

## PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement is made by and between Plaintiff Rafael Marquez ("Plaintiff"), on behalf of himself and on behalf of the State of California and all Private Attorneys General Act ("PAGA") Settlement Group Members, on the one hand, and Defendant Hixson Metal Finishing on behalf of itself and all of its current and former owners, parents, subsidiaries, members, shareholders, affiliates, representatives, agents, insurers, officers, directors, and employees (collectively referred herein as, "Defendant"), on the other (Plaintiff and Defendant are collectively referred herein as, the "Parties", and individually as a "Party"), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), upon and subject to the following terms and conditions.

### I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- A. "Action" means the civil action titled *Rafael Marquez, as an individual and on behalf of all similarly situated employees v. Hixson Metal Finishing, and DOES 1 through 50, inclusive* (the "Action"), pending before Superior Court of the State of California, for the County of Orange (the "Court"), No. 30-2020-01161559-CU-OE-CXC.
- B. "Agreement" or "Settlement Agreement" means this PAGA Settlement Agreement.
- C. "Complaint" means the Complaint filed by Plaintiff on September 22, 2020, in the Action, and all amendments thereto.
- D. "Court" means the Superior Court for the State of California, County of Orange.
- E. "Covered Period" means the period of time from September 22, 2019 through the date upon entry of an Order by the Court approving the Settlement Agreement.
- F. "Defendant" means the defendant in this Action, Hixson Metal Finishing.
- G. "Effective Date" means the date upon entry of an Order by the Court approving the Settlement Agreement.
- H. "Defendant's Counsel" means Michael A. Hood and Richard B. Azada of Jackson Lewis, P.C.
- I. "Order" means the Order Granting Approval of Settlement and Entering Final Judgment entered by the Court in substantially the same form evidenced by Exhibit A to this Agreement and incorporated by reference into this Agreement.
- J. "LWDA" means the California Labor and Workforce Development Agency.

- K. "LWDA Payment" means the portion of the payment from the Total Settlement Amount to be paid to the LWDA under the Settlement Agreement.
- L. "Net Settlement Amount" means the amount from the Total Settlement Amount that is available for distribution as Settlement Shares to PAGA Settlement Group Members and the LWDA Payment after deduction for (i) the Representative Plaintiff's Payment, (ii) the Plaintiff's Counsel Fees and Expenses Payment, and (iii) the Settlement Administrator's fees and expenses. If any Settlement Share check is not timely cashed by a Settlement Group Member, that share will be sent to the California State Controllers' Office Unclaimed Property Fund in the name of the Settlement Group Member.
- M. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*
- N. "PAGA Notice" means a notice of proposed settlement pursuant to PAGA, substantially in the form evidenced by Exhibit B to this Agreement.
- O. "PAGA Released Claims" means any and all claims under PAGA that are pled in Plaintiff's Representative Action Complaint, or which could have been pled under the PAGA based on the factual allegations in Plaintiff's Representative Action Complaint, that arose during the Covered Period.
- P. "PAGA Settlement Group Members" means, based upon Defendant's representation to Plaintiff, the allotted for one hundred sixty-two (162) current and former non-exempt employees of Defendant in California at any time during the period from September 22, 2019 to June 23, 2021.
- Q. "Plaintiff" means the plaintiff in the Action, Rafael Marquez.
- R. "Plaintiff's Counsel" means Kevin Mahoney, Esq. and John A. Young, Esq., of Mahoney Law Group, APC.
- S. "Released Parties" means Defendant and any present and former parents, subsidiaries, owners, members, shareholders, affiliates and their respective officers, directors, employees, representatives, insurers, and agents, and any other successors, assigns and legal representatives and its related persons and entities.
- T. "Representative Plaintiff's Payment" means the special payment made to Plaintiff to compensate him for initiating and pursuing the Action, undertaking the risk of liability for attorneys' fees and expenses in the event that he was unsuccessful in the prosecution of the Action.
- U. "Settlement" means the Parties' agreement, as detailed herein, to dispose of the Action and all other claims, demands, rights, promises, covenants, actions, suits, causes of action, obligations, debts, expenses, administration costs, damages, penalties fines, interest, injuries, compensation, judgments, orders and liabilities alleged in, arising from or related to the Action.

- V. "Settlement Administrator" means the administrator proposed by the Parties and appointed by the Court to administer the Settlement. The Parties have agreed to propose Phoenix Class Action Administration Solutions to serve in this capacity.
- W. "Settlement Share" means the portion of the Net Settlement Amount allocable to each PAGA Settlement Group Member as provided by this Agreement.
- X. "Total Settlement Amount" means the total amount to be paid by Defendant as provided by this Agreement. The Total Settlement Amount is three hundred eleven thousand seventy dollars (\$311,070.00). The Total Settlement Amount will cover all Settlement Shares to PAGA Settlement Group Members, (ii) the LWDA Payment, (iii) the Representative Plaintiff's Payment, (iv) the Plaintiff's Counsel Fees and Expenses Payment, and (v) the Settlement Administrator's fees and expenses.

## **II. FACTUAL BACKGROUND**

- A. On June 29, 2020, Plaintiff served a letter to the LWDA and Defendant in accordance with the requirements of Labor Code section 2699.3, to notify the LWDA of alleged violations by Defendant of California Labor Code sections 201-203, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, 2802, 2698, 2699.3, and 2699.5, for alleged failures to properly pay employees, provide meal and rest periods, reimburse for work-related expenses, and provide accurate itemized wage statements. The LWDA declined to investigate the alleged violations, and Plaintiff initiated this Action.
- B. On September 22, 2020, Plaintiff commenced this Action as a PAGA action.
- C. In the Action, Plaintiff seeks penalties under PAGA on behalf of himself and the PAGA Settlement Group Members for the alleged violations of California's Labor Code.
- D. Prior to mediation, the Parties conducted formal and informal discovery. Defendant supplied Plaintiff with employee and payroll data, which Plaintiff's Counsel reviewed and analyzed.
- E. On June 23, 2021, the Parties participated in a mediation presided over by Honorable Carl West (Ret.). During the mediation, each side, represented by its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action, and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement.
- F. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that they have any liability to Plaintiff or the PAGA Settlement Group on those claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit.

### III. SETTLEMENT TERMS AND CONDITIONS

- A. **Non-Admission.** Nothing in this Settlement nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person. Defendant specifically disclaims any such liability or wrongdoing. Defendant denies the allegations in the Action and specifically denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.
- B. **Total Settlement Amount.** Subject to the terms and conditions of this Agreement and court approval, the Total Settlement Amount is three hundred eleven thousand seventy dollars (\$311,070.00). The Total Settlement Amount will cover (i) all Settlement Shares to PAGA Settlement Group Members, (ii) the LWDA Payment, (iii) the Representative Plaintiff's Payment, (iv) the Plaintiff's Counsel Fees and Expenses Payment, and (v) the Settlement Administrator's fees and expenses. The Total Settlement Amount will not be increased unless there is ultimately ten percent (10%) more than the allotted for one hundred sixty-two (162) total PAGA Settlement Group Members from September 22, 2019 through June 23, 2021 (i.e., more than the 178 total PAGA Settlement Group Members allotted for and contemplated by the Parties), in which case the Gross Settlement Amount shall be increased proportionally (i.e. increase 11% if the total PAGA Settlement Group Members). The settlement is non-reversionary, such that the entire Gross Settlement Amount will be disbursed.
- C. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Maximum Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees: (1) Payments to Settlement Administrator; (2) Payment to Plaintiff's Counsel; and (3) Payment to Plaintiff.
- D. **Payments to Settlement Administrator.** The Settlement Administrator will pay to itself out of the Total Settlement Amount its reasonable fees and expenses as approved by the Court, and not to exceed four thousand dollars (\$4,000.00).
- E. **Payments to LWDA.** The Settlement Administrator shall pay to the LWDA 75% of the Net Settlement Amount.
- F. **Payment to Plaintiff's Counsel.** Defendant will not oppose Plaintiff's Counsel's request for a Fees and Expenses Payment in the total, maximum amount of one

hundred three thousand six hundred ninety dollars (\$103,690.00) for attorneys' fees one-third (33.33%) of the Total Settlement Amount) and expenses not to exceed eleven thousand dollars (\$11,000.00). The Settlement Administrator will issue to Plaintiff's Counsel a Form 1099 with respect to the awarded attorneys' fees and costs.

- G. **Payment to Plaintiff.** In addition to his Settlement Share, Plaintiff will apply to the Superior Court for a Representative Plaintiff's Payment of not more than five thousand dollars and no cents (\$5,000.00). Defendant will not oppose a Representative Plaintiff's Payment of up to five thousand dollars (\$5,000.00). The Settlement Administrator will pay the Representative Plaintiff Payments approved by the Superior Court out of the Total Settlement Amount. If the Superior Court approves a Representative Plaintiff's Payment of less than five thousand dollars and no cents (\$5,000.00), the remainder will be retained in the Net Settlement Amount. Tax deductions and withholdings will not be taken from the Representative Plaintiff's Payment, and instead a Form 1099 will be issued to Plaintiff with respect to this payment.
- H. **Settlement Share to PAGA Settlement Group Members.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Settlement Shares from the Net Settlement Amount to the PAGA Settlement Group Members in proportion to the number of weeks worked for Defendant during the Covered Period. A Form 1099 will be issued to each Settlement Group Member for his/her Settlement Share because the Action sought civil penalties.
- I. **Appointment of Settlement Administrator.** The Parties have agreed to propose Phoenix Class Action Administration Solutions as an acceptable Settlement Administrator to resolve disputes in connection with the calculation of Settlement Shares in accordance with the Settlement; distribute Settlement Shares and other payments due under the Settlement; and otherwise administer the Settlement. The Settlement Administrator's duties will include preparing, printing, and mailing the Notice Packet to the PAGA Settlement Group Members; conducting a National Change of Address search and using Accurint and other reasonable and cost-effective skip trace methods to locate any PAGA Settlement Group Member whose Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Notice Packet to the PAGA Settlement Group Member's new address; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a PAGA Settlement Group Member's Settlement Share, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Notice Packet, will be paid out of the Total Settlement Amount.
- J. **Procedure for Approving Settlement.**
  - 1. **Motion for an Order Approving the Settlement.**

a. The Parties will cooperate in seeking approval of the Settlement, including Plaintiff filing a Motion for an Order Approving the Settlement Agreement (the "Motion").

b. Pursuant to PAGA, on the date the Parties file the Motion, Plaintiff will submit to the LWDA the PAGA Notice substantially evidenced by **Exhibit B** to this Agreement, enclosing this Agreement. The Parties intend and believe that providing notice of this Settlement to the LWDA pursuant to the procedures described in this section complies with the requirements of PAGA.

c. At the hearing on the Motion, the Parties will jointly appear, support the granting of the motion, and submit an order granting the motion in the form evidenced by **Exhibit A** to this Agreement.

d. Should the Court decline to approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, the Parties will meet and confer to address the Court's concerns and determine whether resolution of the Action and be obtained in a manner consistent with the Court's concerns. If no agreement can be reached, the Settlement will be null and void and the Parties will have no further obligations under it. However, an award by the Court of lesser amounts than sought for the Representative Plaintiff's Payment and/or Counsel Fees and Expenses Payment will not be considered a material change to the Settlement.

2. **No Right to Opt Out or Object.** The Parties agree there is no statutory right for any PAGA Settlement Group Member to object, opt out or otherwise exclude himself or herself from the Settlement. The Parties further agree there is no right or opportunity for any PAGA Settlement Group Member to appeal the approval of the Settlement by the Court. The Parties further agree that an Aggrieved Employees' recovery under this Settlement does not act to preclude claims not encompassed within the release of claims in Section III.K.1.

3. **Notice to PAGA Settlement Group Members.** After the Court enters its order granting the Motion, every PAGA Settlement Group Member will be provided with the Notice and a check for their Settlement Share.

a. Within twenty-one (21) days after the Court Order is signed, approving the Settlement, Defendant will provide to the Settlement Administrator the names, last known addresses and telephone numbers, Social Security numbers, and Covered Pay Periods of all PAGA Settlement Group Members. The Settlement Administrator shall keep this information confidential and not disclose it to Plaintiff's Counsel or any third parties. If any or all of the PAGA Settlement Group Member' data are unavailable to

Defendant, Defendant will use best efforts to deduce or reconstruct their data prior to when it must be submitted to the Settlement Administrator.

b. Within five business (5) days after receiving the PAGA Settlement Group Members' data from Defendant, the Settlement Administrator will send a Notice and a check for their Settlement Share to each PAGA Settlement Group Member. The Settlement Administrator will mail this information to all identified PAGA Settlement Group Members, using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement. In the event of returned or non-deliverable notices, the Settlement Administrator will make reasonable efforts to locate PAGA Settlement Group Members and re-send the notices.

c. If a Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned packet, search for a more current address for the PAGA Settlement Group Member using Accurint and other reasonable and cost-effective skip trace methods, and re-mail the Notice Packet to the PAGA Settlement Group Member. The Settlement Administrator will use the PAGA Settlement Group Members' data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Plaintiff's Counsel and according to the following deadlines, to trace the mailing address of any PAGA Settlement Group Member for whom a Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps will include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to PAGA Settlement Group Members for whom new addresses are found.

4. **Submission of Order.** Plaintiff shall submit a copy of the Order providing for or denying an award of civil penalties within ten (10) days after entry of the Order, in compliance with Section 2699(1)(3) of the California Labor Code. The Order will be made available to the LWDA and Aggrieved Employees through the Settlement Administrator's website for a period of one (1) year following entry of judgment.
5. **Waiver of Right to Appeal.** Provided that the Order is consistent with the material terms of this Agreement, Plaintiff, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Order, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Order therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment

proceedings. This paragraph does not preclude Plaintiff or Plaintiff's Counsel from appealing from a refusal by the Court to award the Plaintiff's Counsel attorneys' fees and/or costs sought by them. If an appeal is taken, the time for consummating the Settlement (including making payments under the Settlement) will be suspended until such time as their appeal is finally resolved and the Order becomes Final, as defined in this Agreement.

6. **Vacating, Reversal, or Material Modification of Order on Appeal or Review.** If, after a notice of appeal or a petition for *certiorari* or review, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Order such that there is a material change to the Settlement, and that court's decision is not completely reversed and the Order is not fully affirmed on review by a higher court, then either Plaintiff or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Court not later than 30 days after the reviewing court's decision vacating, reversing, or materially modifying the Order becomes Final. A vacation, reversal, or modification of the Court's award of the Representative Plaintiff's Payment and/or Plaintiff's attorneys' fees and/or costs will not constitute a vacating, reversal, or material modification of the Order within the meaning of this paragraph, although Plaintiff or Plaintiff's Counsel have the right to appeal from any refusal by the Court to award the Plaintiff's Counsel attorneys' fees and/or costs sought by them.
7. **Timing of Settlement Payments.** Within ten (10) business days after the Court Order is signed approving the Settlement, the Settlement Administrator will provide Defendant with wire transfer information. Within ten (10) business days after the Settlement Administrator provides Defendant with wire transfer information, Defendant will transfer the Total Settlement Amount to the Settlement Administrator via wire transfer. Within five (5) business days thereafter, the Settlement Administrator will make the following payments from the Total Settlement Amount: the LWDA Payment paid to the LWDA; the Representative Plaintiff's Payment to Plaintiff; Plaintiff's Counsel Fees and Expenses Payment paid to Plaintiff's Counsel; and the Settlement Administrator's fees and expenses.
8. **Uncashed Settlement Share Checks.** A PAGA Settlement Group Member must receive or cash his or her Settlement Share payment or check within 180 calendar days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the PAGA Settlement Group Member at his or her correct address. If any PAGA Settlement Group Member's Settlement Share check is not cashed within 120 days after its last mailing to the PAGA Settlement Group Member, the Settlement Administrator will send the PAGA Settlement Group Member a letter or postcard informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or

misplaced but not cashed. If a PAGA Settlement Group Member fails to cash the check for his or her Settlement Share within 180 days after it is mailed to him or her, the funds shall be distributed by the Settlement Administrator to the State Controller's Unclaimed Property Fund in the Settlement Group Member's name.

**K. Release and Waiver of Claims.**

1. PAGA Settlement Group Members. As of the date the Settlement becomes Final, Plaintiff, acting on behalf of the State of California, and all PAGA Settlement Group Members release Defendants and the Released Parties from any and all claims based on the Private Attorneys General Act (2004), as pleaded in Plaintiff's Complaint or that could have been pleaded on the facts as alleged in the Complaint and Plaintiff's notice letter to LWDA, arising during the Covered Period, including but not limited to claims under Labor Code sections 201-204, 226, 226.7, 510, 512, 1174, 1194, 1197, 2802, 2698, 2699.3, and 2699.5, the Industrial Welfare Commission Wage Orders, and any resulting claim for attorneys' fees and costs (the "Released Claims"). Release by Aggrieved Employees.

Upon entry of the Order approving payment of the PAGA penalties as described in this Agreement and subject to Defendant's full payment of all sums required by this Agreement, Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the PAGA Released Claims that arose during the Release Period.

2. Release by Plaintiff Rafael Marquez.

Upon the Effective Date and subject to Defendant's full payment of all sums required by this Agreement, Plaintiff shall be deemed to have fully, finally, and forever released the Released Parties from any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, arising through the Effective Date, for any type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. These claims include, but are not limited to, the PAGA Released Claims, as well as any other claims under any provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, and claims under local, state, or federal discrimination statutes, including, without limitation:

- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;
- Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
- The Employee Retirement Income Security Act of 1974 (“ERISA”) (as modified below);
- The Immigration Reform and Control Act;
- The Americans with Disabilities Act of 1990;
- The Age Discrimination in Employment Act of 1967 (“ADEA”);
- The Workers Adjustment and Retraining Notification Act;
- The Occupational Safety and Health Act;
- The Sarbanes-Oxley Act of 2002;
- The Fair Credit Reporting Act;
- The Family and Medical Leave Act;
- The Equal Pay Act;
- The Genetic Information Nondiscrimination Act of 2008;
- California Family Rights Act – Cal. Gov’t Code § 12945.2;
- California Fair Employment and Housing Act – Cal. Gov’t Code § 12900 et seq.;
- California Unruh Civil Rights Act – Cal. Civ. Code § 51 et seq.;
- Statutory Provisions Regarding the Confidentiality of AIDS Information – Cal. Health & Safety Code § 120775 et seq.;
- California Confidentiality of Medical Information Act – Cal. Civ. Code § 56 et seq.;
- California Parental Leave Law – Cal. Lab. Code § 230.7 et seq.;
- California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394;
- The California Occupational Safety and Health Act, as amended, and any applicable regulations thereunder;
- The California Consumer Credit Reporting Agencies Act – Cal. Civ. Code § 1785 et seq.
- California Investigative Consumer Reporting Agencies Act – Cal. Civ. Code § 1786 et seq.;
- Those provisions of the California Labor Code that lawfully may be released;
- Any other federal, state or local civil or human rights law or any other federal, state or local law, regulation or ordinance;
- Any public policy, contract, tort or common law; or
- Any basis for recovering costs, fees or other expenses including attorneys’ fees incurred in these matters.

With respect to these released claims as described in this Section, Plaintiff Marquez shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they

respectively may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Agreement, and that this Agreement contemplates the extinguishment of any such claims. Plaintiff warrants he individually has read this Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Agreement and specifically about the waiver of section 1542, and that Plaintiff understands this Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enter into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiff.

- L. **No Effect on Other Benefits.** The payment to PAGA Settlement Group Members will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or the PAGA Settlement Group Members, and they will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- M. **Confidentiality Preceding Approval.** Prior to filing of the Motion for Settlement Approval, Plaintiff will not issue any press or other media releases or have any communication with the press or media or anyone other than financial advisors, retained experts, the LWDA and vendors related to settlement administration, regarding the Settlement. If, before the filing of the Motion for Settlement Approval, Plaintiff or his attorneys disclose to any unauthorized party (a) that a settlement has been reached or (b) any of the terms of the Settlement except as required by law or to effect the Settlement, Defendant may rescind the Settlement, rendering it null and void. Plaintiff further agrees that he will instruct his attorneys not to disclose the terms of this Agreement other than as necessary in connection with the motion to approve the settlement. This section does not bar Plaintiff's counsel from carrying out their duties as counsel to Representative Plaintiff for the LWDA.

N. **Miscellaneous Terms.**

1. **No Admission of Liability.**

- a. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant, or an admission by Plaintiff that any of his claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).
- b. Whether or not the Order becomes Final, nothing in the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, or any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
- c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

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

3. **Attorney Authorization.** Plaintiff's Counsel and Defendant's Counsel each warrant and represent that they are authorized by their respective clients to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court or mediator, and in all cases all such documents, supplemental provisions and assistance of the court will be consistent with this Agreement. No attorney for any party is a party to this agreement and will not be liable for any party's breach of any of the terms of this agreement.
4. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
5. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
6. **Severability.** The provisions of this Agreement are severable, and, if any part of it is found to be unenforceable, void, or invalid by a court of competent jurisdiction, the other paragraphs shall remain in full force and effect. This Agreement shall survive the termination of any arrangements contained herein.
7. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
8. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
9. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

10. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
11. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

*To Plaintiff and the Settlement Group:*

Kevin Mahoney  
John A. Young  
Mahoney Law Group, APC  
249 East Ocean Boulevard, Suite 814  
Telephone: (562) 590-5550  
Facsimile: (562) 590-8400  
kmahoney@mahoney-law.net  
jyoung@mahoney-law.net

*To Defendant:*

Michael A. Hood (SBN 71258)  
Richard B. Azada (SBN 306030)  
JACKSON LEWIS, P.C.  
200 Spectrum Center Drive, Suite 500  
Irvine, California 92618  
(949) 885-1360 – Telephone  
(949) 885-1380 – Facsimile  
michael.hood@jacksonlewis.com  
richard.azada@jacksonlewis.com

12. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile and electronic signatures will be accepted if the original signatures. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

#### **IV. EXECUTION BY PARTIES**

The Parties hereby execute this Agreement.

11 / 15 / 2021

Dated: October \_\_, 2021

RAFAEL MARQUEZ

*Rafael Marquez*

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Dated: October 12, 2021

HIXSON METAL FINISHING

By:

*Douglas C. Greene*

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DOUGLAS C. GREENE  
PRESIDENT

**EXHIBIT A**

**[[PROPOSED] ORDER GRANTING APPROVAL OF SETTLEMENT]**

**EXHIBIT B**

**[NOTICE OF APPROVAL OF SETTLEMENT]**