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Attorneys for Plaintiff and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BOBBY MOODY, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DURA TECHNOLOGIES, INC, a Wyoming
Corporation; HAWKEYE INDUSTRIES
INC., a Georgia Corporation; REVCHEM
COMPOSITES, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVDS2008887
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: March 23, 2021

Time: 10:00 a.m.

Dept.: S26

Complaint filed: May 29, 2020

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled 400 to 500 employee vs. employer litigation matters during my 20
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 200 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in approximately half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$200
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest PAGA-only case in
17 California’s history - a \$12.5 million-dollar court approved settlement, which followed extensive
18 litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
19 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
21 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
22 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
23 case against Walmart that was tried to the jury in District Court, wherein the jury awarded
24 Plaintiffs over \$6 million. Both cases were appealed.

25 6. Over the last several consecutive years, I have been selected by my peers as a
26 “Super Lawyer” in Employment Litigation.

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Through a contested but productive mediation, Plaintiff Bobby Moody and the Defendant Dura Technologies, Inc., Hawkeye Industries Inc., and/or Revchem Composites, Inc., (collectively, the “Parties”) agreed to a Joint Stipulation of Class Action Settlement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement”), which is attached hereto as **Exhibit A** (notably, the Defendants have not returned the signed Settlement Agreement, so I’m attaching the unsigned version and will file a supplemental declaration to include the fully signed version once received). The Settlement Agreement seeks to fully release and discharge Defendants from the claims brought against them in this matter in exchange for Defendants’ agreement to pay \$350,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or taking action, except for those who opt-out). Plaintiff seeks to represent a class of all non-exempt (hourly-paid) employees employed by Defendants in California at any time during the period from May 29, 2016, through February 26, 2021 (the “Class” or “Class Members”). Under the terms of the Settlement Agreement, Defendants will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$15,000, settlement administrator costs not to exceed \$7,000, PAGA payment of \$18,750 to the LWDA, and an enhancement award not to exceed \$7,500 to Plaintiff. After subtracting the agreed-upon deductions from the Settlement Amount, approximately \$184,583.34 will be available to pay the individual settlement amounts to approximately 150 Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$350,000
Attorneys' Fees (1/3)	\$116,666.66
Litigation Costs	\$15,000
Administrator Costs	\$7,000
PAGA payment to LWDA (75% of \$25k award)	\$18,750
Class Representative's Service Award	\$7,500
<i>Net Settlement Amount</i>	\$184,583.34

7. Assuming approximately 150 total Class Members employed during the Class Period, each will receive approximately \$1,230 on average.

8. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of work weeks he/she is credited with working during the Class Period (attached hereto as **Exhibit B**).

PROCEDURAL BACKGROUND

9. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case at mediation. Because of the risks involved in litigating the case and the contested legal and factual issues, Plaintiff's Counsel believe this settlement to be fair, reasonable, and adequate.

10. After being retained by Plaintiff, we sent a letter to Defendant requesting the production of Plaintiff's personnel and timekeeping records in order to further evaluate his wage and hour claims. On May 13, 2020, we submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit C**.

11. On May 29, 2020, Plaintiff filed a putative class action and representative in the Court on behalf of all Class Members, alleging class and PAGA claims for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay final wages, (6) failure to provide accurate itemized wage statements, (7) unfair and unlawful competition, and (8) related PAGA claims.

12. Defendants fully denied the allegations. However, before conducting extensive discovery, depositions and filing the class certification motion, the parties agreed to explore an early resolution through mediation. In preparation for mediation, the Parties agreed to an informal discovery process where information was exchanged relating to the applicable policies

1 and procedures, payroll and time keeping records, size of the class, and potential value of the
2 case. During this process, Plaintiff and his counsel analyzed, researched, and investigated the
3 potential claims of all similarly situated employees.

4 13. On November 18, 2020, the parties participated in a full-day mediation with Steve
5 Serratore, who is a full-time mediator with extensive experience in employment matters. At the
6 conclusion of the mediation, Mr. Serratore issued a mediator's proposal calling for a class-wide
7 settlement for \$350,000. The Parties accepted the mediator's proposal and memorialized the
8 terms in a long-form Settlement Agreement. Under the terms of the settlement, the Parties now
9 seek preliminary approval of the Settlement.

10 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL'S INVESTIGATION**

11 14. The putative Class in this case consists of approximately 150 similarly situated
12 non-exempt employees. Plaintiff alleged numerous wage and hour violations on behalf of these
13 workers. However, Defendants vigorously contested and denied each of Plaintiff's material
14 allegations on the merits and as to the propriety of a class action or PAGA representative action.

15 15. First, Plaintiff alleged that Defendant failed to pay proper overtime due to the
16 failure to include these earned and nondiscretionary bonuses in the calculations for the applicable
17 overtime rate of pay, leading to a violation on each such occasion. In response, Defendant
18 argued that these were discretionary payments that were properly excluded from the overtime
19 rate. And Defendants also argued that, regardless of the merits of the claim, any purported
20 violation was extremely limited in scope with only 54 former employees receiving bonuses.

21 16. Second, Plaintiff raised an additional claim for unpaid overtime based on an
22 allegedly invalid alternative workweek schedule ("AWS"). However, Defendant vehemently
23 opposed this claim and argued that all employees that worked an AWS did so under a valid
24 election that was properly reported to the Department of Industrial Relations as required.

25 17. Third, Plaintiff argued that certain Class Members were subjected to violations
26 when Defendants deducted 30 minutes of pay from shifts despite that no meal period appears in
27 the timekeeping records (the "auto-deduct" claim). But Defendants claimed that there was no
28 "auto-deduct" policy in place and that all Class Members were provided compliant meal periods.

1 18. Fourth, Plaintiff sought waiting time penalties under Labor Code §§ 201 – 203 for
2 each *former* employee due to the violations discussed above. Defendants opposed this claim on
3 the merits by arguing that this claim is solely derivative of the claims above, and that Defendants
4 would defeat those claims at the class certification stage or on dispositive motion.

5 19. Fifth, Plaintiff alleged that Defendants failed to provide compliant meal periods
6 and rest breaks. Specifically, Plaintiff argued that Defendant engaged in systemic meal period
7 violations relating to late first meals, short meal periods (less than 30 minutes in length) and no
8 second meal periods for shifts over 12 hours. However, Defendant argued that it has fully
9 compliant meal and rest break, that all breaks were made available and missed or short breaks
10 were solely the decision of the employee.

11 20. Lastly, Plaintiff raised claims for wage statement violations due to the to the
12 failure to accurately state total hours worked for every pay period with an auto-deduct.
13 However, Defendants again opposed this claim and argued that, even if there was merit to the
14 auto-deduct theory (which Defendants denied), statutory § 226(e) penalties are not proper for
15 these type of “derivative” violations.

16 21. Nonetheless, the Parties concluded that further litigation of the Action would be
17 protracted and expensive, and that it is desirable that the Action be fully and finally settled in
18 order to limit further risk, expense and protracted litigation.

19 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

20 22. The settlement was the product of extensive arm’s length negotiations, facilitated
21 by an experienced mediator. Though cordial and professional, the settlement negotiations were
22 adversarial and non-collusive in nature. The settlement reached is the product of substantial
23 effort by the parties and their counsel. Although we believed that there was a possibility of
24 certifying the claims, we recognized the potential risk, expense, and complexity posed by
25 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
26 on the damages awarded, and/or on an appeal that can take several more years to litigate.

27 23. The settlement will result in a fair payment to each class member based on the
28 number of weeks worked during the Class Period. As set forth hereinabove, Plaintiff and his

1 counsel have diligently investigated the claims and defenses on behalf of the class members and
2 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
3 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
4 further litigation described above and weighing them against the benefits of a known
5 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
6 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
7 reasonable resolution of the claims alleged.

8 24. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
9 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
10 and investigation, making it possible to exercise informed judgment throughout the settlement
11 process, including significant document review (e.g. documents pertaining to Defendant's
12 policies and procedures, personnel documents, among others), and conducted an extensive
13 analysis of the detailed class-wide data provided by Defendant.

14 25. Based on my experience in other cases, including wage and hour matters, I
15 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
16 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
17 settlement at this time is in the best interests of the class. The settlement provides each class
18 member with compensation for the alleged violations when viewed in relation to the costs and
19 risks inherent in obtaining class certification and proceeding to trial.

20 26. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
21 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

22 27. Of course, the settlement amount represents a compromise figure, taking into
23 account the various risks surrounding class certification and the merits of Defendant's asserted
24 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
25 members, with no reversion to Defendant.

26 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

27 28. Plaintiff seeks an enhancement payment of \$7,500 for his service to the class,
28 which I believe is fair and warranted. Mr. Moody came forward in an effort to effectuate a

1 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
2 He assumed significant risk in bringing this litigation—namely, had he lost, he would have been
3 ordered to pay Defendant’s costs.

4 29. Plaintiff provided invaluable assistance to my office and the Class in this case,
5 including: providing factual background for the Class Complaint; reviewing the litigation
6 documents; providing information and documents about Defendant’s policies and practices;
7 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
8 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
9 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
10 the reasons why he believes that the service award should be approved.

11 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF**
12 **THE REQUESTED FEES AND COSTS**

13 30. As set forth above, I have handled over 200 class and representative actions, have
14 been appointed as class counsel and have successfully resolved over half of those class actions,
15 and many others remain pending and will successfully resolve in the future.

16 31. When this case was taken on a contingency fee basis, with my firm agreeing to
17 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
18 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
19 and mediation costs. There was never a guarantee that my firm would recoup those expenditures.

20 32. It is my experience that attorney fee awards of one-third of a common fund
21 settlement is the standard in California. In this case, Plaintiff’s counsel agreed to seek one-third
22 of the Settlement Amount for attorneys’ fees. Defendant does not oppose this fee request. The
23 fee is further warranted because it is within the range of reasonableness typically awarded in
24 class actions. My firm’s costs are reasonably capped at \$15,000 and will be based on the actual
25 amount of costs incurred at the time of final approval.

26 **SETTLEMENT ADMINISTRATOR**

27 33. The parties request that the Court appoint Phoenix to serve as the Settlement
28 Administrator. Phoenix is experienced in administering class action settlements, and has

1 provided a flat-fee proposal to administer this settlement \$7,000.

2 **CONCLUSION**

3 34. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
4 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit D**.

5 35. For the foregoing reasons, it is respectfully requested that the Court grant
6 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
7 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
8 payment to the Class Representative.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct. Executed on March 1, 2021, at Riverside, California.

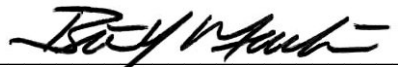
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12 By: 
13 Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendants
DURA TECHNOLOGIES, INC.,
HAWKEYE INDUSTRIES INC., and
REVCHEM COMPOSITES, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO – SAN BERNARDINO DISTRICT**

BOBBY MOODY, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

DURA TECHNOLOGIES, INC, a Wyoming
Corporation; HAWKEYE INDUSTRIES INC., a
Georgia Corporation; REVCHEM
COMPOSITES, INC., a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVDS2008887

CLASS ACTION

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

*[Assigned for All Purposes to the Hon.
David Cohn, Dept. S26]*

Complaint Filed: May 29, 2020
Trial Date: Not Yet Set

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or
2 “Agreement”) is made and entered into by and between Plaintiff BOBBY MOODY (“Plaintiff” or
3 “Class Representative”), individually and on behalf of all putative class members, and Defendants
4 DURA TECHNOLOGIES, INC. (“Dura”), HAWKEYE INDUSTRIES INC. (“Hawkeye”), and
5 REVCHEM COMPOSITES, INC. (“Revchem”) (collectively, “Defendants”). Plaintiff and
6 Defendants are collectively referred to herein as “the Parties.”

7 **I. DEFINITIONS**

8 The following definitions are applicable to this Settlement, in addition to other terms defined
9 elsewhere in this Settlement:

10 1. The “Action” shall mean the operative Complaint of the civil action commenced on
11 May 29, 2020, filed and maintained by Plaintiff against Defendants in the Superior Court of
12 California, County of San Bernardino, Case No. CIVDS2008887.

13 2. “Class” shall mean all persons who, during the Class Period, have previously been or
14 currently are employed in California by Defendants, as an hourly-paid, non-exempt employee.

15 3. “Class Counsel” shall mean the attorneys representing Plaintiff in the Action, Brian
16 J. Mankin, Esq. and Peter J. Carlson, Esq. of Lauby Mankin Lauby LLP.

17 4. “Class Counsel Fees Payment” shall mean One Hundred and Sixteen Thousand, Six
18 Hundred and Sixty-Six Dollars and Sixty-Six Cents (\$116,666.66) (one-third of the Maximum
19 Settlement Amount), subject to approval by the Superior Court as Class Counsel’s attorneys’ fees
20 incurred in connection with the Action, including fees incurred in pre-filing investigation, filing of
21 the Action, and all related litigation activities, this Settlement, and all post-Settlement compliance
22 procedures.

23 5. “Class Counsel Litigation Expenses Payment” shall mean the actual litigation
24 expenses and/or costs expended by Class Counsel subject to approval by the Superior Court
25 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and
26 all related litigation activities, this Settlement, and all post-Settlement compliance procedures. Class
27 Counsel’s expenses are not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00).

28 6. “Class Member” shall mean an individual who is a member of the Class (or if any

1 such person is incompetent, deceased, or unavailable due to military service, the person's legal
2 representative or successor in interest evidenced by reasonable verification).

3 7. "Class Members' Data" shall consist of an electronic database containing (i) each
4 Class Member's first and last name, (ii) last known mailing address, (ii) last four digits of the Class
5 Member's Social Security number, (iii) the Class Member's employee identification number, if
6 applicable, and based on Defendants' payroll records, (iv) the Class Member's total number of
7 Individual Workweeks, and (v) the Class/PAGA Group Members' total number of Individual Pay
8 Periods.

9 8. "Class Notice" shall mean the Notice of Proposed Settlement, Preliminary Approval
10 of Settlement, and Hearing Date for Final Court Approval, a sample of which is attached hereto as
11 **Exhibit A**. The Class Notice shall further contain (i) a Class Member's first and last name, (ii) last
12 known address, (iii) last four digits of their social security number, (iv) employee identification
13 number, if applicable, (v) the Class Member's Individual Workweeks, (vi) the PAGA Group
14 Member's Individual Pay Periods; (vi) the Class Member's estimated amount of the Settlement
15 Share; and (vii) the PAGA Group Member's estimated amount of the PAGA Payment. The Class
16 Notice shall also provide the Class Members with instructions on how to opt-out of and/or object to
17 the Settlement.

18 9. The "Class Period" shall mean the period of time from May 29, 2016, through
19 February 26, 2021 (i.e., 90 days from the Parties' mediation on November 18, 2020).

20 10. "Class Representative Payment" shall mean the special payment made to Plaintiff in
21 his capacity as Class Representative to compensate him for prosecuting the Action, and performing
22 work in support of the Action, in the amount of Seven Thousand, Five Hundred Dollars and Zero
23 Cents (\$7,500.00), subject to approval by the Superior Court.

24 11. "Defense Counsel" shall mean the attorneys representing Defendants in the Action,
25 Matthew C. Sgnilek, Esq. and Andrea Rosenkranz, Esq. of O'Hagan Meyer.

26 12. "Effective Date" shall mean the date by which this Settlement is approved by the
27 Superior Court by entry of the Judgment and the Judgment becomes Final. The Judgment becomes
28 "Final" when the later of the following events occurs: (i) if Participating Class Members have not

1 filed objections, or if they have filed objections and said objections have been withdrawn, entry of
2 the Final Judgment in this Action after the Court has granted Final Approval of the Settlement, and
3 a file stamped copy of the Final Judgment with a proof of service has been served on all Parties by
4 Class Counsel; or (ii) if Participating Class Members have filed objections that have not been
5 withdrawn, either (a) the time to appeal, object or attack the Court's entry of Final Judgment has
6 expired and there has been no appeal, objection or attack or (b) the court of last resort to which any
7 appeal is taken has affirmed its entry of Final Judgment in its entirety or the Participating Class
8 Members has presented a petition for review and the affirmance is no longer subject to further
9 appeal or review, and no further challenge to the entry of Final Judgment is possible. The
10 occurrence of the Effective Date is a prerequisite to any obligation of Defendants to pay any funds
11 into the Settlement Account.

12 13. "Employer's Payroll Taxes" shall mean Defendants' share of all payroll taxes
13 payable to any and all government agencies incurred for any payments of Settlement Shares to
14 Participating Class Members pursuant to this Settlement. Defendants' payment of the Employer's
15 Payroll Taxes will be made separately and shall not come from the Maximum Settlement Amount.

16 14. "Final Approval Hearing" shall mean the hearing to be conducted by the Superior
17 Court to determine whether to finally approve and implement the terms of this Settlement.

18 15. "Individual Pay Periods" shall mean the number of Pay Periods for an individual
19 PAGA Group Member.

20 16. "Individual Workweeks" shall mean the number of Workweeks for an individual
21 Class Member.

22 17. "Judgment" shall mean the Order of Final Judgment entered by the Superior Court
23 that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
24 this Action.

25 18. "LWDA Payment" shall mean the payment to the California Labor and Workforce
26 Development Agency ("LWDA") constituting seventy-five percent (75%) of the value assigned to
27 the claim for penalties under the California Labor Code Private Attorneys General Act, California
28 Labor Code Section 2698, *et seq.* ("PAGA"). Specifically, Eighteen Thousand, Seven Hundred and

1 Fifty Dollars and Zero Cents (\$18,750.00), which shall constitute the LWDA's seventy-five percent
2 (75%) share of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) in civil penalties paid
3 under this Settlement. The remaining Six Thousand, Two Hundred and Fifty Dollars and Zero
4 Cents (\$6,250.00) in civil penalties shall be distributed on a *pro rata* basis based upon the number
5 of pay periods worked by each PAGA Group Member ("PAGA Payment").

6 19. "Maximum Settlement Amount" shall mean the maximum settlement amount of
7 Three Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000.00) payable by Defendants as
8 provided by this Agreement, exclusive of the Employer's Payroll Taxes which will be paid
9 separately by Defendants. Should the number of Workweeks increase by 10% or more, i.e., more
10 than 1,129 workweeks, the Maximum Settlement Amount shall increase by the additional
11 workweeks multiplied by the workweek value calculated off the 11,285 workweeks and the Net
12 Settlement Amount, exclusive of this escalator provision, as defined in Paragraph 20. For example, if
13 the Workweeks are 12,500 and the workweek value is \$20.00 then the Maximum Settlement Amount
14 increases by \$24,300.00 (12,500 workweeks – 11,285 workweeks = 1,215 workweeks x \$20.00 per
15 workweek = \$24,300).

16 20. "Net Settlement Amount" shall mean the Maximum Settlement Amount, less (i) the
17 Class Representative Payment approved by the Superior Court; (iii) the Class Counsel Fees
18 Payment approved by the Superior Court; (iv) the Class Counsel Litigation Expenses Payment
19 approved by the Superior Court; (v) the LWDA Payment approved by the Superior Court; (vi) the
20 PAGA Payment approved by the Superior Court; (vii) the Settlement Administrator Payment
21 approved by the Superior Court; and (viii) any other fees or expenses (other than Class Counsel
22 Fees Payment and Class Counsel Litigation Expenses Payment) incurred in implementing the terms
23 and conditions of this Agreement as approved by the Superior Court.

24 21. "Non-Participating Class Member" shall mean a Class Member who submits a
25 complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
26 provided in the Class Notice.

27 22. The "PAGA Group" shall mean all persons who, during the PAGA Period, have
28 previously been or currently are employed in California by Defendants, as an hourly-paid, non-

1 exempt employee. “PAGA Group Member” shall mean an individual who is a member of the
2 PAGA Group (or if any such person is incompetent, deceased, or unavailable due to military
3 service, the person’s legal representative or successor in interest evidenced by reasonable
4 verification).

5 23. “PAGA Payment Share” shall mean the value of each PAGA Group Member’s share
6 of the PAGA Payment as provided by this Agreement.

7 24. The “PAGA Period” shall mean the period of time from May 29, 2019, through
8 February 26, 2021 (i.e., 90 days from the Parties’ mediation on November 18, 2020).

9 25. “Participating Class Member” shall mean all Class Members who have not submitted
10 a complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
11 provided in the Class Notice.

12 26. “Pay Period” shall mean any pay period in which a Class Member actually received
13 payment from Defendants as an hourly-paid, non-exempt employee.

14 27. “Preliminary Approval” shall mean the Superior Court’s preliminary approval of the
15 Settlement without material change that the Parties anticipate will be made following submission of
16 this Agreement to the Court.

17 28. “Releasees” includes Defendants and Defendants’ parents, predecessors, successors,
18 subsidiaries, affiliates, partners, owners, assigns, trusts, employees, officers, agents, attorneys,
19 including but not limited to O’Hagan Meyer and MNK Law, stockholders and fiduciaries.

20 29. “Settlement Administrator” shall mean Phoenix Settlement Administrators proposed
21 by the Parties and appointed by the Superior Court to administer the Settlement.

22 30. “Settlement Administrator Payment” shall mean the payment to the Settlement
23 Administrator for its fees and expenses in administering this Settlement.

24 31. “Settlement Share” shall mean the value of each Participating Class Member’s share
25 of the Net Settlement Amount as provided by this Agreement.

26 32. “Superior Court” shall mean the Superior Court of California for the County of San
27 Bernardino.

28 33. “Workweek” shall mean any week in which a Class Member actually performed paid

1 work for Defendants during the Class Period as an hourly-paid, non-exempt employee. Defendants
2 represent that as of November 17, 2020, the number of Workweeks in the Class Period is
3 11,285.

4 **II. RECITALS**

5 34. On May 29, 2020, Plaintiff commenced the Action against Defendants by filing a
6 Complaint in the Superior Court. In the Complaint, Plaintiff, on behalf of himself and all others
7 similarly situated alleged causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to
8 Pay Overtime Wages; (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof; (4)
9 Failure to Provide Rest Periods or Compensation in Lieu Thereof; (5) Failure to Timely Pay Final
10 Wages; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Unfair and Unlawful
11 Competition; and (8) Civil Penalties pursuant to the Private Attorneys' General Act ("PAGA").
12 Based on these allegations, Plaintiff alleged that he and all others similarly situated were entitled to
13 unpaid wages, liquidated damages, statutory penalties, civil penalties, attorneys' fees, and costs of
14 litigation, among other remedies.

15 35. Defendants deny and continue to deny all of Plaintiff's material allegations including
16 that Defendants Hawkeye and Rev Chem were Plaintiff's employer and that Defendants are an
17 integrated/single enterprise. Specifically, Defendants contend (1) they did not fail to pay the Class
18 the minimum wage or overtime compensation; (2) they provided the Class with all meal periods
19 according to law; (3) they provided the Class with all rest periods according to law; (4) they did not
20 fail to timely pay the Class wages due and owing upon separation; (5) they provided the Class with
21 accurate itemized wage statements, consistent with Labor Code Section 226; (6) they properly
22 maintained all payroll records; (7) they did not violate Business & Professions Code Section 17200,
23 et seq.; (8) the PAGA Group is not entitled to penalties under PAGA; and (9) Defendants are not
24 liable for damages, liquidated damages, penalties, attorneys' fees, or costs of litigation to the Class.

25 36. In connection with the Action, and in order to work toward a mediated resolution
26 without the time and expense of formal discovery, the Parties produced voluminous documents and
27 data (including, by Defendants, human resources documents and policies, time records, and payroll
28 data during the Class Period) which were reviewed, investigated, and analyzed by Class Counsel.

1 37. On November 18, 2020, the Parties in Action participated in a full day of mediation
2 before an experienced employment and class action mediator, Steve Serratore, Esq., which resulted
3 in a settlement of the Action (the “Mediation”).

4 38. The Settlement described in this Agreement represents a compromise and settlement
5 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an
6 admission by Defendants that Plaintiff’s claims in the Action have any merit or that it has any
7 liability to Plaintiff, the Class, the PAGA Group or the State on those claims, or as an admission by
8 Plaintiff that Defendants’ defenses in Action have any merit. This Settlement is intended to fully,
9 finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to
10 the terms and conditions set forth in this Settlement.

11 39. Based on its own thorough, independent investigation and evaluation of this case,
12 Class Counsel is of the opinion that the Settlement of this Action with Defendants for the
13 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the
14 best interest of the Class in light of all known facts and circumstances, including the risk of
15 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
16 Defendants including the risks of adverse determinations on the merits and numerous potential
17 appellate issues. Although Defendants contend that they have no liability in the Action, Defense
18 Counsel shares Class Counsel’s belief that the Settlement represents a fair and adequate settlement
19 given the respective risks associated with the case.

20 40. Based on the foregoing Recitals, the Parties agree as follows:

21 **III. PROCEDURE FOR APPROVING SETTLEMENT**

22 41. **Motion for Preliminary Approval of Settlement by the Superior Court.** Plaintiff
23 will move the Superior Court for an order granting Preliminary Approval of the Settlement, setting
24 a date for the Final Approval Hearing no earlier than 90 days from the date of the order granting
25 Preliminary Approval of the Settlement, and approving the Class Notice (attached as **Exhibit A** to
26 this Stipulation) (“Motion for Preliminary Approval”). The hearing on the motion for Preliminary
27 Approval of Settlement has been scheduled for March 23, 2021 at 10:00 a.m. Any unresolved
28 disagreement among the Parties concerning the Class Notice or other documents necessary to

1 implement the Settlement will be referred first to Steve Serratore, Esq., and if no resolution is
2 reached, then to the Superior Court.

3 42. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that
4 they will jointly appear, support the granting of the Motion for Preliminary Approval, and obtain an
5 order granting Preliminary Approval, granting approval of the Class Notice, and setting a date for
6 the Final Approval Hearing no earlier than 90 days from the date of the order granting Preliminary
7 Approval.

8 43. Should the Superior Court require any amendments to this Agreement or the Motion
9 for Preliminary Approval, the Parties agree to work jointly to resolve any issues in order to secure
10 the Superior Court's Preliminary Approval.

11 44. Should the Superior Court decline to preliminarily approve any material aspects of
12 the Settlement, the Settlement will be null and void and the Parties will have no further obligations
13 under it. In such event, the Parties shall be returned to their respective positions as of the date and
14 time immediately prior to the execution of this Agreement, and the Parties shall proceed in all
15 respects as if this Agreement had not been executed.

16 45. **Class Notice.** After the Superior Court enters its order granting Preliminary
17 Approval, every Class Member will be provided with the Class Notice (in English and Spanish)
18 which will include the Class Notice completed to reflect the order granting Preliminary Approval of
19 the Settlement and the Class Member's information as follows:

20 (a) Within fourteen days (14) days after the Motion for Preliminary Approval is
21 granted, Defendants will provide to the Settlement Administrator the Class Members' Data. If any
22 or all of the Class Members' Data are unavailable to Defendants, Defendants will so inform Class
23 Counsel prior to the date on which Defendants are required to submit the Class Members' Data to
24 the Settlement Administrator and the Parties will make their best efforts to reconstruct or otherwise
25 agree upon the Class Members' Data prior to when it must be submitted to the Settlement
26 Administrator. If the Parties are unable to agree, the dispute will be resolved by the Settlement
27 Administrator as provided in Paragraph 46. This information will otherwise remain confidential
28 and will not be disclosed to anyone, except as required to applicable taxing authorities, as required

1 to carry out the reasonable efforts to identify Class Member information as described in this
2 Paragraph 44(c), pursuant to Defendants' express written authorization, or by order of the Superior
3 Court.

4 (b) Within seven (7) days after receiving the Class Members' Data, or as soon
5 thereafter as it is able to do so, the Settlement Administrator will mail the Class Notice to all
6 identified Class Members via first-class U.S. Mail using the mailing address information provided
7 by Defendants, unless modified by any updated address information that the Settlement
8 Administrator obtains in the course of administration of the Settlement.

9 (c) If a Class Notice is returned by the U.S. Postal Service because of an
10 incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from
11 receipt of the returned packet, search for a more current address for the Class Member and re-mail
12 the Class Notice to the Class Member. The Settlement Administrator will use the Class Members'
13 Data and otherwise work with Defense Counsel or utilize its own resources such as skip traces to
14 find a more current address. The Settlement Administrator will be responsible for taking reasonable
15 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
16 address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service.
17 These reasonable steps shall include the tracking of all undelivered mail; performing address
18 searches for all mail returned without a forwarding address; and promptly re-mailing to Class
19 Members for whom new addresses are found. Any such Class Members who failed to receive a
20 Class Notice, or who were subject to a re-mailing of the Class Notice as described herein shall be
21 given an additional fourteen (14) days to opt out or object to the Settlement.

22 (d) The Settlement Administrator will inform Class Counsel and Defense
23 Counsel of the number of returned Class Notices it receives and Class Notices re-mailed in a
24 weekly status report.

25 (e) Not later than twenty-five (25) court days prior to the Final Approval
26 Hearing, the Settlement Administrator will serve on the Parties a declaration of due diligence setting
27 forth its compliance with its obligations under this Settlement. The declaration will be filed with
28 the papers submitted with the Motion for Final Approval. Prior to the Final Approval Hearing, the

1 Settlement Administrator will supplement its declaration of due diligence if any material changes
2 occur from the date of the filing of its prior declaration.

3 **46. Participating Class Members; Requests for Exclusion from Class Settlement;**
4 **and Objections to Settlement.** Class Members may submit requests to be excluded from the effect
5 of the Settlement; or objections to the Settlement, pursuant to the following procedures:

6 **(a) Participating Class Members.** Each Class Member shall be deemed to be a
7 Participating Class Member unless they submit a complete, timely, and valid request to be excluded
8 from the effect of the Settlement as provided below. All Participating Class Members shall be
9 bound by the provisions and releases contained in this Settlement.

10 **(b) Request for Exclusion from Settlement.** Class Members who wish to
11 exclude themselves from the Settlement (“opt out” of the Settlement) must submit to the Settlement
12 Administrator, not later than forty-five (45) days after the date that the Settlement Administrator
13 first mails the Class Notices, an Exclusion Request (“the Exclusion Period”). Exclusion Requests
14 may be submitted to the Settlement Administrator via U.S. Mail only. Class Members must
15 complete, sign, date, and timely return an Exclusion Request to the Settlement Administrator to
16 exclude themselves from the Settlement, setting forth their (i) name, (ii) address, (iii) last four digits
17 of their Social Security number, and (iv) the following statement or a similar statement: “I wish to
18 exclude myself from the settlement reached in the matter of *Moody v. Dura Technologies, Inc., et*
19 *al.* I understand that by excluding myself, I will not receive any money from the Class settlement
20 reached in this matter.” A Class Member who does not complete and submit a valid and timely
21 Exclusion Request in the manner and by the Exclusion Period will remain a Participating Class
22 Member and, if the Court approves the Settlement, will be bound by all terms and conditions of the
23 Settlement and by the Judgment. A Class Member who timely submits a valid Exclusion Request
24 will not participate in, or be bound by, the Settlement of the Judgment and will not receive any
25 payment pursuant to the Settlement except for a payment from the portion of the PAGA Payment to
26 the PAGA Group if the Class Member is a PAGA Group Member, and will not be bound by the
27 terms of the Settlement, except for the release of the PAGA Group Released Claims if the Class
28 Member is a PAGA Group Member, and will not have any right to object, appeal, or comment

1 thereon. To be valid, Exclusion Requests must be completed in full, signed, and returned to the
2 Settlement Administrator before the expiration of the Exclusion Period. Non-Participating Class
3 Members will not be permitted to file objections to the Settlement and/or appear at the Final
4 Approval Hearing to voice any objections to the Settlement. Members of the PAGA Group cannot
5 seek to exclude themselves from the Settlement of the PAGA claim, but retain all rights to exclude
6 themselves from the Class Settlement as delineated herein. The Settlement Administrator will
7 provide a declaration to Class Counsel and Defense Counsel with the names of the Non-
8 Participating Class Members, who shall be identified in the Final Order/Judgment.

9 (c) **Objections to Settlement.** The Class Notice will provide that any Class
10 Member who does not request exclusion from the Settlement and who wishes to object to the
11 Settlement must serve on the Settlement Administrator, not later than forty-five (45) days after the
12 Settlement Administrator initially mails the Class Notice, a written objection to the Settlement
13 which sets forth the grounds for the objection and the other information required by Paragraph
14 44(d).

15 (d) The written objection must be signed and dated and must state the Class
16 Member's (i) name, (ii) address, (iii) last four digits of their Social Security number, (iv) the dates
17 of the Class Member's employment with Defendants (v) the basis for each objection in clear and
18 concise terms, including any legal support and each specific reason in support of the objection, as
19 well as any documentation or evidence in support thereof, and, (v) if the Class Member is
20 represented by counsel, the name and address of his or her counsel. The written objection shall also
21 state whether the Class Member wishes to speak at the Final Approval Hearing, and the Superior
22 Court will determine whether Objecting Settlement Class Members will be permitted to speak. If a
23 Class Member fails to submit a written objection, the Class Member will be deemed to have waived
24 all objections and will be foreclosed from making any objections – whether by appeal or otherwise
25 – to the Settlement, unless otherwise permitted by the Superior Court.

26 (e) The Settlement Administrator shall provide objections, if any, to Class
27 Counsel and Defense Counsel within three (3) days of receipt, and the Settlement Administrator
28 shall attach the same to its declaration of due diligence and file with the Court prior to the Final

1 Approval Hearing. Any Class Member who files an objection remains eligible to receive monetary
2 compensation from the Settlement. If the Superior Court rejects the Class Member's objection, or if
3 the Superior Court approves the Settlement despite any objections, the Class Member will be
4 deemed to be a Participating Class Member and will be bound by the terms of this Settlement.
5 Plaintiff and Defendants shall not be responsible for any fees, costs, or expenses incurred by any
6 Class Member and/or his or her counsel related to any objections to the Settlement. Submitting an
7 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is
8 preserved by becoming a party of record by timely and properly intervening or filing a motion to
9 vacate the judgment under Code of Civil Procedure Section 663.

10 47. **Report.** Not later than seven (7) days after the deadline for submission of requests
11 to be excluded and/or objections, the Settlement Administrator will provide Defendants, through
12 Defense Counsel, with a complete and accurate list of names for all Participating Class Members,
13 all Non-Participating Class Members, all PAGA Group members, and all Class Members who
14 objected to the settlement. The report shall also be accompanied by an itemized calculation of the
15 Settlement Shares for each Participating Class Member. The Settlement Administrator shall also
16 provide both Parties with a weekly report during the Exclusion Period identifying the number of
17 Participating Class Members, the number of Non-Participating Class Members, the number of
18 PAGA Group members, and the number of Class Members who submitted a valid, timely, and
19 complete objection. Class Counsel shall also receive a list of Class Members who object to the
20 Settlement and their objections, as noted above.

21 48. **Resolution of Class Member and PAGA Group Member Disputes.** If a Class
22 Member and/or PAGA Group Member disputes the number of his or her Individual Workweeks
23 and/or Individual Pay Periods stated in their Class Notice, the Class Member and/or PAGA Group
24 Member must, within forty-five (45) days after the Settlement Administrator initially mails the
25 Class Notice, ask the Settlement Administrator to resolve the matter by returning the Class Notice
26 with a statement of the number of Workweeks and/or Pay Periods that he or she contends were
27 worked and include any documentation the Class Member and/or PAGA Group Member has to
28 support their contention. The Settlement Administrator shall notify Defendants of the dispute and

1 provide them with a copy of the Class Notice and any documentation received in support of the
2 dispute within three (3) court days of receipt thereof. Defendants shall review their payroll and
3 personnel records and verify the correct number of Workweeks and/or Pay Periods within five (5)
4 court days of the Settlement Administrator's notification. Defendants' records will have a
5 rebuttable presumption of accuracy. After consultation with Class Counsel, Defense Counsel, and
6 the applicable Class Member and/or PAGA Group Member, the Settlement Administrator will,
7 within three (3) court days of Defendants' verification, make a determination of the Class Member's
8 and/or PAGA Group Member's number of Workweeks and/or Pay Periods and that determination
9 will be final, binding on the Parties and the Class Member and/or PAGA Group Member, and is not
10 appealable.

11 **49. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
12 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to
13 exclude him or herself from the Settlement, object to the Settlement, and/or appeal from the
14 Judgment. If ten percent (10%) or more of the Class Members submit a complete, valid, and timely
15 request to be excluded from the Settlement and are deemed to be Non-Participating Class Members,
16 then Defendants shall have the unilateral right to void this Settlement. Defendants may do so by
17 giving notice to Plaintiff and the Court of its election to void the Settlement not later than fourteen
18 (14) days after the Settlement Administrator issues its report identifying the number of Participating
19 Class Members, the number of Non-Participating Class Members, and the number of Class
20 Members who objected to the settlement as described in Paragraph 44(c). Notwithstanding any
21 other provisions in this Settlement, no sums shall be payable by Defendants in the event that this
22 Settlement is voided as provided for herein.

23 **50. Additional Briefing and Final Approval.**

24 (a) Not later than sixteen (16) court days before the Final Approval Hearing, the
25 Plaintiff will prepare and the Parties will jointly file with the Superior Court a Motion for Final
26 Approval of the Settlement, including payment of the Settlement Administrator's Payment, Class
27 Representative Payment, Class Counsel Fees Payment, and the Class Counsel Litigation Expenses
28 Payment, and a memorandum in support of their motion ("Motion for Final Approval"). Plaintiff

1 will not seek additional fees from Defendants or an increase in the Maximum Settlement Amount as
2 part of the Motion for awards of the Class Representative Payment, Class Counsel Fees Payment,
3 and the Class Counsel Litigation Expenses Payment.

4 (b) Not later than five (5) court days before the Final Approval Hearing, the
5 Parties shall be entitled to file and serve a response to any Class Member's objection to the
6 Settlement and/or reply in support of their Motion for Final Approval, to the extent that any
7 opposition to said Motion is filed.

8 (c) If the Superior Court ultimately does not grant final approval of the
9 Settlement or grants final approval conditioned on any material change to the Settlement that is not
10 agreed to by one of the Parties, then either Party will have the right to void the Settlement. If the
11 Settlement is voided in this manner, the Parties will have no further obligations under the
12 Settlement, including any obligation by Defendants to pay any amounts that otherwise would have
13 been payable under this Settlement, except that the voiding Party will pay the Settlement
14 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
15 right to void the Settlement under this paragraph. For the purposes of this paragraph, a "material
16 change" is a change to the terms outlined in the accepted Mediator's Proposal, a copy of which is
17 attached hereto as **Exhibit B**. However, an award by the Superior Court of a lesser amount than
18 that sought by Plaintiff and Class Counsel for the Class Representative Payment, the Class Counsel
19 Fees Payment, and/or the Class Counsel Litigation Expenses Payment, will not constitute a material
20 change to the Settlement within the meaning of this paragraph.

21 (d) Upon final approval of the Settlement by the Superior Court at or after the
22 Final Approval Hearing, the Parties will present for the Superior Court's approval and entry a
23 Proposed Final Order and Judgment. The entry of the Final Order and Judgment shall permanently
24 bar all Participating Class Members from prosecuting against Defendants any claims or causes of
25 action of any kind up through the date of Final Approval, which were or could have been brought in
26 this Action, whether known or unknown, as well as all claims as set forth in the Release contained
27 in Section V of this Agreement.

28 (e) After entry of the Judgment, the Superior Court will have continuing

1 jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Settlement,
2 (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as
3 may be appropriate under court rules or applicable law.

4 **51. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
5 and conditions of this Settlement, Plaintiff, Participating Class Members, Defendants, and their
6 respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights
7 to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a
8 motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary
9 writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The
10 waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
11 proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for
12 consummation of the Settlement (including making payments under the Settlement) will be
13 suspended until such time as the appeal is finally resolved and the Judgment, consistent with the
14 terms of this Settlement, becomes Final.

15 **52. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
16 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
17 motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the
18 Judgment such that there is a material modification to the Settlement, and that court's decision is
19 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then
20 either Party will have the right to void the Settlement, which the Party must do by giving written
21 notice to the other Parties, the reviewing court, and the Superior Court, not later than fourteen (14)
22 days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment
23 becomes final. For the purposes of this paragraph, a "material change" is a change to the terms
24 outlined in the accepted Mediator's Proposal, a copy of which is attached hereto as **Exhibit B**. A
25 vacation, reversal, or modification of the Superior Court's award of the Class Representative
26 Payment, the Class Counsel Fees Payment, and/or Class Counsel Litigation Expenses Payment will
27 not constitute a vacation, reversal, or material modification of the Judgment within the meaning of
28 this paragraph.

1 **53. Establishment of Settlement Account.** The Settlement Administrator shall
2 establish a Settlement Account within ten (10) days of the Effective Date and notify the Parties
3 when the Settlement Account has been established. The Settlement Administrator shall also
4 provide Defendants with an itemized statement for the total amount to be deposited into the
5 Settlement Account, which shall equal the Maximum Settlement Amount (“Settlement Account
6 Deposit”). Within ten (10) days after receiving notification of the Settlement Account and
7 statement for the Settlement Account Deposit, Defendants shall pay into the Settlement Account an
8 amount equal to the Settlement Account Deposit. Defendants shall have no obligation to pay any
9 additional funds into the Settlement Account.

10 **54. Payment of Settlement Shares and PAGA Payment Shares.** The Settlement
11 Administrator shall pay to each Participating Class Member his or her Settlement Share and to each
12 PAGA Group Member his or her PAGA Payment Share from the Settlement Account. The
13 Settlement Administrator shall pay each Settlement Share by sending a check in the appropriate
14 amount after withholdings to the Participating Class Member at the address indicated in the Class
15 Member’s Data. The Settlement Administrator shall pay each PAGA Payment Share by sending a
16 check in the appropriate amount to the PAGA Group Member at the address indicated in the PAGA
17 Group Member’s Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail
18 within fourteen (14) days of its receipt of the Settlement Account Deposit from Defendants.

19 **55. Uncashed Settlement Share and PAGA Payment Share Checks.** Any checks
20 paid to Participating Class Members and/or PAGA Group Members shall be negotiable for one
21 hundred eighty (180) calendar days from the date of their issuance. A Participating Class Member
22 must cash his or her Settlement Share check within one hundred eighty days (180) calendar days
23 after it is mailed to him or her. A PAGA Group Member must cash his or her PAGA Payment
24 Share check within one hundred eighty days (180) calendar days after it is mailed to him or her. If a
25 check remains uncashed after one hundred eighty (180) calendar days from the initial mailing, or if
26 a check is returned to the Settlement Administrator as undeliverable during the one hundred eighty-
27 day period, the Settlement Administrator shall take all reasonable efforts to identify the
28 Participating Class Member’s and/or PAGA Group Member’s correct address, including the

1 performance of a “skip-trace.” If an updated address can be identified, the Settlement
2 Administrator shall issue another check to the Participating Class Member and/or PAGA Group
3 Member and mail it to the Participating Class Member and/or PAGA Group Member at his or her
4 updated address. If an updated address for the Participating Class Member and/or PAGA Group
5 Member cannot be identified, if a reissued check is once again returned to the Settlement
6 Administrator as undeliverable, or if the reissued check remains uncashed after one hundred eighty
7 (180) calendar days, the Settlement Administrator will keep an accounting of such funds and shall
8 give notice to the Parties of the total balance of uncashed Settlement Shares and/or PAGA Payment
9 Shares. A Participating Class Member who fails to negotiate or receive their Settlement Share
10 check despite the procedures described above shall nevertheless remain bound by the Settlement
11 and the releases contained herein. A PAGA Group Member who fails to negotiate or receive their
12 PAGA Payment Share check despite the procedures described above shall nevertheless remain
13 bound by the Settlement and the releases contained herein.

14 56. The funds represented by Settlement Share and/or PAGA Payment Share checks
15 remaining uncashed for more than 180 days after issuance shall be voided and then shall be
16 transmitted to the Controller of the State of California to be held pursuant to the Unclaimed
17 Property Law, California Code of Civil Procedure § 1500, *et seq.* in the names of those Participating
18 Class Members and/or PAGA Group Members who did not cash their checks until such time they
19 claim their property. After the expiration of the 180-calendar day check cashing period, as outlined
20 above, the Settlement Administrator shall begin the process of transferring the funds in accordance
21 with California Code of Civil Procedure §§ 1500-1582 and the timing requirements set forth by the
22 Office of the State Controller. The Parties agree that this disposition results in no “unpaid residue”
23 under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out
24 to Participating Class Members, whether or not they all cash their settlement checks.

25 57. **Final Report by Settlement Administrator to Superior Court.** Within ten (10)
26 days after final disbursement of all funds from the Settlement Account, including the transmission
27 of any uncashed checks to the Unclaimed Property Fund, pursuant to Paragraph 56, the Settlement
28 Administrator will provide the Parties with a declaration providing a final summary report on the

1 disbursements of all funds from the Settlement Account, and then Class Counsel will file the
2 declaration with the Superior Court.

3 **IV. SETTLEMENT TERMS AND CONDITIONS**

4 58. **Conditional Certification for Settlement Purposes.** Solely for the purposes of
5 effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the
6 conditional certification of the following Settlement Class: “all persons who, during the Class
7 Period, have previously been or currently are employed in California by Defendants as an hourly-
8 paid non-exempt employee.” The Parties agree that if for any reason the Settlement is not
9 preliminarily and/or finally approved, the conditional certification of the Settlement Class will be of
10 no force or effect, does not constitute an admission by Defendants that class certification is proper,
11 and will not be deemed admissible in this or any other proceeding, and that the Parties will litigate
12 the issue of class certification.

13 59. **Settlement Shares.** Subject to the terms and conditions of this Settlement, the
14 Settlement Administrator will calculate the Settlement Shares for each Class Member within ten
15 (10) days after Defendants provide the Settlement Administrator with the Class Members’ Data.
16 The Settlement Share for each Class Member will be calculated as follows, understanding that the
17 formulas below do not constitute an admission by either Party, and are intended only to provide a
18 practical means to simplify and administer the claims process:

19 (a) **Number of Class Members and Workweeks.** Defendants shall determine
20 the total number of Class Members and the aggregate number of Workweeks for those Class
21 Members as of the time of Preliminary Approval. This information shall be provided to the
22 Settlement Administrator along with the Class Members’ Data as described in Paragraph 44(a)
23 above.

24 (b) **Calculation of the Workweek Value.** The Settlement Administrator shall
25 determine the value of a Workweek (“Workweek Value”) by taking the Net Settlement Amount and
26 dividing it by the sum of all Class Members’ Workweeks who do not opt out of the Settlement.

27 (c) **Calculation of Settlement Shares.** The Settlement Administrator shall
28 assign to each Participating Class Member a Settlement Share which shall be equal to the

1 Workweek Value multiplied by each Participating Class Member's Individual Workweeks. Upon
2 calculation of the Participating Class Members' Settlement Shares, the Settlement Administrator
3 shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of employee
4 identification numbers for the Class Members with their corresponding Individual Workweeks and
5 Settlement Shares.

6 **60. PAGA Payment Shares.** Subject to the terms and conditions of this Settlement, the
7 Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Group Member
8 within ten (10) days after Defendants provide the Settlement Administrator with the PAGA Group
9 Members' Data. The PAGA Payment Share for each PAGA Group Member will be calculated as
10 follows, understanding that the formulas below do not constitute an admission by either Party, and
11 are intended only to provide a practical means to simplify and administer the claims process:

12 **(a) Number of PAGA Group Members and Pay Periods.** Defendants shall
13 determine the total number of PAGA Group Members and the aggregate number of Pay Periods for
14 those PAGA Group Members as of the time of Preliminary Approval. This information shall be
15 provided to the Settlement Administrator along with the Class Members' Data as described in
16 Paragraph 44(a) above.

17 **(b) Calculation of the Pay Period Value.** The Settlement Administrator shall
18 determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount
19 and dividing it by the sum of all PAGA Group Members' Pay Periods.

20 **(c) Calculation of PAGA Payment Shares.** The Settlement Administrator shall
21 assign to each PAGA Group Member a PAGA Payment Share which shall be equal to the Pay
22 Period Value multiplied by each PAGA Group Member's Individual Pay Periods. Upon calculation
23 of the PAGA Group Members' PAGA Payment Shares, the Settlement Administrator shall furnish
24 to Class Counsel and Defense Counsel a worksheet containing a list of employee identification
25 numbers for the PAGA Group Members with their corresponding Individual Pay Periods and
26 PAGA Payment Shares.

27 **61. Taxes and Withholdings.** Each Settlement Share is intended to settle the Class
28 Members' claims for unpaid wages and penalties. Accordingly, twenty percent (20%) of each

1 Settlement Share shall represent unpaid wages and the remaining eighty percent (80%) of each
2 Settlement Share shall represent penalties and interest. The portion of the Settlement Share
3 representing unpaid wages shall be paid to each Participating Class Member subject to any
4 applicable employee-side tax withholdings and deductions, and the Settlement Administrator shall
5 issue an IRS Form W-2 to each Participating Class Member for that amount. The portion of the
6 Settlement Share representing penalties shall be paid to the Participating Class Member in full
7 without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099
8 to each Participating Class Member for that amount. Each Participating Class Member shall be
9 individually responsible for their own share of applicable income tax withholdings and deductions
10 from the Settlement Share attributable to the portion of the settlement for which an IRS Form 1099
11 will be issued. Defendants shall be responsible for payment of the Employer Payroll Tax
12 attributable to the Settlement Share payments constituting wages. The Employer's Payroll Tax
13 shall not be deducted from the Maximum Settlement Amount and shall not be included in any
14 payments of Settlement Shares. The Parties agree and understand that neither Defendants nor
15 Plaintiff nor their respective counsel have made any representations regarding the tax obligations or
16 consequences, if any, related to this Settlement. The Parties agree that Defendants and each
17 Participating Class Member are solely responsible for determining the tax consequences of
18 payments made pursuant to this Settlement and for paying taxes, if any, which are determined to be
19 owed by each of them on such payments (including penalties and interest related thereto) by any
20 taxing authority, whether state, local, or federal.

21 62. Each PAGA Payment Share is intended to settle the PAGA Group Members' claims
22 for civil penalties. Accordingly, one hundred percent (100%) of each PAGA Payment Share shall
23 represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Group Member in
24 full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form
25 1099 to each PAGA Group Member for that amount. Each PAGA Group Member shall be
26 individually responsible for their own share of applicable income tax withholdings and deductions
27 for his or her PAGA Payment Share.

28 63. **Total Payment Amount.** In no event will Defendants be required to pay more than

1 the Maximum Settlement Amount for distribution to the Plaintiff, Class Counsel, Participating
2 Class Members, PAGA Group Members, LWDA, Settlement Administrator, or for any other costs
3 or expenses not otherwise enumerated. However, Defendants shall be responsible for paying any
4 Employer Payroll Taxes for the payment of Settlement Shares attributable to wages, which shall not
5 be paid from the Settlement Account and shall not be included in the Maximum Settlement
6 Amount.

7 **64. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
8 conditions of this Settlement, the Settlement Administrator will make the following payments out of
9 the Maximum Settlement Amount as follows:

10 **(a) To Plaintiff:** In addition to his Settlement Share, Plaintiff will apply to the
11 Superior Court for a Class Representative Payment in an amount not to exceed Seven Thousand,
12 Five Hundred Dollars and Zero Cents (\$7,500.00). Defendants will not oppose this Class
13 Representative Payment. The Settlement Administrator will pay the Class Representative Payment
14 approved by the Superior Court out of the Maximum Settlement Amount. Payroll tax withholding
15 and deductions will not be taken from the Class Representative Payment and an IRS Form 1099 will
16 be issued to Plaintiff for this payment.

17 **(b) To Class Counsel:** Class Counsel will apply to the Superior Court for the
18 Class Counsel Fees Payment in an amount not to exceed One Hundred and Sixteen Thousand, Six
19 Hundred and Sixty-Six Dollars and Sixty-Six Cents (\$116,666.66), or one-third of the Maximum
20 Settlement Amount. Class Counsel will also submit to the Superior Court a memorandum of costs
21 for the Class Counsel Litigation Expenses Payment in an amount not to exceed Fifteen Thousand
22 Dollars (\$15,000.00) as request reasonable costs of suit to be paid from the Maximum Settlement
23 Amount. Defendants will not oppose these requests. The Settlement Administrator will pay the
24 amounts approved by the Superior Court out of the Maximum Settlement Amount. Withholding
25 and deductions will not be taken from the Class Counsel Fees Payment or Class Counsel Litigation
26 Expenses Payment and one or more IRS Forms 1099 will be issued to Class Counsel with respect to
27 those payments.

28 **(c) To the LWDA:** As part of their Motions for Preliminary and Final

1 Approval, the Parties will jointly apply to the Superior Court for approval of the LWDA Payment in
2 the amount of Eighteen Thousand, Seven Hundred and Fifty Dollars and Zero Cents (\$18,750.00),
3 which shall constitute the LWDA's seventy-five percent (75%) share of Twenty-Five Thousand
4 Dollars and Zero Cents (\$25,000.00) in civil penalties paid under this Settlement. The remaining
5 Six Thousand, Two Hundred and Fifty Dollars and Zero Cents (\$6,250.00) in civil penalties shall be
6 distributed on a *pro rata* basis based upon the number of pay periods worked by each PAGA Group
7 Member ("PAGA Payment").

8 (d) **To the Settlement Administrator:** The Settlement Administrator will be
9 paid from the Maximum Settlement Amount its reasonable fees and expenses as approved by the
10 Superior Court, which are estimated to be Seven Thousand Dollars and Zero Cents (\$7,000.00).

11 65. **Appointment of Settlement Administrator.** The Parties will ask the Superior
12 Court to appoint Phoenix Class Action Administrators, a qualified and experienced administrator
13 based in California where the Action is venued, to serve as the Settlement Administrator, which, as
14 a condition of appointment, will agree to be bound by this Agreement with respect to the
15 performance of its duties and its compensation. The Settlement Administrator's duties will include
16 (i) calculating Settlement and PAGA Payment Shares; (ii) preparing, printing, and mailing the Class
17 Notice to all Class Members; (iii) using reasonable measures to contact all Class Members,
18 including conducting a National Change of Address search on all Class Members before mailing the
19 Class Notice to each Class Member's address; (iv) re-mailing the Class Notice to the Class
20 Member's new address for those Class Members whose address had changed; (v) setting up a toll-
21 free telephone number to receive calls from Class Members; (vi) receiving requests for exclusion
22 and objections to the Settlement; (vii) providing the Parties with weekly status reports about the
23 delivery of Class Notices and any requests for exclusion and objections; (viii) issuing the checks to
24 effectuate the payments due under the Settlement; (ix) using reasonable measures to deliver issued
25 checks to Participating Class Members, including use of a "skip-trace" for undeliverable checks;
26 and (x) otherwise administering the Settlement pursuant to this Agreement including paying and
27 reporting the employer's share of the payroll taxes to the appropriate taxing agency. The Settlement
28 Administrator will have the final authority to resolve all disputes concerning the calculation of a

1 Participating Class Member's Settlement Share and/or PAGA Group Member's PAGA Payment
2 Share, subject to the terms set forth in this Agreement. The Settlement Administrator's reasonable
3 fees and expenses are estimated to be Seven Thousand Dollars and Zero Cents (\$7,000.00) and will
4 be paid out of the Maximum Settlement Amount, as set forth herein, subject to Court approval.

5 **V. RELEASE OF CLAIMS**

6 **66. Participating Class Members Released Claims.** As of the date of the Judgment,
7 each Participating Class Member, and without the need to manually sign a release document, in
8 exchange for the consideration recited in this Agreement, on behalf of himself or herself and on
9 behalf of his/her current, former, and future heirs, executors, administrators, attorneys, agents, and
10 assigns, shall and does hereby fully and finally release Defendants and the Releasees from any and
11 all claims, demands, rights, liabilities, and causes of action that were or could have been brought
12 against the Releasees in the Action based on the facts, allegations or issues set forth in the Action
13 (the "Released Claims"). Released Claims for Class Members who worked for Defendants in
14 California during the Class Period shall have their claims released during the Class Period. The
15 Released Claims release all causes of action and claims that were alleged in the Action or
16 reasonably could have been alleged based on the facts and legal theories contained in the operative
17 complaint, including, but not limited to, all of the following claims for relief: (a) failure to pay all
18 minimum and overtime wages due; (b) failure to provide meal periods or compensation in lieu
19 thereof; (c) failure to provide rest periods or compensation in lieu thereof; (d) failure to pay wages
20 timely at time of termination or resignation; (e) failure to provide complete, accurate wage
21 statements; (f) unfair business practices that could have been premised on the claims, causes of
22 action or legal theories of relief described above or any of the claims, causes of action or legal
23 theories of relief pleaded in the operative complaint; and (g) all claims under PAGA that could have
24 been premised on the claims, causes of action or legal theories described above or any of the claims,
25 causes of action or legal theories of relief pleaded in Plaintiff's Complaint; any claim for costs and
26 attorneys' fees and expenses, and any claim arising from the claims described above under
27 applicable federal, state, local or territorial law as well as applicable regulations and Wage Orders.
28 Participating Class Members who cash their checks are deemed to have waived all claims under the

1 settlement inclusive of claims under the Fair Labor Standards Act (“FLSA”). Participating Class
2 Members who do not cash their checks shall be deemed to waive all claims under the Settlement
3 that were or could have been pled in Plaintiff’s Complaint based on the allegations in the Plaintiff’s
4 Complaint except for a claim under the FLSA.

5 **67. PAGA Group Released Claims.** As of the date of the Judgment, each PAGA Group
6 Member, and without the need to manually sign a release document, in exchange for the
7 consideration recited in this Agreement, on behalf of himself or herself and on behalf of his/her
8 current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, shall and
9 does hereby fully and finally release Defendants and the Releasees from any and all claims,
10 demands, rights, liabilities, and causes of action that were or could have been brought against the
11 Releasees in the Action for civil penalties pursuant to the PAGA that were alleged or could have
12 been alleged under the Labor Code, state or local wage and hour laws and Wage Orders, whether
13 known or unknown, based on the facts and legal theories contained in the Action, including but not
14 limited to (a) failure to pay all minimum and overtime wages due; (b) failure to provide meal
15 periods or compensation in lieu thereof; (c) failure to provide rest periods or compensation in lieu
16 thereof; (d) failure to pay wages timely at time of termination or resignation; and (e) failure to
17 provide complete, accurate wage statements that could have been premised on the claims, causes of
18 action or legal theories of relief described above or any of the claims, causes of action or legal
19 theories of relief pleaded in the operative complaint (the “PAGA Released Claims”). Following the
20 Effective Date and Defendants funding the settlement, all PAGA Group Members will release the
21 Releasees from the PAGA Released Claims that accrued during the PAGA Period. PAGA Group
22 Members cannot opt out of or object to the foregoing PAGA Release.

23 **68.** The Released Claims and PAGA Released Claims described in Paragraphs 66 & 67
24 expressly exclude all claims made by a Participating Class Member and/or PAGA Group Member
25 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
26 workers’ compensation, claims while classified as exempt, and claims outside of the Class Period
27 and/or PAGA Period.

28 **69. Class Counsel.** As of the Effective Date, and except as otherwise provided by this

1 Settlement, Class Counsel and any counsel associated with Class Counsel waive any further claims
2 to costs and attorneys' fees and expenses against Defendants or the Releasees arising from or
3 related to the Action, including but not limited to claims based on the Labor Code, the Code of Civil
4 Procedure, PAGA, the Fair Labor and Standards Act, the Business and Professions Code, or any
5 other contract, statute or law ("Class Counsel Released Claims").

6 70. **No Effect on Other Benefits.** The payment of Settlement Shares and/or PAGA
7 Payment Shares will not result in any additional employee benefit payments (such as 401(k),
8 vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any
9 employee benefit.

10 **VI. MISCELLANEOUS TERMS**

11 71. **No Admission of Liability.** Defendants deny that they have engaged in any
12 unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone
13 under the claims asserted in the Action. This Settlement is entered into solely for the purpose of
14 compromising highly disputed claims. Nothing in this Settlement is intended or will be construed
15 as an admission of liability or wrongdoing by Defendants, an admission by Plaintiff that any of his
16 claims were non-meritorious, or any defense asserted by Defendants was meritorious. This
17 Settlement and the fact that Plaintiff and Defendants were willing to settle the Action will have no
18 bearing on, and will not be admissible in connection with, any litigation (other than solely in
19 connection with the Settlement).

20 72. The Parties also agree that this release constitutes a resolution of a good faith dispute
21 concerning wages and thus Labor Code Section 206.5 does not apply, which reads in part:

22
23 "Execution of release of claim or right on account of wages due.

24 No employer shall require the execution of any release of any
25 claim or right on account of wages due, or to become due, or made,
26 or made as an advance on wages to be earned, unless payment of
27 those wages has been made."
28

1 73. Whether or not the Judgment becomes Final, neither the Settlement, any document,
2 statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those
3 matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be
4 evidence for any purpose adverse to Defendants or any other Releasees, including, but not limited
5 to, evidence of a presumption, concession, indication or admission by any of the Releasees of any
6 liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered
7 in evidence against any of the Releasees, or any other civil, criminal or administrative action or
8 proceeding except for purposes of effectuating this Settlement.

9 74. Notwithstanding Paragraph 73 of this Settlement, any and all provisions of this
10 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce
11 any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

12 75. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties
13 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
14 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
15 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits
16 other than the representations, warranties, covenants, and inducements expressly stated in this
17 Settlement and its exhibits.

18 76. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent
19 that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action
20 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms,
21 and to execute any other documents required to effectuate the terms of this Settlement. The Parties
22 and their counsel will cooperate with each other and use their best efforts to affect the
23 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
24 form or content of any document needed to implement the Settlement, or on any supplemental
25 provisions that may become necessary to effectuate the terms of this Settlement, the Parties will
26 seek the assistance of mediator Steve Serratore, Esq., and if no resolution is reached the Superior
27 Court, and in all cases all such documents, supplemental provisions and assistance of the court will
28 be consistent with this Settlement.

1 77. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
2 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
3 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

4 78. **Settlement Binding on Successors.** This Settlement Agreement will be binding
5 upon, and inure to the benefit of, the successors of each of the Parties.

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

9 80. **Cooperation in Drafting.** The Parties have cooperated in the drafting and
10 preparation of this Settlement. This Settlement will not be construed against any Party on the basis
11 that the Party was the drafter or participated in the drafting.

12 81. **Fair Settlement.** The Parties and their respective counsel believe and warrant that
13 this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at
14 this Settlement through arms-length negotiations, taking into account all relevant factors, current
15 and potential.

16 82. **Headings.** The descriptive heading of any section or paragraph of this Settlement is
17 inserted for convenience of reference only and does not constitute a part of this Settlement.

18 83. **Notice.** All notices, demands or other communications given under this Settlement
19 will be in writing and deemed to have been duly given as of the third business day after mailing by
20 U.S. Mail, addressed as follows:

21
22 *To Class Counsel:*

Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
LAUBY MANKIN LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501

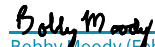
23
24
25 *To Defense Counsel:*

Matthew C. Sgnilek, Esq.
Andrea Rosenkranz, Esq.
O'HAGAN MEYER
4695 MacArthur Court, Suite 210
Newport Beach, CA 92660

1 84. **Execution in Counterpart.** This Settlement may be executed in one or more
2 counterparts. All executed counterparts and each of them will be deemed to be one and the same
3 instrument provided that counsel for the Parties will exchange between themselves original signed
4 counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be
5 presumptive evidence of execution of the original, which shall be produced on reasonable request.
6 Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

7
8 DATED: Feb 25, 2021

BOBBY MOODY

9
10 
Bobby Moody (Feb 25, 2021 13:02 PST)

11
12 DATED: _____

DURA TECHNOLOGIES, INC.

13
14 By: _____

15 Its: _____

16
17 DATED: _____

HAWKEYE INDUSTRIES INC.

18
19 By: _____

20 Its: _____

21 DATED: _____

REVCHEM COMPOSITES, INC.

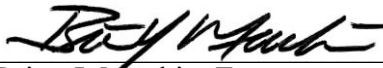
22
23 By: _____

24 Its: _____

1 DATED: February 25, 2021

LAUBY MANKIN LAUBY LLP

2
3 By:



4 Brian J. Mankin, Esq.
Peter J. Carlson, Esq.

5 Attorney for Plaintiff
6 BOBBY MOODY

7 DATED: _____

O'HAGAN MEYER

8
9 By:

10 Matthew C. Sgnilek, Esq.
11 Andrea Rosenkranz, Esq.

12 Attorneys for Defendants
13 DURA TECHNOLOGIES, INC.,
14 HAWKEYE INDUSTRIES INC., and
15 REVCHEM COMPOSITES, INC.
16
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EXHIBIT “B”

Bobby Moody v. Dura Technologies, Inc., et al.
San Bernardino County Superior Court Case No. CIVDS2008887

|||||
<<PSA ID>>

<<Last 4 Digits of SSN>>

<<First Last>>

<<Address>>

<<City, State, Zip, Country>>

Name/Address Changes (if any):

NOTICE OF CLASS ACTION SETTLEMENT

If you are or were a non-exempt, hourly employee of Dura Technologies, Inc., Hawkeye Industries Inc., and/or Revchem Composites, Inc. at any time between May 29, 2016, and February 26, 2021, you may be able entitled to receive money from a Class Action Settlement.

*A court approved this notice. This is not a solicitation from a lawyer.
You are not being sued.*

PLEASE READ THIS NOTICE.

Your legal rights are affected whether you act or don't act. Your legal rights and options—and the deadlines to use them—are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE SETTLEMENT PAYMENT	You are not required to take action to receive a payment. If you do nothing, you will automatically receive a payment from the Settlement if the Court finally approves the Settlement. In exchange, you will be bound by the Settlement including the release of all claims covered by the Settlement.
REQUEST EXCLUSION	Request to be excluded and receive no benefits from the Settlement. If you submit a Request for Exclusion, you will not receive a settlement payment.
OBJECT	If you wish to object to the Settlement, you may submit a written objection and supporting papers to the Settlement Administrator. Any written objections will be provided to the Court. You may also offer your oral comments at the Final Approval Hearing. In order to object, you must not have excluded yourself from the Settlement.

1. Why should you read this notice?

A proposed settlement (the "Settlement") has been reached in a class action lawsuit entitled *Bobby Moody v. Dura Technologies, Inc., et al.*, San Bernardino County Superior Court Case No. CIVDS2008887 (the "Action" or "Lawsuit"). The Defendants in the Action are Dura Technologies, Inc., Hawkeye Industries Inc., and/or Revchem Composites, Inc (referred to collectively in this Notice as "Defendants.")

The Court has granted preliminary approval of a “Settlement Class” defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by Dura Technologies, Inc., Hawkeye Industries Inc., and/or Revchem Composites, Inc. at any time between May 29, 2016, and February 26, 2021.

The Court has also granted preliminary approval of a “PAGA Group” defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by Dura Technologies, Inc., Hawkeye Industries Inc., and/or Revchem Composites, Inc. at any time between May 29, 2019, and February 26, 2021.

Defendants’ employment records indicate that you meet one or both of these definitions, which makes you a member of the Settlement Class (referred to in this Notice as a “Class Member”) and possibly a member of the PAGA Group (referred to in this Notice as a “PAGA Group Member”). The Court directed that this Notice be sent to all Class Members and PAGA Group Members to inform you about the case and your rights and options before the Court decides to approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, payments will be made to Class Member who have not opted out of the Settlement and all PAGA Group Members.

This Notice explains the Lawsuit, the Settlement, your legal rights and options, what benefits are available and how to get them.

2. What is this Lawsuit about?

On May 29, 2020, Plaintiff Bobby Moody filed the operative class action complaint against the Defendants alleging several violations of California wage and hour laws. Plaintiff filed the Action on behalf of himself and on behalf of all current and former non-exempt, hourly employees. By Plaintiff’s Complaint, Plaintiff alleges that the Defendants: (1) failed to pay at least the minimum wage for all hours worked; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to provide rest periods; (5) failed to provide accurate wage statements; (6) failed to timely pay wages at separation; (7) violated California’s Unfair Competition Law; and (8) owed penalties under California’s Private Attorneys General Act of 2004, California Labor Code §§ 2698-2699.5 (“PAGA”). Defendants vigorously deny all the claims and contentions made in the Lawsuit and maintain they have fully complied with the law, but have agreed to settle the Lawsuit to avoid the expense of litigation.

3. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendants. Instead, both sides agreed to a Settlement. This allows the Parties to avoid the risk and uncertainty of trial and any subsequent appeal, and all affected employees who have not opted out of the Settlement will receive compensation. The Settlement is not an admission of liability by Defendants. The Class Representative and the attorneys believe the Settlement is fair, reasonable and adequate, and in the best interests of all Class Members.

4. What are the terms of the Settlement?

Defendants will pay \$350,000.00 to settle the Action (the “Maximum Settlement Amount”). The Maximum Settlement Amount includes: (a) all Settlement Payments to Participating Class Members; (b) the Service Award to the Class Representative; (c) the Class Counsel’s attorneys’ fees and costs; (d) a payment to the California

Labor and Workforce Development Agency (“LWDA”) for civil penalties brought under PAGA; (d) all PAGA Payments to the PAGA Group Members; and (e) the reasonable fees and costs of the Settlement Administrator. Defendants will pay its portion of all payroll taxes resulting from the Settlement in addition to the Maximum Settlement Amount.

The Court has preliminarily approved the following payments from the Maximum Settlement Amount:

- A. Settlement Administration Costs.** The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$7,000.00 will be paid from the Maximum Settlement Amount to pay the Settlement Administration Costs.
- B. Penalties to the LWDA.** \$25,000 of the Settlement Amount will be allocated to Plaintiff’s claim under PAGA. Of this amount, \$6,250.00 will be distributed to the PAGA Group Members and \$18,750.00 will be paid to the LWDA. This allocation between the PAGA Group Members and LWDA is required by the PAGA.
- C. Service Payment to Class Representative.** Class Counsel will ask the Court to award a Service Payment in the amount of \$7,500.00 to Bobby Moody to compensate him for his service and extra work provided on behalf of the Class Members. This Service Payment will be paid from the Maximum Settlement Amount. The Class Representative also will receive a share of the Settlement as a Class Member.
- D. Attorneys’ Fees and Expenses.** Class Counsel has been prosecuting the Action on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and has 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. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of \$166,666.66, which is one-third of the Maximum Settlement Amount, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$15,000.00 for the costs Class Counsel incurred in connection with the Action.

The final amounts of these various payments are all subject to Court approval.

After deductions of the preceding Court-approved payments, the remaining amount—the “Net Settlement Amount”—will be distributed to those Class Members who have not opted out of the Settlement (the “Participating Class Members”). No portion of the Maximum Settlement Amount will be returned to Defendants.

5. How much can I expect to receive?

There are two types of payments that you may be eligible to receive: (i) as a Participating Class Member; and (ii) as a PAGA Group Member. Below is a summary of how funds from each group are calculated, and your estimated share in each group:

A. Payment to Participating Class Members

Each Participating Class Member will receive a *pro rata* share of the Net Settlement Amount based on the number of workweeks the person worked for Defendants as a non-exempt, hourly employee during

the Class Period, defined as the period of time from May 29, 2016, through February 26, 2021. Any workweek in which a Class Member worked at least one day shall be counted as a workweek.

To calculate a Class Member's Individual Settlement Payment, the Net Settlement Amount will be divided by the aggregate total number of workweeks of all Participating Class Members, resulting in the "Workweek Value." Each Participating Class Member's Individual Settlement Payment will be calculated by multiplying each individual Participating Class Member's total number of workweeks by the Workweek Value.

Your Compensable Workweeks are: <<Workweeks>>

Your Estimated Individual Settlement Payment as a Participating Class Member is: \$<<Est.SettlementAmt>>

All settlement payments are subject to taxation. Each Individual Settlement Payment will be allocated as follows: (a) 20% as wages that will be subject to deductions and withholdings for the employee's share of state and federal payroll taxes; and (b) 80% as penalties and interest that will not be subject to deductions and withholdings. Each Participating Class Member will receive an IRS Form W-2 with respect to the portion of the Settlement Payment allocated to wages and an IRS Form-1099 with respect to the portion of the Settlement Payment allocated to penalties and interest. Prior to mailing Settlement checks, the Settlement Administrator will calculate and deduct the employee's required withholdings and payroll taxes from the "wage" portion of the Settlement payment. Defendants will separately pay the employer's share of payroll taxes with respect to the "wage" portion of each Settlement payment.

Please note that each Participating Class Members will be responsible for his/her share of taxes attributable to the receipt of an Individual Settlement Payment. The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

B. Payment to PAGA Group Member

Each PAGA Group Member will receive a *pro rata* share of the PAGA Payment based on the number of pay periods the person worked for Defendants as a non-exempt, hourly employee during the PAGA Period, defined as the period of time from May 29, 2019, through February 26, 2021. Any pay period in which a Class Member worked at least one day shall be counted as a pay period.

To calculate a PAGA Group Member's Individual PAGA Payment, the PAGA Payment will be divided by the aggregate total number of pay periods of all PAGA Group Members, resulting in the "Pay Period Value." Each PAGA Group Member's Individual Settlement Payment will be calculated by multiplying each individual PAGA Group Member's total number of pay periods by the Pay Period Value.

Your Compensable Pay Periods are: <<PayPeriods>>

Your Estimated Individual PAGA Payment is: \$<<Est.PAGAPaymentAmt>>

All settlement payments are subject to taxation. Each Individual PAGA Payment will be allocated as follows: 100% as penalties that will not be subject to deductions and withholdings. Each PAGA Group Member will receive an IRS Form-1099 for his or her Individual PAGA Payment.

6. What if I disagree with the number of workweeks and/or pay periods credited to me in Section 5(A) and/or 5(B)?

The information concerning the number of workweeks and/or pay periods you worked as an hourly, non-exempt employee during the Class Period and/or PAGA Period is based on Defendants' records. To dispute this number of workweeks and/or pay periods credited to you, you must send written notice to the Settlement Administrator. To be valid, your written dispute of weeks worked must: (1) include your full name, address, telephone number, and last four digits of the Social Security number; and (2) be accompanied by satisfactory evidence of the actual weeks worked as an hourly, non-exempt employee for Defendants during the Class Period and/or PAGA Period, including any supporting documentation, e.g., copies of your pay stubs. To be timely, your written dispute of weeks and/or pay periods worked must be mailed by first-class U.S. Mail, or the equivalent, to the Settlement Administrator *at the address provided below*, and be postmarked on or before [REDACTED], 2021.

The Parties and the Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks and/or pay periods should be credited to the Class Member and/or PAGA Group Member. The Settlement Administrator will make the final decision as to how many workweeks and/or pay periods should be credited to the Class Member and/or PAGA Group Member and report the outcome to the Class Member and/or PAGA Group Member.

7. How and when will I get a payment? How do I update my address?

How do I receive money from the Settlement? You do not need to do anything to receive your Individual Settlement Payment. Just watch your mail for a check and cash it when you get it. If you do not exclude yourself from the Settlement, you will automatically receive money from the Settlement. You do not need to make a claim or take any other action to receive your share of the Settlement.

When will I receive my Settlement payment? Class Members who do not opt out of the Settlement will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. PAGA Group Members will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. If there are appeals, resolving them can take time. Please be patient.

Settlement payment checks must be cashed soon after receipt. The Settlement checks will be able to be cashed for 180 days after they are issued. After 180 days, the Settlement checks will no longer be able to be cashed. Any funds represented by Settlement checks remaining uncashed for more than 180 days after issuance shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure Section 1500, *et seq.* in the names of those Participating Class Members and/or PAGA Group Members who did not cash their Settlement checks until such time they claim their property.

Change of address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure that you receive your Settlement payment. If you change your address, or if this notice was not mailed to your correct address, you should immediately provide your current address to the Settlement Administrator. The Settlement Administrator can be reached at (800) ###-####, or at the address provided below.

8. What claims are being released by the Settlement?

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, all Participating Class Members shall release the Releasees from the Released Claims for the Class Period, which is defined as the period of time between May 29, 2016, and February 26, 2021.

The Released Claims are defined as all causes of action and claims that were alleged or could have been alleged under the Labor Code, state or local wage and hour laws and Wage Orders, whether known or unknown, based on the facts and legal theories contained in the Complaint, including but not limited to: (i) claims for unpaid minimum wages (Lab. Code §§ 1194, 1197, 1197.1); (ii) claims for unpaid overtime (Lab. Code §§ 510, 1198); (iii) claims for non-compliant meal periods and/or associated premiums (Lab. Code §§ 226.7, 512(a)); (iv) claims for non-compliant rest periods and/or associated premiums (Lab. Code § 226.7); (v) claims for wage statement violations (Lab. Code § 226(a)); (vi) claims for failure to timely pay wages upon termination of employment and associated waiting time penalties (Cal. Lab. Code §§ 201-203); (vii) claims for violations of California Business & Professions Code, §§ 17200, *et seq.* arising out of the aforementioned claims; (viii) claims for civil penalties arising under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698-2699.5) (“PAGA”) arising out of the aforementioned claims; (ix) claims that the Class Member is an “aggrieved employee” under PAGA with respect to any of the aforementioned claims released herein; and (x) claims for attorneys’ fees, costs and expenses for all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Complaint. The Participating Class Members who cash their Settlement checks further acknowledge that they are releasing any claims they have against Defendants under the Fair Labor Standards Act (“FLSA”) (collectively, the “Released Claims”). Other than for Plaintiff, claims of Participating Class Members, if any, for vested benefits, wrongful termination, unemployment insurance, disability benefits, social security, workers’ compensation, claims while classified as exempt, and claims outside of the Class Period are not encompassed within the definition of “Released Claims.”

The Releasees are defined as Defendants and their parents, predecessors, successors, subsidiaries, affiliates, partners, owners, assigns, trusts, employees, officers, agents, attorneys, including but not limited to O’Hagan Meyer and MNK Law, stockholders, and fiduciaries.

Any Class Member who does not request exclusion by the applicable deadline will be considered to have accepted the release and to have waived any and all of the Released Claims against the Releasees.

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, all PAGA Members shall release the Releasees from the PAGA Released Claims for the PAGA Period, which is defined as the period of time between May 29, 2019, and February 26, 2021.

The PAGA Released Claims are defined as all claims for civil penalties pursuant to PAGA that were alleged or could have been alleged under the Labor Code, state or local wage and hour laws and Wage Orders, whether known or unknown, based on the facts and legal theories contained in the Complaint, including but not limited to: (i) claims for unpaid minimum wages (Lab. Code §§ 1194, 1197, 1197.1); (ii) claims for unpaid overtime (Lab. Code §§ 510, 1198); (iii) claims for non-compliant meal periods and/or associated premiums (Lab. Code §§ 226.7, 512(a)); (iv) claims for non-compliant rest periods and/or associated premiums (Lab. Code § 226.7); (v) claims for wage statement violations (Lab. Code § 226(a)); (vi) claims for failure to timely pay wages upon termination of employment and associated waiting time penalties (Cal. Lab. Code §§ 201-203); (vii) claims that the Class Member is an “aggrieved employee” under PAGA with respect to any of the aforementioned claims released herein; and (viii) claims for attorneys’ fees, costs and expenses for all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Complaint. Other than for Plaintiff, claims of PAGA Group Members, if any, for vested benefits, wrongful termination, unemployment insurance, disability benefits, social security, workers’ compensation, claims while classified as exempt, and claims outside of the PAGA Period are not encompassed within the definition of “PAGA Released Claims.” PAGA Group Members cannot opt out of or object to the foregoing PAGA Release.

The Releasees are defined as Defendants and their parents, predecessors, successors, subsidiaries,

affiliates, partners, owners, assigns, trusts, employees, officers, agents, attorneys, including but not limited to O'Hagan Meyer and MNK Law, stockholders, and fiduciaries.

9. What are my options?

a. **Participate in the Settlement and Receive a Settlement Payment.** If you want to participate in the Settlement, you do not have to do anything. You will receive your Individual Settlement Payment automatically if the Settlement is finally approved by the Court. If applicable, you will receive your Individual PAGA Payment automatically if the Settlement is finally approved by the Court.

b. **Exclude Yourself from the Settlement.** If you do not want to be part of the Settlement, you can request to be excluded from the Settlement by mailing a written Request for Exclusion to the Settlement Administrator. If you exclude yourself, you will not receive your Individual Settlement Payment, you will not be subject to the terms of the Settlement, and you will retain whatever rights you may currently have. To be valid, your Request for Exclusion must include: (1) include your full name, address, and last four digits of the Social Security number; and (2) your signature, and (3) the following statement or a similar statement:

I WISH TO EXCLUDE MYSELF FROM THE SETTLEMENT REACHED IN THE MATTER OF *MOODY V. DURA TECHNOLOGIES, INC., ET AL.* I UNDERSTAND THAT BY EXCLUDING MYSELF, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT REACHED IN THIS MATTER.

To be timely, a Request for Exclusion must be mailed by first-class U.S. Mail, or the equivalent, to the Settlement Administrator at the address provided below and **be postmarked on or before** [REDACTED], 2021.

If applicable, you may not exclude yourself from the PAGA Group and will be bound by the PAGA Released Claims.

c. **Object to 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 proposed Settlement, or any portion of it, you must submit a written objection stating (i) your full name, current address, and last four digits of the Social Security number; (ii) the approximate dates of your employment at Defendants; (iii) the case name and number (e.g., *Moody v. Dura Technologies, Inc.*, San Bernardino County Superior Court Case No. CIVDS2008887); (iv) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents on which the objection is based, if any; (v) your signature; and (vi) a statement of whether you intend to appear at the Final Approval Hearing, either in person or by counsel. Objections must be in writing and must be mailed to the Settlement Administrator **by no later than** [REDACTED], 2021 for your objection to be considered. Objections that do not include all required information, or that are not submitted timely, will not be considered. **You need not object to the Settlement if you only dispute the number of workweeks and/or pay periods worked.**

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2021, at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. You have the right to appear either in person or through your own attorney at this hearing. The Court will determine if you or your lawyer will have the right to speak at the hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all Parties on or before [REDACTED], 2021.

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 participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Please note that you cannot both exclude yourself and object to the Settlement. In order for you to object to this Settlement, or any term of it, you may not submit a Request for Exclusion.

10. Who are the attorneys representing the Plaintiff and the Settlement Class and the PAGA Group?

The Court has appointed “Class Counsel” to represent all Class Members and PAGA Group Members:

Brian J. Mankin, Esq.
brian@lmlfirm.com
Peter J. Carlson, Esq.
peter@lmlfirm.com
Lauby Mankin Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Telephone: 951-320-1444

You will not be charged for these lawyers. Class Counsel’s attorneys’ fees and costs will be paid from the Maximum Settlement Amount, as outlined in Section 4(D).

11. When and where will the Court decide to approve the Settlement?

The Court has preliminarily approved the settlement and will hold a hearing, called a Final Approval Hearing, to decide whether to give final approval to the Settlement. The Court will hold the Final Approval Hearing on _____, 2021, at _____ a.m., in Department S26 of the San Bernardino County Superior Court located at 247 West Third Street, San Bernardino, California 92415-0210, before the Honorable David S. Cohn. At the Final Approval Hearing, the Court will rule on Class Counsel’s request for attorneys’ fees and litigation costs, the Class Representative Service Award and the Settlement Administration Costs.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing. If you did not submit a Request for Exclusion, you or your attorney may appear at the hearing at your own expense and request to be heard. The Final Approval Hearing may be postponed without further notice.

12. Will I be subject to discipline if I participate in the Settlement?

No. Defendants approve the Settlement and will not retaliate in any way against any Class Member for participating in the Settlement. Your decision to participate, not participate, or object to this Settlement will not affect your employment with Defendants or Defendants’ treatment of you as a former employee.

13. What is the Settlement Administrator’s address?

Any Request for Exclusion, Notice of Objection, address change request, and all other correspondence intended

for the Settlement Administrator must be mailed to the Settlement Administrator at the following address:

Moody v. Dura Technologies, Inc., et al.

c/o [REDACTED]
[REDACTED]
[REDACTED]

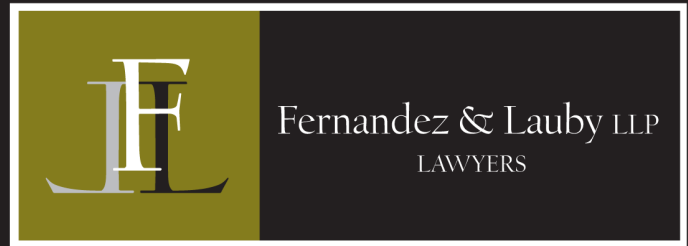
Telephone: [REDACTED]

14. How Can I Get Additional Information?

If you have questions, you can call the Settlement Administrator at [REDACTED] and/or call or email Class Counsel at the contact information noted above.

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANTS' MANAGERS, SUPERVISORS,
OR ATTORNEYS ABOUT THIS SETTLEMENT
They will not be able to assist you.

EXHIBIT “C”



May 13, 2020

Sent Via Online Filing to the LWDA

Sent Via U.S. Mail and Certified Mail

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Please see attached Service List

Re: PAGA Civil Penalty Claim
Bobby Moody v. Dura Technologies, Inc., et al.

To the Labor and Workforce Development Agency (“LWDA”), Dura Technologies, Inc., RevChem Composites, Inc., Hawkeye Industries, Inc., Mr. Pendleton, Mr. Dennis, and Mr. Bui.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Bobby Moody (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Dura Technologies, Inc., RevChem Composites, Inc., Hawkeye Industries, Inc., and/or any affiliated entities, and/or the respective owner of said companies (Mr. Pete Pendleton, Mr. Britton Dennis, and Mr. John N. Bui) (collectively the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately February 2019 through March 2020. Claimant alleges that, at all relevant times, he and all other nonexempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and violations to which Claimant was subjected during his employment.

At all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages for multiple reasons. Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Among other violations, at all relevant times, the Company paid Claimant and the Aggrieved Employees on an hourly basis but also paid additional earned compensation and/or bonuses. However, during workweeks where the Aggrieved Employees worked overtime hours and earned additional nondiscretionary compensation and/or bonuses, the Company failed to include the bonuses in the calculations for the regular rate of pay and instead paid overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime must always

be paid at time and one-half the regular rate of pay. As a result of these violations and others, the Company failed to pay proper minimum and overtime wages to Claimant and the Aggrieved Employees.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Additionally, Claimant was often not permitted to leave the premises for his rest breaks, in violation of California law. Also, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, and meal and rest period premiums. And the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of Dura Technologies, Inc., RevChem Composites, Inc., Hawkeye Industries, Inc., Mr. Pendleton, Mr. Dennis, and Mr. Bui and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Dura Technologies, Inc., RevChem Composites, Inc., Hawkeye Industries, Inc., Mr. Pendleton, Mr. Dennis, and Mr. Bui acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Dura Technologies, Inc., RevChem Composites, Inc., Hawkeye Industries, Inc., Mr. Pendleton, Mr. Dennis, and Mr. Bui are an integrated enterprise and should be treated as a single employer because Dura Technologies, Inc., RevChem Composites, Inc., Hawkeye Industries, Inc., Mr. Pendleton, Mr. Dennis, and Mr. Bui share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief Dura Technologies, Inc., RevChem Composites, Inc., Hawkeye Industries, Inc., Mr. Pendleton, Mr. Dennis, and Mr. Bui share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Mr. Pendleton, Mr. Dennis, and Mr. Bui are now and at all relevant times were the owners of Dura Technologies, Inc., RevChem Composites, Inc., and Hawkeye Industries, Inc., and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times Mr. Pendleton, Mr.

Dennis, and Mr. Bui had the authority, in the interest of Dura Technologies, Inc., RevChem Composites, Inc., and Hawkeye Industries, Inc., to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Dura Technologies, Inc., RevChem Composites, Inc., Hawkeye Industries, Inc., Mr. Pendleton, Mr. Dennis, and Mr. Bui are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Dura Technologies, Inc., RevChem Composites, Inc., Hawkeye Industries, Inc., Mr. Pendleton, Mr. Dennis, and Mr. Bui were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Dura Technologies, Inc., RevChem Composites, Inc., Hawkeye Industries, Inc., Mr. Pendleton, Mr. Dennis, and Mr. Bui were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, Dura Technologies, Inc., RevChem Composites, Inc., and Hawkeye Industries, Inc. have been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Mr. Pendleton, Mr. Dennis, and Mr. Bui have conducted their personal affairs. Adherence to the fiction of the separate existence of Dura Technologies, Inc., RevChem Composites, Inc., and Hawkeye Industries, Inc. would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to Dura Technologies, Inc., RevChem Composites, Inc., and Hawkeye Industries, Inc. should be imposed jointly and severally against Mr. Pendleton, Mr. Dennis, and Mr. Bui.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Pendleton, Mr. Dennis, and Mr. Bui are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

Claimant and the Aggrieved Employees were not paid all minimum, regular wages, and/or overtime wages for time spent subject to the control of the Company, including instances of underpayment due to the violations discussed above. Accordingly, Labor Code §§ 210, 558, 1197.1,

and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and the Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimant and all Aggrieved Employees due to the: failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state total hours worked; failure to accurately state the applicable overtime rate, and; failure to accurately state the corresponding number of hours worked at each hourly rate. As a result of these violations, civil penalties may be assessed under Labor Code §§ 226.3 and/or 2699, and Claimant may recover attorneys’ fees and costs.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 256.) Labor Code § 2699 also imposes a penalty.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS

(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys' fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

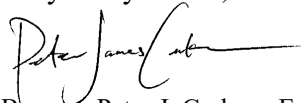
Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 256, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimant's notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: PJC@fernandezlauby.com

www.California-EmploymentLawyers.com

Service List

Dura Technologies, Inc.
2720 S. Willow Ave., #A
Bloomington, CA 92316

Hawkeye Industries, Inc.
2720 S. Willow Ave., #A
Bloomington, CA 92316

RevChem Composites, Inc.
2720 S. Willow Ave., #A
Bloomington, CA 92316

Pete Pendleton
2720 S. Willow Ave., #A
Bloomington, CA 92316

Britton Dennis
2720 S. Willow Ave., #A
Bloomington, CA 92316

John N. Bui
2720 S. Willow Ave., #A
Bloomington, CA 92316

EXHIBIT “D”