settlement Administrator to render a final decision.
16 Settlement Class Members will have until the Response Deadline to dispute Weeks
17 Worked, object or opt out, unless extended by the Court.

18 58. Declaration of Due Diligence. The Settlement Administrator shall
19 provide counsel for the Parties, at least twenty-five (25) days prior to the Final
20 Approval Hearing, a declaration of due diligence and proof of mailing with regard to
21 the mailing of the Notice.

22 59. Settlement Class Members' Rights. Each Settlement Class Member will
23 be fully advised of the Settlement, the ability to object to the settlement, and the ability
24 to opt-out or request exclusion from the Settlement. The Notice will inform the
25 Settlement Class Members of the Court-established deadlines for filing objections or
26 requesting exclusion from the Settlement in accordance with the following guidelines:

27 (a) Requests for Exclusion from Settlement Class. Any Settlement
28 Class Member, other than Plaintiff, may request to be excluded from the Settlement

1 Class by submitting a "Request for Exclusion" to the Settlement Administrator. A
2 Request for Exclusion must: (1) contain the name, address, telephone number and the
3 last four digits of the Social Security number of the Settlement Class Member
4 requesting exclusion; (2) clearly state that the Settlement Class Member does not wish
5 to be included in the Settlement; (3) be returned by mail to the Settlement
6 Administrator at the specified address; and, (4) be postmarked on or before the
7 Response Deadline.

8 The Request for Exclusion must be returned by mail to the Settlement
9 Administrator at the specified address. Any such Request must be made in
10 accordance with the terms set forth in the Notice. A Request for Exclusion will be
11 timely only if postmarked by the Response Deadline, unless the Parties otherwise
12 agree in writing. Any Settlement Class Member who timely requests exclusion in
13 compliance with these requirements: (i) will not have any rights under this
14 Agreement, including the right to object, appeal or comment on the Settlement; (ii)
15 will not be entitled to receive any payments under this Agreement; and (iii) will not
16 be bound by this Agreement, or the Judgment.

17 (b) Binding Effect on Participating Class Members. Except for those
18 Settlement Class Members who exclude themselves in compliance with the
19 procedures set forth above, all Settlement Class Members will: (i) be deemed to be
20 Participating Class Members for all purposes under this Agreement; (ii) will be bound
21 by the terms and conditions of this Agreement, the Judgment, and the releases set
22 forth herein; and (iii) except as otherwise provided herein, will be deemed to have
23 waived all objections and oppositions to the fairness, reasonableness, and adequacy
24 of the Settlement.

25 (c) Objections to Settlement. Any Settlement Class Member, other
26 than Plaintiff, may object to the terms of this Agreement. To object, a Settlement
27 Class Member shall inform the Settlement Administrator, in writing, of his or her
28 objection that must be postmarked by the Response Deadline at the address set forth

1 in the Notice. Such objection shall include the full name, address, telephone number,
2 dates of employment with Defendant of the Objecting Settlement Class Member, the
3 case name and number, the basis for the objection, including any legal support and
4 each specific reason in support of the objection, as well as any documentation or
5 evidence in support thereof, and, if the Objecting Settlement Class Member is
6 represented by counsel, the name and address of his or her counsel. If any Objecting
7 Settlement Class Member wishes to speak at the Final Approval Hearing, that
8 Objecting Settlement Class Member's written submission should include a request to
9 be heard, and the Court will determine whether Objecting Settlement Class Members
10 will be permitted to speak. The Settlement Administrator shall provide objections, if
11 any, to Class Counsel and Defense Counsel within three (3) days of receipt, and the
12 Settlement Administrator shall attach the same to its declaration of due diligence and
13 file with the Court prior to the Final Approval Hearing. Any Participating Class
14 Member who files an objection remains eligible to receive monetary compensation
15 from the Settlement. Plaintiff and Defendant shall not be responsible for any fees,
16 costs, or expenses incurred by any Class Member and/or his or her counsel related to
17 any objections to the Settlement. Submitting an objection does not preserve the right
18 to appeal a final judgment.

19 (d) Failure to Object. Any Settlement Class Member who desires to
20 object but fails to timely submit a written objection waives any right to object and
21 will be foreclosed from making any objection (whether by appeal or otherwise) to this
22 Settlement.

23 (e) Responses to Objections. Counsel for the Parties may file a
24 response to any objections submitted by Objecting Settlement Class Members at least
25 five (5) court days before the date of the Final Approval Hearing.

26 60. Settlement Class Members will have until the Response Deadline to
27 object or submit a Request for Exclusion to the Settlement Administrator by U.S.
28 Mail. The Settlement Administrator shall disclose jointly to Class Counsel and

1 Defendant's Counsel what objections or Requests for Exclusion were timely
2 submitted on a weekly basis, and upon the request of Class Counsel or Defense
3 Counsel.

4 61. Escalator Clause. Defendant represents that, as of August 6, 2021, there
5 were approximately 339 Settlement Class Members. If, as of the end of the Class
6 Period, the number of Settlement Class Members increases by more than ten percent
7 (10%), Defendant shall increase the Gross Settlement Amount proportionally (*i.e.*, for
8 an increase of eleven percent (11%) in the number of Class Members, Defendant shall
9 add an extra one percent (1%) to the Gross Settlement Amount; for a fifteen percent
10 (15%) increase in the number of Class Members, Defendant shall add an extra five
11 percent (5%) to the Gross Settlement Amount).

12 62. Funding of the Gross Settlement Amount. Defendant shall make a one-
13 time deposit into the QSF of the Gross Settlement Amount, as described in Paragraph
14 41(a) that is necessary to make all payments required under this Settlement, within
15 ten (10) days after the Effective Date, plus shall separately pay its share of employer
16 payroll taxes as calculated and directed by the Settlement Administrator.

17 63. Distribution of Funds. No later than ten (10) calendar days after the
18 deposit of the Gross Settlement Amount into the QSF, the Settlement Administrator
19 will mail the payments to the Participating Class Members, the payment for the
20 attorneys' fees and costs to Class Counsel, any Service Payment to the Class
21 Representative, the payment to the LWDA for PAGA penalties, and will pay itself
22 the Settlement Administration Costs.

23 64. Deadline for Cashing Settlement Checks. Participating Class Members
24 shall have 180 calendar days after mailing by the Settlement Administrator to cash
25 their settlement checks. If any Participating Class Member's check is not cashed
26 within that period, the check will be void and a stop-payment will be issued, and the
27 Settlement Administrator shall issue the unclaimed funds to the California State
28 Controller's Office, Unclaimed Property Division, in the name of the Class Member,

1 unless the Court directs the Parties to issue unpaid residue to other fund. The release
2 will be binding upon all Participating Class Members who do not cash their checks
3 within the 180-day period. In the event that any settlement check is returned to the
4 Settlement Administrator within 180 days of mailing, the Settlement Administrator
5 will, within five (5) business days of receipt of the returned settlement check, perform
6 a skip trace to locate the individual, and notify Defense Counsel and Class Counsel
7 of the results. If a new address is located by these means, the Administrator will have
8 ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel,
9 Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for
10 lost or stolen settlement checks, forged signatures on settlement checks, or
11 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the
12 event a Participating Class Member notifies the Settlement Administrator that he or
13 she believes that a settlement check has been lost or stolen, the Settlement
14 Administrator shall immediately stop payment on such check. If the check in question
15 has not been negotiated prior to the stop payment order, the Settlement Administrator
16 will issue a replacement check.

17 **H. Duties of the Parties Prior to the Court's Approval**

18 65. Promptly after execution of this Stipulation of Settlement, Plaintiff will
19 move the Court for Preliminary Approval of this Settlement and entry of the
20 Preliminary Approval Order accomplishing the following:

21 (a) Scheduling the Final Approval Hearing on the issue of whether
22 this Settlement should be finally approved as fair, reasonable and adequate as to the
23 Class Members and a hearing on fees, costs and the Service Payment;

24 (b) Approving as to form and content the proposed Notice, attached
25 hereto as Exhibit A;

26 (c) Directing the mailing of the Notice by first class mail to the
27 Settlement Class Members; and

28 (d) Preliminarily approving this Settlement.

Pursuant to Labor Code § 2699(1)(2), Class Counsel shall also submit its Motion for Preliminary Approval to the LWDA.

66. Pursuant to the Class Action Fairness Act ("CAFA") Defendant will provide timely notice to all appropriate government entities in compliance with the CAFA (including California or any other state where Class Members may reside) and file a statement of compliance with the Court soon after notice has been served so as to prevent delay of the Effective Date.

I. Duties of the Parties Following Court's Final Approval

67. In connection with the Final Approval Hearing provided for in this Stipulation of Settlement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement, thereby permanently barring all Settlement Class Members from prosecuting any Released Claims against any of the Released Parties.

Pursuant to Labor Code § 2699(1)(3), Class Counsel shall submit a copy of any final judgment issued by the Court to the LWDA.

J. Voiding the Agreement

68. If the Court fails or refuses to enter a final order granting approval of the Settlement or fails to approve any material condition of this Stipulation of Settlement which effects a fundamental change of the Settlement, the entire Stipulation of Settlement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

69. Blow-Up Provision: Notwithstanding anything else contained in this Settlement Agreement, if more than 10% of the total Settlement Class Members ("Blow-Up Number") request exclusion from the Settlement and/or object to the terms of the Settlement pursuant to Paragraph 59 then Defendant may, in its sole discretion, elect to terminate this Agreement. Defendant shall exercise the option to terminate this Agreement within five (5) days of notification by the Settlement Administrator that the number of Settlement Class Members who have requested exclusion and/or objected to the terms of the Settlement exceeds the Blow-Up Number, or the right shall be waived. If Defendant exercises its option to terminate the Settlement, Defendant shall provide written notice to Class Counsel at least ten (10) calendar days prior to the Final Approval Hearing. Class Counsel will then have ten (10) calendar days to attempt to cause retraction of any election of exclusion and/or objections by Settlement Class Members. To retract a prior Request for Exclusion and/or Objection, the Settlement Class Member must provide to the Parties, at least three (3) days prior to the Final Approval Hearing, a written notice stating his or her desire to retract the Request for Exclusion and/or Objection from the Settlement Class. If the Parties fail to receive a sufficient number of retractions three days prior to the Final Approval Hearing, Defendant may terminate this Agreement. In that event, (a) this Agreement shall terminate and become null and void, the Preliminary Approval Order and all of its provisions shall be vacated by its own terms, and the Action shall revert to the status that existed prior to the execution date of this Settlement Agreement, including no certification of a class; and (b) no term of this Settlement Agreement or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding. Any dispute among the parties concerning the interpretation or application of this blow-up provision may be presented to the Court for resolution upon the application of any party hereto.

1 70. If the Settlement is voided or fails for any reason, Plaintiff and Defendant
2 will have no further obligations under the Settlement, including any obligation by
3 Defendant to pay the Settlement Amount, or any amounts that otherwise would have
4 been owed under this Settlement.

5 71. If the Settlement is voided or fails for any reason, the Parties hereto and
6 any funds to be awarded under the Settlement shall be returned to their respective
7 statuses as of the date and time immediately prior to the execution of this Agreement,
8 and the parties shall proceed in all respects as if this Agreement had not been executed.

9 72. If the Settlement is voided or fails for any reason, any costs incurred by
10 the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless
11 otherwise specified in this Agreement.

12 **K. Other Terms**

13 73. Waiver. The waiver by one Party of any breach of this Agreement by
14 another Party shall not be deemed a waiver of any other prior or subsequent breach of
15 this Agreement.

16 74. Parties' Authority. The signatories hereto represent that they are fully
17 authorized to enter into this Stipulation of Settlement and bind the Parties hereto to
18 the terms and conditions hereof.

19 75. Mutual Full Cooperation. The Parties agree to fully cooperate with each
20 other to accomplish the terms of this Stipulation of Settlement, including but not
21 limited to, execution of such documents and to take such other action as may
22 reasonably be necessary to implement the terms of this Stipulation of Settlement. The
23 Parties to this Stipulation of Settlement shall use their best efforts, including all efforts
24 contemplated by this Stipulation of Settlement and any other efforts that may become
25 necessary by order of the Court, or otherwise, to effectuate this Stipulation of
26 Settlement and the terms set forth herein. As soon as practicable after execution of
27 this Stipulation of Settlement, Class Counsel shall, with the assistance and
28 cooperation of Defendant and Defendant's counsel, take all necessary steps to secure

1 the Court's preliminary and final approval of the settlement, and the final entry of
2 judgment.

3 76. No Prior Assignments. The Parties hereto represent, covenant, and
4 warrant that they have not, directly or indirectly, assigned, transferred, encumbered,
5 or purported to assign, transfer, or encumber to any person or entity any portion of
6 any liability, claim, demand, action, cause of action or rights released and discharged
7 by this Stipulation of Settlement.

8 77. No Admission. Defendant denies any and all liability to Plaintiff and/or
9 any Settlement Class Member in this Action, as to any and all causes of action that
10 were asserted or that might have been asserted in this Action. Nonetheless, Defendant
11 wishes to settle and compromise the matters at issue in the Complaint to avoid further
12 substantial expense and the inconvenience and distraction of protracted and
13 burdensome litigation. Defendant has also taken into account the uncertainty and
14 risks inherent in litigation, and without conceding any infirmity in the defenses that it
15 has asserted or could assert against Plaintiff, has determined that it is desirable and
16 beneficial that Plaintiff's claims be settled in the manner and upon the terms and
17 conditions set forth in this Agreement.

18 78. Inadmissibility of Agreement. Whether or not the Court issues the Final
19 Approval Order, nothing contained herein, nor the consummation of this Stipulation
20 of Settlement, is to be construed or deemed an admission of liability, culpability,
21 negligence, or wrongdoing on the part of Defendant or any of the other Released
22 Parties. Each of the Parties hereto has entered into this Stipulation of Settlement with
23 the intention of avoiding further disputes and litigation with the attendant
24 inconvenience and expenses. This Stipulation of Settlement is a settlement document,
25 and it, along with all related documents such as the notices, and motions for
26 preliminary and final approval, shall, pursuant to California Evidence Code section
27 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any
28 proceeding, except an action or proceeding to approve the settlement, and/or interpret

1 or enforce this Stipulation of Settlement. The stipulation for class certification as part
2 of this Stipulation of Settlement is for settlement purposes only and if, for any reason
3 the settlement is not approved, the stipulation will be of no force or effect.

4 78. Return of Documents and Information. Plaintiff, Class Members and Class
5 Counsel agree that none of the documents and information provided to the Settlement
6 Administrator by Defendant shall be used for any purpose other than approval of this
7 Settlement.

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

12 To the Settlement Class:

13 Larry W. Lee, Esq.

14 Kristen Agnew, Esq.

15 Nicholas Rosenthal, Esq.

16 DIVERSITY LAW GROUP, P.C.

17 515 S. Figueroa St., Suite 1250

18 Los Angeles, CA 90071

19 Telephone: (213) 488-6555 Facsimile: (213) 488-6554

20
21 To Defendant:

22 Daniel B. Chammas, Esq.

23 Min K. Kim, Esq.

24 Ford & Harrison, LLP

25 350 S. Grand Ave., Suite 2300

26 Los Angeles, California 90071

27 Tel: (714) 379-6239; Fax: (714) 379-5444

28 80. Construction. The Parties hereto agree that the terms and conditions of

1 this Stipulation of Settlement are the result of lengthy, intensive arms' length
2 negotiations between the Parties and that this Stipulation of Settlement shall not be
3 construed in favor of or against any Party by reason of the extent to which any Party
4 or his or its counsel participated in the drafting of this Stipulation of Settlement.
5 Plaintiff and Defendant expressly waive the common-law and statutory rule of
6 construction that ambiguities should be construed against the drafter of an agreement
7 and further agree, covenant, and represent that the language in all parts of this
8 Agreement shall be in all cases construed as a whole, according to its fair meaning.

9 81. Captions and Interpretations. Paragraph titles or captions contained
10 herein are inserted as a matter of convenience and for reference, and in no way define,
11 limit, extend, or describe the scope of this Stipulation of Settlement or any provision
12 hereof. Each term of this Stipulation of Settlement is contractual and not merely a
13 recital.

14 82. Modification. This Stipulation of Settlement may not be changed,
15 altered, or modified, except in writing and signed by the Parties hereto, and approved
16 by the Court. This Stipulation of Settlement may not be discharged except by
17 performance in accordance with its terms or by a writing signed by all of the Parties
18 hereto.

19 83. Dispute Resolution. Prior to instituting legal action to enforce the
20 provisions of this Agreement or to declare rights and/or obligations under this
21 Agreement, a Party shall provide written notice to the other Party and allow an
22 opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agrees to
23 seek the help of Steven Serratore to resolve any dispute they are unable to resolve
24 informally. During this period, the Parties shall bear their own attorneys' fees and
25 costs. This provision shall not apply to any legal action or other proceeding instituted
26 by any person or entity other than Plaintiff or Defendant.

27 84. Choice of Law. This Settlement Agreement shall be governed by and
28 construed, enforced and administered in accordance with the laws of the State of

1 California, without regard to its conflicts-of-law rules.

2 85. Integration Clause. This Stipulation of Settlement contains the entire
3 agreement between the Parties relating to the settlement and transaction contemplated
4 hereby, and all prior or contemporaneous agreements, understandings,
5 representations, and statements, whether oral or written and whether by a Party or
6 such Party's legal counsel, are merged herein. No rights hereunder may be waived
7 except in writing.

8 86. Binding On Assigns. This Stipulation of Settlement shall be binding
9 upon and inure to the benefit of the Parties hereto and their respective heirs, trustees,
10 executors, administrators, successors and assigns.

11 87. Signatures of All Class Members Unnecessary to be Binding. It is agreed
12 that, because the members of the Settlement Class are numerous, it is impossible or
13 impractical to have each Class member execute this Stipulation of Settlement. The
14 Notice will advise all Settlement Class Members of the binding nature of the release
15 provided herein and such shall have the same force and effect as if each Settlement
16 Class Member executed this Stipulation of Settlement.

17 88. Counterparts. This Stipulation of Settlement may be executed in
18 counterparts, and when each Party has signed and delivered at least one such
19 counterpart, each counterpart shall be deemed an original, and, when taken together
20 with other signed counterparts, shall constitute one fully-signed Stipulation of
21 Settlement, which shall be binding upon and effective as to all Parties. Electronic
22 signatures shall have the same force and effect as an original.

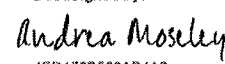
23
24
25
26
27
28 Dated: 12-9, 2021

CLASS REPRESENTATIVE:


ERNESTO DELGADO

Dated: 12/2/2021, 2021

DEFENDANT:

DocuSigned by:

4ED170B589AB4A9

Kloeckner Metals Corporation

By: Andrea Moseley

APPROVED AS TO FORM

Dated: 12/9, 2021

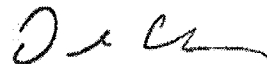
CLASS COUNSEL:
DIVERSITY LAW GROUP, P.C.



Larry W. Lee, Esq.
Kristen M. Agnew, Esq.
Nicholas Rosenthal, Esq.
Attorneys for Plaintiff

Dated: 12/08/2021, 2021

DEFENDANTS' COUNSEL:
FORD & HARRISON, LLP



Daniel B. Chammas, Esq.
Min K. Kim Esq.
Attorneys for Defendant

1 **EXHIBIT A**

2
3 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

4 *Ernesto Delgado v. Kloeckner Metals Corporation et al.*

5 (United States District Court for the Central District of California, Case No. 2:20-
6 cv-07405-GW-SK)

7 *You are not being sued. This is not an ad. This notice affects your rights. Please
8 read it carefully.*

9 **YOU ARE ESTIMATED TO RECEIVE APPROXIMATELY \$«MERGED_EstSettAmnt_CALC»
10 THROUGH THIS CLASS ACTION SETTLEMENT**

11 You have received this Notice of Proposed Class Action Settlement because
12 Kloeckner Metals Corporation's ("Defendant") records show you are what is called a
13 "Class Member," and therefore are entitled to a payment from this class action
14 settlement. Class Members are all persons employed by Defendant in California as
15 an hourly non-exempt employee during the period of April 6, 2016 through October
16 4, 2021 [the "Class Period"].

17 On _____, the Honorable George H. Wu of the United States District
18 Court for the Central District of California granted preliminary approval of this class
19 action Settlement and ordered that all Class Members be notified of the Settlement.

20 **Unless you choose not to participate in the Settlement (in other words, you choose
21 to "opt out") by following the procedures described below, you will be considered
22 a Participating Class Member, and if the Court grants final approval of the
23 Settlement, you will be mailed a check for your share of the settlement proceeds.**

24 The Final Approval Hearing on the adequacy, reasonableness, and fairness of the
25 Settlement will be held at _____, m. on _____, 202____, in
26 Courtroom 9D of the United States District Court for the Central District of
27 California, located at the United States Courthouse, 350 West 1st Street, Los Angeles,
28 CA, 90012, 9th Floor. You are not required to attend the Hearing, but you are welcome
to do so.

29 **What Is This Case About?**

30 Ernesto Delgado is a former employee of Defendant. He is the "Plaintiff" in this case
31 and is suing on behalf of himself and all Class Members. Plaintiff sued Defendant
32 claiming that he and Class Members did not receive all legally compliant meal and
33 rest periods, did not receive payment of final wages at time of separation from
34 employment, that their paystubs did not contain all required information required by

1 law, and unfair competition. Based on these violations, Plaintiff and Class Members
2 also claim associated penalties under the California Private Attorneys General Act of
3 2004 ("PAGA").

4 Defendant denies it engaged in any alleged unlawful conduct and assert that it
5 provided all legally compliant meal and rest periods, properly paid all amounts owed
6 to them, properly compensated their employees properly at the time of separation of
7 employment, provided legally compliant wage statements, and the United States
8 District Court has made no ruling on the merits of Plaintiff's claims.

9 Plaintiff entered into settlement discussions with Defendant in an attempt to resolve
10 the disputed claims in this case. The parties have negotiated a settlement on behalf
11 of themselves and the Class Members with the assistance of a mediator. The parties'
12 agreement has been documented in a Joint Stipulation of Settlement ("Joint
13 Stipulation"). The Court has only preliminarily approved the Joint Stipulation. The
14 Court will decide whether to give final approval to the Settlement at the Final
15 Approval Hearing.

16 Plaintiff's attorneys are Larry W. Lee, Esq., Kristen Agnew, and Nicholas Rosenthal
17 of Diversity Law Group, P.C. ("Class Counsel"). Class Counsel has investigated and
18 researched the facts and circumstances underlying the issues raised in this case and
19 the applicable law. While Class Counsel believes Plaintiff's claims in this lawsuit
20 have merit, Class Counsel also recognizes that the risk and expense of continued
21 litigation justify settlement. Because of this, Class Counsel believes the proposed
22 Settlement is fair, adequate, reasonable, and in the best interests of the Class
23 Members.

24 Defendant has denied and continues to deny Plaintiff's factual and legal allegations.
25 Defendant believe this case has little to no merit. By agreeing to settle, Defendant is
26 not admitting liability on any of the factual allegations or claims in this case or that
27 this case can or should proceed as a class action.

28 Summary of the Settlement Terms

Plaintiff and Defendant have agreed to settle this case on behalf of himself and the
Class Members in exchange for the Gross Settlement Amount of \$465,000. The Gross
Settlement Amount includes: (1) Individual Settlement Payments to participating
Class Members; (2) Claims Administration Costs estimated to be no more than
\$11,000; (3) \$10,000 service payment to Plaintiff for his time and efforts in pursuing
this case and in exchange for a general release of claims against Defendant; (4) a
\$30,000 payment to the California Labor and Workforce Development Agency for

1 settlement of the PAGA claims; and (5) subject to Court approval of an application
2 for fees and costs, an award of up to \$155,000 in attorneys' fees and up to \$25,000 in
3 litigation costs and expenses to Class Counsel. After deducting the Claims
4 Administration Costs, the service payment to Plaintiff, the payment to the California
5 Labor and Workforce Development Agency, and attorneys' fees and costs/expenses,
a total of approximately \$234,000 will be available to Class Members who do not opt
out of the Settlement ("Net Settlement Amount").

6 **Plan of Distribution to Class Members**

7
8 Individual Settlement Payments will be calculated and apportioned from the Net
9 Settlement Amount based on the number of weeks a Class Member worked during
the Class Period ("Workweeks").

10 According to Defendant's records, you worked [REDACTED] Workweeks during the Class
11 Period. Accordingly, your estimated payment is approximately \$ [REDACTED].

12 If you believe the information provided above as to the number of your Workweeks
13 is incorrect and wish to dispute it, please contact the Claims Administrator at
[REDACTED] no later than 30 days after the date this Notice of Class Action
14 Settlement was mailed to you. If you dispute the information stated above, the
15 information Defendant provided to the Claims Administrator will control unless you
are able to provide documentation that establishes otherwise.

16 **Class Member Tax Matters**

17 IRS Forms W-2 and 1099-MISC will be distributed to participating Class Members
18 and the appropriate taxing authorities reflecting the payments Class Members receive
19 under the Settlement. Class Members should consult their tax advisors concerning
20 the tax consequences of the payments they receive under the Settlement. For purposes
21 of this Settlement, 20% of each Individual Settlement Payment will be allocated to
alleged unpaid wages, 80% will be allocated as penalties and interest. Again, please
22 consult a tax advisor regarding the significance of how each Individual Settlement
23 Payment is allocated between wages, penalties, and interest. This notice is not
intended to provide legal or tax advice. To the extent this notice or any of its
24 attachments is interpreted to contain or constitute advice regarding any United States
25 or Federal tax issue, such advice is not intended or written to be used, and cannot be
used, by any person for the purpose of avoiding penalties under the Internal Revenue
Code.

26 **Your Options Under the Settlement**

27 ***Option 1 – Automatically Receive a Payment from the Settlement***

1
2 If want to receive your payment from the Settlement, then no further action is required
3 on your part. You will automatically receive your Individual Settlement Payment
4 from the Claims Administrator if and when the Settlement receives final approval by
the Court.

5 If you choose **Option 1** and the Court grants final approval of the Settlement, you will
6 be mailed a check for your share of the Settlement funds. In addition, you will be
7 deemed to have released or waived the following claims (“Released Claims”):

8 a. All claims, including penalties, costs and attorneys’ fees related
9 thereto, that were or could have been brought under the facts and allegations
10 made in the operative Complaint for violation of Labor Code sections 226.7
and 512, that accrued during the period of April 6, 2016 through October 4,
2021;

11 b. All claims, including penalties, costs and attorneys’ fees related
12 thereto, that were or could have been brought under the facts and allegations
13 made in the operative Complaint for violation of Labor Code section 226, that
accrued during the period of April 6, 2019 through October 4, 2021;

14 c. All claims, including penalties, costs and attorneys’ fees related
15 thereto, that were or could have been brought under the facts and allegations
16 made in the operative Complaint for violation of Labor Code sections 201, 202
and 203, that accrued during the period of June 26, 2018 through October 4,
2021; and

17 d. All claims for penalties under the California Private Attorneys’
18 General Act, including costs and attorneys’ fees related thereto, predicated on
19 the violation of Labor Code sections 201, 202, 203, 212, 213, 226(a), 226.3,
20 226.7 and 512, that accrued during the period of May 20, 2019 through October
4, 2021.

21 Released Parties means:

22 Defendant and its present and former officers, directors, members, managers,
23 shareholders, agents, subsidiaries, insurers, operators, partners, professional
24 employment organizations, successors and assignees.

25 **Option 2 – Opt Out of the Settlement**

26 If you do not wish to participate in the Settlement, you may exclude yourself from
27 participating by submitting a written request to be excluded from the class, to the
28 Claims Administrator. Your written request must expressly and clearly indicate that

1 you do not want to participate in the settlement, and you want to be excluded from
2 the *Ernesto Delgado v. Kloeckner Metals Corporation* settlement. The written request
3 for exclusion must include your name, address, telephone number, and last four digits
4 of your Social Security Number. Sign, date, and mail your written request for
exclusion by U.S. First-Class Mail or equivalent, to the address below.

5 Claims Administrator

6 c/o [Name]

[Address]

7
8 Telephone: 1-888-XXX-XXXX

9 The written request to be excluded from the Settlement must be postmarked to the
10 Claims Administrator not later than [redacted]. If you submit a request for
11 exclusion which is not postmarked by [redacted], your request for exclusion
will be rejected, and you will be included in the Settlement Class.

12 If you choose **Option 2**, you will no longer be a Class Member. Therefore, you
13 (1) will not receive any payment from the Settlement, (2) will not be deemed to have
14 released any claims due to this Settlement, and (3) will be barred from filing an
15 objection to the Settlement.

16 **Option 3 – File an Objection to the Settlement**

17 If you wish to object to the Settlement because you find it unfair or unreasonable, you
18 may object to the terms of the Settlement. Your objection must provide: your full
19 name, address and telephone number, the last four digits of your Social Security
20 Number, the dates you were employed by Defendant, and your objections to the
21 Settlement including each specific reason in support of each objection and any legal
support for each objection. Sign, date, and mail your written objection by U.S. First-
Class Mail or equivalent, to the address below.

22 Claims Administrator

23 c/o [Name]

24 [Address]

25 Telephone: 1-888-XXX-XXXX

26 Your objection must be mailed and postmarked by not later than
27 [redacted].
28

1 Late objections will not be considered. By filing an objection, you are not excluding
2 yourself from the Settlement. To exclude yourself from the Settlement, you must
3 follow the directions described above in Option 2. Please note that you cannot both
4 object to the Settlement and exclude yourself. You must choose one option only.

5 If you submit a timely written objection, you may also appear or appear through
6 counsel of your choice, paid at your own expense, and be heard at the time of the Final
7 Approval Hearing set for [REDACTED] at [REDACTED].m. in Courtroom 9D of
8 the United States District Court for the Central District of California located at United
9 States Courthouse, 350 West 1st Street, Los Angeles, CA, 90012, 9th Floor and
10 discuss your objections with the Court and the Parties.

11 If you choose **Option 3**, you will still be entitled to the money from the Settlement.
12 If the Court overrules your objections, you will be deemed to have released the
13 Released Claims.

14 **Additional Information**

15 This Notice of Class Action Settlement is only a summary of this case and the
16 Settlement. For a more detailed statement of the matters involved in this case and the
17 Settlement, you may refer to the pleadings, the Joint Stipulation of Settlement, and
18 other papers filed in this case, which may be inspected at the Office of the Clerk of
19 the United States District Court for the Central District of California located at United
20 States Courthouse, 350 West 1st Street, Los Angeles, CA, 90012, during regular
21 business hours of each court day.

22 All questions by Class Members regarding this Notice of Class Action Settlement
23 and/or the Settlement should be directed to the Claims Administrator or Class
24 Counsel.

25 The contact information for Class Counsel is as follows:

26 DIVERSITY LAW GROUP, P.C.
27 Larry W. Lee
28 Kristen Agnew
Nick Rosenthal
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555

Fax: (213) 488-6554

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANTS, OR THEIR ATTORNEYS WITH QUESTIONS.**

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT

ERNESTO DELGADO, as	)	Case No.
individuals and on behalf of	)	2:20-cv-07405-GW-SK
all others similarly placed,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
KLOECKNER METALS CORPORATION,	)	
a Delaware corporation; and	)	
DOES 1 through 50, inclusive,	)	
	)	
Defendants.	)	
_____	)	

VIDEOCONFERENCE DEPOSITION OF ERNESTO DELGADO

Taken Thursday, November 5, 2020

Stenographically Reported by: DONNA J. RUDOLPH,
RPR, CA. CSR NO. 9652, NV. CCR NO. 420

1 VIDEOCONFERENCE DEPOSITION OF ERNESTO
2 DELGADO, taken on behalf of the Defendant,
3 commencing at the hour of 10:21 A.M., Thursday,
4 November 5, 2020, before Donna J. Rudolph, RPR,
5 Certified Shorthand Reporter, in and for the State
6 of California.

7 APPEARANCES:

8 For Plaintiff:

9 DIVERSITY LAW GROUP, P.C.
10 BY: NICHOLAS ROSENTHAL, ESQ.
11 515 South Figueroa Street
12 Suite 1250
13 Los Angeles, California 90071
14 (213)488-6555
15 nrosenthal@diversitylaw.com
16 (VIA VIDEOCONFERENCE)

17 For Defendants:

18 FORD & HARRISON LLP
19 BY: DANIEL B. CHAMMAS, ESQ.
20 350 South Grand Avenue
21 Suite 2300
22 Los Angeles, California 90071
23 (213)237-2400
24 dchammas@fordharrison.com
25 (VIA VIDEOCONFERENCE)

Also Present:

20 Sandra Chor, Kloeckner
21 Carolyn Viguery, Kloeckner
22 Sandra Books, Kloeckner
23 Aaron Torres, Videographer
24
25

1 others. But knowing that they needed me to do extra
2 work for them, they would look the other way.

3 Q So you're saying some -- some rules
4 applied to you, but they looked the other way
5 sometimes to allow you to not follow those rules.
6 Is that what you're saying?

7 A I said all rules apply to me, as well as
8 everyone else. That's what I said.

9 Q But I think you said they looked the other
10 way sometimes?

11 A Yes. But knowing that they needed me to
12 do extra work, they would look the other way.

13 Q Right. So, first, let's get a list of all
14 the rules that you believe apply to you and everyone
15 else during rest breaks.

16 A All the rules apply to me.

17 Q Okay. Well, one rule is --

18 A They apply to me.

19 Q One rule is they have to be ten minutes
20 long; right? You have to be back at your
21 workstation in ten minutes; right?

22 A Yes.

23 Q Another rule is is that you have to -- you
24 have to start it at 4:00 or two hours after your
25 shift started; right?

1 A Yes.

2 Q Are there any other recalls that you can
3 think of that were told to you like you have to do
4 this, you can't do this during your rest break?

5 A All the rules that applied to everyone
6 applied to me as well. That's my --

7 Q Can you remember any -- can you remember
8 any of those rules besides the ones we just listed?

9 A Well, as far as for breaks?

10 Q Yes.

11 A Well, it's a ten-minute break. You take
12 your ten minutes, and you go back to work at 4:10.

13 Q But you don't remember any other rules;
14 right?

15 A There is no other rule.

16 Q Okay. I know you were farther away, so
17 it'd be harder for you to have done it, but you were
18 allowed to go to the break room, right, during your
19 rest break?

20 A Yes, everyone is.

21 Q Right. Were -- were you allowed to go to
22 your car during your rest break?

23 A If you got back within the time.

24 Q Right. And I know this is maybe
25 impossible because of where the car was, but could

1 UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 I, DONNA J. RUDOLPH, RPR, CSR No. 9652,
4 Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were taken
6 before me at the time and place therein set forth,
7 at which time the witness was put under oath by me;

8 That the testimony of the witness, the
9 questions propounded, and all objections and
10 statements made at the time of the examination were
11 recorded stenographically by me and were thereafter
12 transcribed;

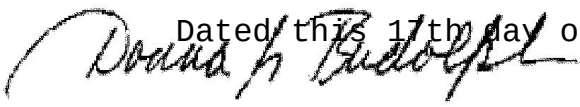
13 That a review of the transcript by the
14 deponent [was not] requested;

15 That the foregoing is a true and correct
16 transcript of my shorthand notes so taken.

17 I further certify that I am not a relative
18 or employee of any attorney of the parties, nor
19 financially interested in the action.

20 I declare under penalty of perjury under
21 the laws of California that the foregoing is true
22 and correct.

23 Dated this 17th day of December, 2020.

24 
25 Donna J. Rudolph, RPR
CA CSR No. 9652, NV CCR No. 420