

**FIRST AMENDMENT TO JOINT STIPULATION AND SETTLEMENT
AGREEMENT**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Tommy Carrillo (“Plaintiff” or “Class Representative”), on behalf of himself and all others similarly situated, and Defendant Weartech International Inc., (“Defendant”) (collectively, the “Parties”).

RECITALS

1. **WHEREAS**, Plaintiff and Defendant entered into a Joint Stipulation and Settlement Agreement (the "Settlement Agreement") on or about October 14, 2021.

2. **WHEREAS**, the Settlement Agreement underestimates the costs incurred by Class Counsel.

3. **WHEREAS**, the Settlement Agreement overestimates the anticipated costs of Settlement Administration.

4. **WHEREAS**, the Parties wish to update the Settlement Agreement in order to better reflect the actual costs anticipated by Class Counsel and anticipated to complete the Settlement Administration process.

5. **WHEREAS**, Section III paragraph M (6) of the Settlement Agreement provides that "The Settlement and any and all parts of it, may be amended, modified, changed, or waived only by a written instrument signed by counsel for all Parties or their successors-in-interest."

6. **WHEREAS**, Counsel whose signatures appear below represent and warrant that they are authorized by the Parties whom they represent to negotiate and enter into this Amendment as set forth in the Settlement Agreement.

NOW, THEREFORE, the Parties hereby agree to amend and modify the Stipulation as follows:

1. Section I paragraph B of the Settlement Agreement shall be revised to state:
“Administration Costs: The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$9,000.00. All Administration Costs shall be paid from the Gross Settlement Amount”

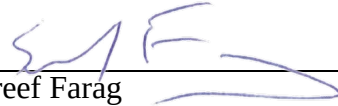
2. Section I paragraph K of the Settlement Agreement shall be revised to state:
“Cost Award: The amount that the Court orders Defendant to pay or cause to be paid, based on this Settlement, to Class Counsel for payment of actual litigation costs, which will be up to Twenty Thousand Dollars and Zero Cents (\$20,000.00). The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount request, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members and PAGA Members.”

3. The proposed notice attached to the Stipulation as Exhibit A and attached hereto as Exhibit 1 shall be amended to reflect the change in these amounts.

Dated: January 31, 2022

BAKER HOSTETLER

By:


Shareef Farag
Attorneys for Defendant
Weartech International

PROTECTION LAW GROUP, LLP

Dated: January 31, 2022

By:


Heather Davis
Amir Nayebdadash
Attorneys for Plaintiff

Exhibit 1

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Carrillo v. Weartech International, Inc

Orange County Superior Court Case No. 30-2020-0115133-CU-OE-CXC

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To: All individuals employed in an hourly or non-exempt position by Weartech International, Inc. in the State of California at any time from July 27, 2016, and [Date of Preliminary Approval]

BASIC INFORMATION

1. What is this settlement about?

A lawsuit has been commenced by Tommy Carrillo (“Plaintiff”) against Defendant Weartech International, Inc. (“Defendant” or “Weartech”). The case is currently pending in the Orange County Superior Court, Case No. 30-2020-0115133-CU-OE-CXC

The lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods and associated premium pay, did not properly pay employees all wages owed for time worked including overtime, did not provide accurate wage statements, did not timely pay all wages during employment and all wages owed at termination of employment, failed to pay employees for vacation time, and maintained unfair business practices. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit claims that the Defendant violated the California Labor Code and the California Business and Professions Code, entitling Class Members are entitled to, *inter alia*, damages, penalties, and restitution.

Defendant denies all alleged violations and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

2. Why is this a class action?

In a class action, one or more people, called the Class Representative(s), sue on behalf of people who appear to have similar claims. All these people are referred to as Class Members. In a class action, one court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Orange County Superior Court is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to a settlement which is memorialized in the Joint Stipulation and Settlement Agreement (“Agreement” or “Settlement”). On [DATE OF PRELIMINARY APPROVAL] the Court granted preliminary approval of the Settlement, appointed Tommy Carrillo as the Class Representative, and appointed his attorneys at Protection Law Group as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendant as an hourly-paid or non-exempt employee in the state of California at any time between July 27, 2016, and [Date of Preliminary Approval]

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Four Hundred and Fifty Thousand Dollars (\$450,000) (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed thirty-three percent (33%) of the Gross Settlement Amount or One Hundred and Forty-Eight Thousand Five Hundred Dollars (\$148,500.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty Thousand Dollars (\$20,000.00);
- C. **Enhancement Payment to the Class Representatives** in an amount not to exceed Five Thousand Dollars (\$5,000) for Plaintiff Carrillo;
- D. **Settlement Administration Costs** which are currently estimated to be Nine Thousand Dollars (\$9,000); and
- E. **PAGA Payment** in the amount of Thirty-Five Thousand Dollars (\$35,000) for the settlement of claims arising under the Private Attorney’s General Act of 2004 (PAGA). Seventy-Five percent (75%) of this amount, (\$26,250) shall be paid to the LWDA. The remaining twenty-five percent (25%) (\$8,750) will be distributed to hourly-paid or non-exempt employees who worked for Defendant in the State of California at any time between July 27, 2019, and [Date of Preliminary Approval] for the release of their claims arising under PAGA.

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment” will be determined on a *pro rata* basis, based on the number of weeks you worked in California as an hourly-paid, non-exempt employee of Defendant from July 27, 2016, to [Date of Preliminary Approval] (“Workweeks”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Payment.

Your Individual Settlement Payment will be apportioned as twenty-five percent (25%) wages, seventy-five percent (75%) penalties and interest. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid separately from and in addition to the Gross Settlement Amount. The penalties and interest portions of each class member’s settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

You worked XXX workweeks during the class period. Your Individual Settlement Payment is \$XXX.XX. This amount is an estimate and is subject to change depending on the payments approved by the Court and other potential factors.

This amount was determined based on Defendant’s record of your employment between July 27, 2016, and [Date of Preliminary Approval] and is presumed correct. If you dispute the accuracy of Defendant’s records as to the number

of weeks worked during the Class Period, provide any documentation you have supporting such dispute to the Settlement Administrator at the address below by [Response Deadline]. All disputes regarding your workweeks will be resolved and decided by the Parties, or if the Parties cannot agree, the Court, after you submit evidence to the Settlement Administrator. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]

[Address]

[Telephone No].

[Fax No.]

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

7. What am I giving up if I do not request to be excluded from the Settlement?

Upon the funding of the Gross Settlement Amount by Defendant, in exchange for the consideration set forth by the Settlement, Class Members who do not submit a timely request for exclusion and the "Releasing Parties" will release the "Released Parties" from the "Released Claims" for the "Class Period."

The "Releasing Parties" include Plaintiff, all Participating Class Members, all PAGA Members, and all persons purporting to act on behalf of any such individuals or purporting to assert a claim under or through them, including but not limited to, their dependents, spouses, attorneys, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, representatives, agents, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

The "Released Parties" include Defendant Weartech International, Inc. and any of its current, former, and future parent, subsidiary, and affiliated companies, and its/their agents, officers, shareholders, directors, employees, including successors and assigns, related or affiliated companies' predecessors and successors; and, with respect to all such entities, all of its/their past and present employees, officers, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries and insurers of such programs) and any other persons acting by, through, under or in concert with any such persons or entities..

The "Released Claims" include any and all causes of action, claims, rights, damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses arising from the facts alleged in both the Notice provided to the LWDA and in the operative complaint in the Action or which could have been alleged based upon such facts including, but not limited to: (a) any alleged failure by Defendant to pay overtime wages, minimum wages, vacation pay, or any other wages due; (b) any alleged failure by Defendant to timely pay wages at termination or during employment; (c) any alleged failure by Defendant to provide meal or rest periods or to pay meal or rest period premiums; (d) any alleged failure by Defendant to provide compliant wage statements; (e) any right or claim for civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.*, based upon the facts alleged in both the Notice provided to the LWDA and subsequently pled in the operative complaint; (f) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 *et seq.* arising from or related to the facts alleged in the operative complaint; and (g) any violation or breach of the California Labor Code arising from the conduct alleged in the operative complaint, including without limitation, Labor Code Sections 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1197.1, and 1198, or any other federal, state or local statute, wage order, rule, regulation, or similar causes of action that could have arisen based upon the facts alleged in the operative complaint in the Action. Notwithstanding the above, the Parties understand and agree that the release in this

Settlement does not apply to (i) those rights that as a matter of law cannot be released and/or waived, including, but not limited to, workers' compensation claims; (ii) rights or claims that may arise after the close of the Class Period; and (iii) rights or claims regarding enforcement of this Settlement.

The "Class Period" during which the release of Released Claims pertains is from July 27, 2016, and [Date of Preliminary Approval]

All Class Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Released Claims arising under PAGA with respect to all of the Released Parties irrespective of whether a Class Member submits a request for exclusion.

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Claims (other than those which arise under the Private Attorney General Act (California Labor Code sections 2698 *et seq.*) which you cannot exclude yourself from), then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim.

8. How can I not participate in the Settlement?

To exclude yourself from the release of Released Claims, other than those which arise under the Private Attorney General Act (California Labor Code sections 2698 *et seq.*) you must submit a written request for exclusion. A Request for Exclusion Form has been sent to you along with this Notice. You must complete all information on this form or submit a separate written request for exclusion that includes your name, address, telephone number and the last four digits of your social security number and/or employee ID number. Your request for exclusion must also include a statement that you do not wish to be included in this action similar to the following: "I wish to exclude myself from the class action settlement reached in the matter of *Carrillo v. Weartech International, Inc.* I understand that by excluding myself I will not receive money from the class portion of the settlement."

Your Request for Exclusion Form or separate written request for exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [DATE]. You cannot exclude yourself by phone or any means other than those described in this Notice.

[Settlement Administrator]
[Address]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You will not be legally bound by the release of Released Claims (except for Released Claims that arise under the Private Attorney General Act (California Labor Code sections 2698 *et seq.*)).

You may be able to sue Defendant and/or the Released Parties or continue any suit you have pending against Defendant or the Released Parties, regarding the Released Claims (except for Released Claims that arise under the Private Attorney General Act (California Labor Code sections 2698 *et seq.*)).

9. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you submit a request for exclusion, you give up the right to sue Defendant and Released Parties for the Released Claims. If you have a pending lawsuit involving the Released Claims, speak to your lawyer in that lawsuit immediately.

10. If I exclude myself, can I get money from this settlement?

You will not receive money for the class claims. You will still receive your portion of the PAGA Payment if eligible because the request for exclusion does not apply to this claim.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has approved Protection Law Group, LLP as Class Counsel. The firm's contact information is set forth below:

PROTECTION LAW GROUP LLP

Heather Davis, Esq.
Amir Nayebdadash, Esq.
237 California Street
El Segundo, California 90245
Telephone: (424) 290-3095

Class Counsel will ask the Court for attorneys' fees of up to \$148,500 and reimbursement of litigation cost/expenses of up to \$15,000. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

12. How do I tell the Court I want to object to the settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. An Objection Form has been included with this Notice. To object, you must mail your objection to the Settlement Administrator no later than [Response Deadline]. Your objection must include your full name, address, telephone number, and the specific reason for your objection. You must also identify any witnesses you intend to call in support of your objection at the Final Approval Hearing and provide copies of any exhibits you intend to present. You may come to the Final Approval Hearing on [Response Deadline] and make an objection at that time, regardless of whether you submitted a written objection.

13. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing at [redacted] a.m./p.m. on [redacted], 2022], at the Orange County Superior Court located at 751 W Santa Ana Blvd, Santa Ana, CA 92701 in Department CX102.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

15. Do I have to come to the hearing?

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf.

16. How will I learn if the settlement was approved

A notice of final judgment will be posted on the Settlement Administrator website located at www.occourts.org

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or Released Parties about the Released Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days from the date on the check, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund. You may then claim these funds from there.

If you lose your check or it is damaged in the mail, contact the Settlement Administrator.

GETTING MORE INFORMATION

18. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by viewing the settlement located on the Settlement Administrator's website at www.occourts.org or by contacting the Settlement Administrator or Class Counsel. You may also review the documents that have been filed in this matter with the Court (for a fee) on the Court's website: <https://www.occourts.org/online-services/case-access>

WHAT IF MY INFORMATION CHANGES?

19. What if my contact information changes ?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE