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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

JOCELYN MATUS, an individual, on behalf of
herself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

FLORY INDUSTRIES, a California
Corporation; and DOES 1 TO 50,

Defendants.

Case Number: CV-20-003117

**Settlement Agreement and Release of Class
Action**

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SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION

This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and entered into by: **(1)** Plaintiff Jocelyn Matus (“Plaintiff”), individually and in her representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and **(2)** Defendant Flory Industries (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

1.1. ACTION

“Action” shall mean the following civil action: *Jocelyn Matus v. Flory Industries*, case number CV-20-003117, filed on July 21, 2020, in the Superior Court of California for the County of Stanislaus.

1.2. ADMINISTRATIVE EXPENSES

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, which are estimated not to exceed \$25,000.00.

1.3. APPLICABLE WAGE ORDERS

“Applicable Wage Orders” shall mean the California Industrial Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case, including IWC Wage Orders 1-2001, 4-2001, and 7-2001 and others that may be applicable. (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11070.)

1.4. CLAIMS

“Claims” shall mean the claims asserted in the Action.

1 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

2 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
3 attributable to attorney fees and litigation expenses. The Parties agree that the fee portion of the Class
4 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e.,
5 \$308,333.33), as approved by the Court, and the award of costs and expenses shall be up to an
6 additional \$18,000.00.

7 **1.6. CLASS COUNSEL**

8 “Class Counsel” shall mean Jonathan Melmed and Kyle Smith of Melmed Law Group P.C. and
9 Martin Sullivan of Sullivan Employment Law PC.

10 **1.7. CLASS MEMBER**

11 “Class Member” shall mean any person who is a prospective member of the Settlement Class,
12 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-
13 in-interest.

14 **1.8. CLASS NOTICE**

15 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
16 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
17 Class Members along with the Share Form.

18 **1.9. CLASS PARTICIPANTS**

19 “Class Participants” shall mean all Class Members who do not timely request exclusion from
20 the Class Settlement.

21 **1.10. CLASS PERIOD**

22 “Class Period” shall mean the period from July 21, 2016, through August 31, 2021.

23 **1.11. CLASS REPRESENTATIVE**

24 “Class Representative” shall mean Plaintiff Jocelyn Matus.

25 **1.12. CLASS SETTLEMENT**

26 “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is
27 subject to Court approval.

1 **1.13. COMPLAINT**

2 “Complaint” shall mean the currently-operative complaint in the Action.

3 **1.14. COURT**

4 “Court” shall mean the Superior Court of the County of Stanislaus.

5 **1.15. DEFENDANT**

6 “Defendant” shall mean Defendant Flory Industries.

7 **1.16. DEFENSE COUNSEL**

8 “Defense Counsel” shall mean the attorneys representing Defendant.

9 **1.17. EFFECTIVE DATE**

10 “Effective Date” shall be the date when all of the following events have occurred: **(a)** this
11 Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel;
12 **(b)** the Court has given preliminary approval to the Class Settlement; **(c)** notice has been given to the
13 Settlement Class providing them with an opportunity to request exclusion from the Class Settlement;
14 **(d)** the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
15 certifying the Settlement Class and approving this Settlement Agreement; and **(e)** the later of the
16 following events: **(i)** the expiration of the period for filing any appeal, writ, or other appellate
17 proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other appellate
18 proceeding having been filed; **(ii)** the dismissal of any appeal, writ, or other appellate proceeding
19 opposing the Class Settlement with no right to pursue further remedies or relief; or **(iii)** any appeal,
20 writ, or the issuance of such other final appellate order upholding the Court’s final order with no right
21 to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class
22 Settlement shall not become effective until the Court’s order approving the Class Settlement is
23 completely final and there is no further recourse by an appellant or objector who seeks to contest the
24 Class Settlement. In the event no objections are filed, the Effective Date shall be after steps (a) through
25 (d) are completed (i.e., the date that the court has entered a final order and judgment certifying the
26 Settlement Class and approving this Settlement Agreement).

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1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING

"Employee's Taxes and Required Withholding" shall mean the employee's share of any and all applicable federal, state, or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement Amount that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld from and paid out of the Net Settlement Amount.

1.19. EMPLOYER'S TAXES

"Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g., Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages. The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross Settlement Amount or Net Settlement Amount.

1.20. FINAL APPROVAL AND FAIRNESS HEARING

"Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

1.21. GROSS SETTLEMENT AMOUNT

"Gross Settlement Amount" is the agreed upon non-reversionary settlement amount totaling \$925,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case, inclusive of the Administrative Expenses, the Employee's Taxes and Required Withholdings, the Class Attorney Fees and Expenses, the Incentive Award, the Net Settlement Amount, and PAGA Payment. Defendant shall separately pay its share of the Employer's Taxes in addition to the Gross Settlement Amount on the portion of each Individual Settlement Amount allocated as wages.

1.22. HEARING ON PRELIMINARY APPROVAL

"Hearing on Preliminary Approval" shall mean the hearing held on the motion for preliminary approval of the Class Settlement.

1.23. INCENTIVE AWARD

“Incentive Award” shall mean any additional monetary payment provided to the Class Representative for her efforts and risks on behalf of the Settlement Class in this Action.

1.24. INDIVIDUAL SETTLEMENT AMOUNT

“Individual Settlement Amount” shall mean the amount which is ultimately distributed to each Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement Amount does not include any portion of the PAGA Payment.

1.25. NET SETTLEMENT AMOUNT

“Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative Expenses; Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”), codified at Labor Code sections 2698 through 2699.6, which are payable to the California Labor and Workforce Development Agency (“LWDA”); and Plaintiff’s Incentive Award.

1.26. OPT OUT

“Opt Out” shall refer to the process of submitting a timely and valid request for exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

1.27. OPT-OUTS

“Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

1.28. PAGA PAYMENT

“PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. Class Counsel shall give timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699, subdivision (l)(2).

1 **1.29. PAGA PERIOD**

2 “PAGA Period” shall mean the period from July 21, 2019, through August 31, 2021.

3 **1.30. PAGA SETTLEMENT CLASS**

4 “PAGA Settlement Class” shall mean all individuals who are or were employed by Defendant
5 as hourly, non-exempt employees in California during the period from July 21, 2019, to August 31,
6 2021. Defendant represents that the PAGA Settlement Class consists of approximately 305 employees
7 that worked a total of approximately 22,295 pay periods during the PAGA Period.

8 **1.31. PARTIES**

9 “Parties” shall mean Plaintiff and Defendant.

10 **1.32. PLAINTIFF**

11 “Plaintiff” shall mean Plaintiff Jocelyn Matus.

12 **1.33. PRELIMINARY APPROVAL DATE**

13 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
14 preliminarily approving this Settlement Agreement.

15 **1.34. RELEASED CLAIMS**

16 “Released Claims” shall mean those claims arising out of or related to the allegations set forth
17 in the Complaint and/or PAGA notice to the LWDA, which arose during the Class Period, including
18 claims for: **(1)** failure to provide compliant rest periods and pay missed rest break premiums in violation
19 of Labor Code section 226.7 and the Applicable Wage Orders; **(2)** failure to provide compliant meal
20 periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and
21 the Applicable Wage Orders; **(3)** failure to pay proper overtime wages in violation of Labor Code
22 sections 510, 1197, and 1198, and the Applicable Wage Orders; **(4)** failure to provide complete and
23 accurate wage statements in violation of Labor Code sections 226 and 226.3; **(5)** failure to pay all
24 wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(6)** failure
25 to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** deceptive,
26 fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s
27 Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); **(8)** statutory penalties based on the
28

1 foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and (9) all claims for liquidated damages,
2 penalties, interest, fees, costs based on the foregoing.

3 No other claims are released other than those claims specifically plead in the Complaint or
4 otherwise specifically identified herein. This Settlement Agreement will not release any person, party,
5 or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability
6 benefits of any nature. Nor does it release any claims, actions, or causes of action which may be
7 possessed by Class Members under state or federal discrimination statutes, including, without
8 limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh
9 Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of
10 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the
11 Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their
12 implementing regulations and interpretive guidelines.

13 **1.35. RELEASED PARTIES**

14 “Released Parties” shall mean Defendant and all of Defendant’s subsidiaries, affiliates,
15 shareholders, members, agents, predecessors, successors, and assigns.

16 **1.36. RELEASING PARTIES**

17 “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their
18 behalf or purporting to assert a claim under or through them, including, but not limited to, their
19 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,
20 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,
21 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

22 **1.37. RESPONSE DEADLINE**

23 “Response Deadline” shall mean the date forty-five (45) days following the date on which the
24 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class
25 Members may submit a request for exclusion and/or objection to Class Settlement.

1.38. SETTLEMENT ADMINISTRATOR

“Settlement Administrator” shall mean ILYM Group, Inc. (or other administrator agreed on by the parties) which the Parties have agreed will be responsible for administration of the Class Settlement and related matters.

1.39. SETTLEMENT CLASS

“Settlement Class” shall mean all individuals who are or were employed by Defendant as hourly, non-exempt employees in California during the period from July 21, 2016, to August 31, 2021. Defendant represents that the Settlement Class consists of approximately 795 Class Members that worked a total of approximately 62,600 workweeks during the Class Period.

1.40. SHARE FORM

“Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members along with the Class Notice.

2. FACTUAL AND PROCEDURAL BACKGROUND

2.1. PLAINTIFF’S CLAIMS

Plaintiff, individually and in her representative capacity on behalf of the Settlement Class, and as a private attorney general on behalf of the State of California, has alleged the following violations: **(1)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Orders; **(2)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Orders; **(3)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Orders; **(4)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(5)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(6)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(7)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and **(8)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6).

2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION

Class Counsel has conducted significant informal discovery during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a dozen telephonic conferences with Plaintiff; **(b)** inspection and analysis of hundreds of pages of documents and other information produced by Plaintiff and Defendant; **(c)** analysis of employment data from a sample of Class Members; **(d)** an analysis of the legal positions taken by Defendant; **(d)** investigation into the viability of class treatment of the claims asserted in the Action; **(e)** analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; **(f)** research of the applicable law with respect to the claims asserted in the Complaint and the potential defenses thereto; and **(g)** assembling and analyzing of data for calculating damages.

Class Counsel and the Class Representative have vigorously prosecuted this case, and Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims of the Class Representative and of the defenses to them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation with an experienced employment law mediator, which culminated in a settlement in principle, the terms of which are elaborated in this Settlement Agreement.

2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF CLASS SETTLEMENT

The document and data exchange in this matter, as well as discussions between counsel, have been adequate to give the Class Representative and Class Counsel a sound understanding of the merits of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery conducted in this Action and the information exchanged by the Parties through pre-mediation discussions are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis.

The Class Representative and Class Counsel believe that the claims, causes of action, allegations, and contentions asserted in the Action have merit. However, the Class Representative and Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings

1 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
2 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
3 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
4 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
5 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
6 alleged in the Action.

7 The Class Representative and Class Counsel believe that the settlement set forth in this
8 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
9 independent review of this Settlement Agreement by the Court in the approval process will confirm
10 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
11 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
12 and the Class Members.

13 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

14 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by
15 Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing
16 or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the
17 Action. Defendant contends that it complied with California and federal wage and hour laws and has
18 dealt legally and fairly with Plaintiff and the Class Members.

19 Defendant further denies that, for any purpose other than settling this Action, these claims are
20 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further
21 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
22 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
23 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendant's
24 respective businesses without further expensive litigation and the distraction and diversion of their
25 personnel with respect to matters at issue in the Action. Defendant has also taken into account the
26 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
27 Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled
28 in the manner and upon the terms and conditions set forth in this Settlement Agreement.

1 **2.5. INTENT OF THE CLASS SETTLEMENT**

2 The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an order
3 approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge of the Released
4 Parties from liability for any and all of the Released Claims; and **(4)** discharge of Defendant from
5 liability for any and all claims arising out of the Action.

6 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

7 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
8 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this
9 conditional certification is appropriate because the Released Claims are being compromised without
10 need to establish the elements of those claims on which liability turns. The certification of the
11 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
12 Defendant, including without limitation, that certification of a class for trial purposes is or would be
13 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class
14 treatment of any of the claims in the Action.

15 In the event that the Settlement Agreement is not finally approved by the Court, a Final
16 Effective Date is not achieved, or the Class Settlement is rejected, terminated, or otherwise rendered
17 null and void as set forth herein, then certification of the Settlement Class shall be automatically
18 vacated, shall be void *ab initio*, of no force or effect, and shall not constitute evidence or a binding
19 determination that the requirements for certification of a class for trial purposes in this Action or in any
20 other action which have been, are or can be, satisfied. Further, if the Agreement does not reach a Final
21 Effective Date, Plaintiff agrees that Plaintiff will not argue, claim, reference, or otherwise raise any
22 preliminary approval of the Settlement Class in connection with any later proceeding before the Court.

23 **4. APPOINTMENT OF CLASS COUNSEL**

24 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
25 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
26 Class Settlement pursuant to this Settlement Agreement.

1 **5. CONSIDERATION**

2 **5.1. SETTLEMENT AMOUNT**

3 The Parties agree to settle this Action for the Gross Settlement Amount of \$925,000.00. There
4 shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross
5 Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate
6 consideration for the Class Settlement and will be made in full and final settlement of: the Released
7 Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the
8 PAGA Payment (and any payments to individual PAGA Class Members resulting from the PAGA
9 Payment), and any other obligation of Defendant under this Settlement Agreement (other than the
10 Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).

11 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
12 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
13 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
14 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each
15 Class Member ("Workweeks"), as well as the estimated amount of the Individual Settlement Amount
16 the Class Member can expect to receive once the Class Settlement becomes effective on the Effective
17 Date. Class Members shall be given the opportunity to challenge their Workweeks information.

18 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

19 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$10,000.00
20 for Jocelyn Matus to acknowledge her efforts on behalf of the Settlement Class in this Action, including
21 assisting in the investigation and consulting with Class Counsel and providing crucial documents to
22 Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive Award in such an
23 amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross
24 Settlement Amount and shall be in addition to any distribution to which she may otherwise be entitled
25 as a Class Participant. Any Incentive Award approved by the Court shall not be considered wages, and
26 the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such payment.
27 Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award approved
28 by the Court and shall hold Defendant harmless from all liability with regard thereto.

1 **5.3. PAYMENT TO CLASS PARTICIPANTS**

2 Each Class Participant shall be eligible to receive payment of the Individual Settlement
3 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked
4 by the Class Members during the Class Period as a proportion of all weeks worked by all Class
5 Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the
6 Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount
7 and shall hold Defendant harmless from any and all liability with regard thereto.

8 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

9 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
10 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
11 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
12 is \$20,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
13 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
14 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. The portion of the
15 PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement
16 Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class
17 member during the PAGA Period as a proportion of all pay periods worked by all members of the
18 PAGA Settlement Class.

19 **5.5. TAX TREATMENT AND PAYMENT**

20 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
21 Settlement Amounts for Class Participants (including any payments to the Class Representative but
22 exclusive of her Incentive Award), the Parties agree that 20% of each Individual Settlement Amount
23 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
24 W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall constitute
25 penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment
26 to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total
27 Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants'
28 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net

1 Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final
2 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage
3 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant
4 to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the
5 Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely
6 responsible for all other individual tax obligations.

7 With respect to the PAGA Payment and any payments made to individual members of the
8 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
9 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
10 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
11 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
12 to them.

13 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

14 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
15 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
16 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
17 benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies,
18 or bonus programs. The payments made under the terms of this Settlement Agreement shall not be
19 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
20 form of compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program.
21 Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs
22 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are
23 not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined
24 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or
25 any other purpose, and that additional contributions or benefits are not required by this Settlement
26 Agreement. Defendant does not consider the Class Settlement payments "compensation" for purposes
27 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
28 or any other plan sponsored by Defendant.

1 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

2 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
3 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
4 Settlement Amount (i.e., \$308,333.33) and the award of costs and expenses up to an additional
5 \$18,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those
6 amounts.

7 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
8 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
9 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
10 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
11 Class Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less
12 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
13 Attorney Fees and Expenses awarded.

14 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
15 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
16 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
17 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
18 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering
19 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may
20 be based on the "catalyst theory" and/or the "common fund doctrine."

21 **6. SETTLEMENT ADMINISTRATION**

22 **6.1. COSTS AND EXPENSES**

23 All costs and expenses due to the Settlement Administrator in connection with its administration
24 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
25 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment
26 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the
27 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
28

1 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
2 Amount, and is not expected to exceed \$25,000.00.

3 **6.2. PAYMENT BY DEFENDANT**

4 Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
5 employer-side payroll taxes to the Settlement Administrator within fifteen (15) days of the Effective
6 Date. In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator
7 more than \$925,000.00 plus the Employer's Taxes, except where the Escalator Provision is triggered.

8 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

9 **7.1. THE SETTLEMENT ADMINISTRATOR**

10 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
11 (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry of final order and
12 judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries
13 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;
14 determining individual payments to members of the PAGA Settlement Class; maintaining the
15 settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing
16 Individual Settlement Amounts to Class Participants; preparing, administering, and distributing
17 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA
18 Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties
19 may direct. Additionally, the Settlement Administrator will handle all tax document preparation and
20 reporting, including state and federal tax forms, if any.

21 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
22 Defense Counsel with summary information updating them as to the number of validated and timely
23 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and
24 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no
25 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
26 with proof of mailing of the Class Notice, without listing individual Class Member names which the
27 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
28 of the Court's Final Approval and Fairness Hearing.

1 No later than seven (7) days prior to the Final Approval and Fairness Hearing, the Settlement
2 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
3 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class
4 Participant, without any identifying personal information; **(b)** the number of Class Participants to
5 receive such payments, and **(c)** the final number of Opt-Outs and objections.

6 Administrative Expenses are not anticipated to exceed \$25,000.00. Prior to the calculation and
7 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
8 total Administrative Expenses through the conclusion of their services and such actual amount will be
9 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
10 Amounts.

11 **7.2. NOTICE TO CLASS MEMBERS**

12 Notice shall be provided to Class Members in the following manner: Within fourteen (14) days
13 after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an
14 updated list of Class Members and members of the PAGA Settlement Class containing names, social
15 security numbers, dates of employment, last-known addresses, and phone numbers (the “Database”).
16 The Database shall be marked “Confidential – Settlement Administrator’s Eyes Only.” Class Counsel
17 shall not receive a copy of this list.

18 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
19 Administrator shall determine the number of workweeks worked by each Class Member, populate the
20 data for each Class Member accordingly, and send each Class Member the Class Notice via first-class,
21 United States mail. The Class Notice shall also contain an easily-understood statement alerting the
22 Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing
23 and waiving all Released Claims against the Released Parties.

24 The Class Notice will inform Class Members of their estimated share of the settlement and the
25 number of workweeks they worked during the Class Period. Class Members may dispute their
26 workweeks if they believe they worked more weeks in the Class Period than Defendant’s records show
27 by submitting information to the Settlement Administrator no later than forty-five (45) days after being
28 mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined

1 Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant to
2 resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the workweeks to be
3 credited, the Settlement Administrator shall make the final decision based on the information presented
4 by the Class Member and Defendant.

5 **7.3. OPT OUT PROCEDURE**

6 Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate
7 in the Class Settlement and shall become Class Participants without having to submit a claim form or
8 take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or
9 postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state
10 the Class Member's name, address, telephone number, and signature. The Opt Out request should state
11 something to the effect of:

12 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE
13 *JOCELYN MATUS V. FLORY INDUSTRIES* LAWSUIT. I UNDERSTAND THAT IF
14 I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
15 RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT
16 AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE."

17
18 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. In the
19 event that, prior to the Response Deadline, any Class Notice mailed to a Class Member is returned as
20 having been undelivered by the United States Postal Service, the Settlement Administrator shall
21 perform a skip trace search and seek an address correction for such Class Members, and a second Class
22 Notice will be sent to any new or different address obtained. Such Class Members shall have an
23 additional fourteen (14) days from the date of the mailing of the second Class Notice in which to Opt
24 Out if the Response Deadline would have otherwise passed prior to fourteen (14) days from the date
25 of the mailing of the second Class Notice.

26 It will be presumed that, if an envelope containing the Class Notice has not been returned within
27 twenty-eight (28) days of the mailing, the Class Member received the Class Notice. At least seven (7)
28 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class

1 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
2 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
3 specify the number of Class Members to whom the Class Notice was sent and the number of Class
4 Members to whom the Class Notice was not delivered, as well as information relating to the number
5 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

6 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
7 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
8 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
9 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
10 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
11 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

12 Class Participants will be bound by the Release of Released Claims set forth in the definition
13 of “Released Claims” provided in this Settlement Agreement.

14 A request to Opt Out of the Class Settlement shall **not** serve to exclude the Class Member from
15 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
16 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
17 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

18 **7.4. OBJECTION PROCEDURE**

19 The Class Notice shall inform the Class Members of their right to object to the Class Settlement.
20 Any Class Member who wishes to object to the Class Settlement may submit a written objection to the
21 Settlement Administrator no later than the Response Deadline. Only Class Participants may object to
22 the Settlement. The objection should include the case name and number and must set forth, in clear and
23 concise terms, a statement of the reasons why the objector believes that the Court should find that the
24 proposed Class Settlement is not in the best interest of the Settlement Class and the reasons why the
25 Class Settlement should not be approved, including the legal and factual arguments supporting the
26 objection. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person
27 or through an attorney, they may do so. The Settlement Administrator will promptly serve copies of
28 any objection or notice of intention to appear on Class Counsel and Defense Counsel. Class Members

wishing to make an objection may appear at the Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own expense.

7.5. NOTICE OF FINAL JUDGMENT

Within ten (10) days after the Court has held a Final and Fairness Approval Hearing and entered a final order certifying the Class for settlement purposes only and approving the Class Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on its website at a web address to be included in the Class Notice.

8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION

8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT

The claims of all Class Members are settled for the Gross Settlement Amount of \$925,000.00, which will be allocated as follows:

1. The Administrative Expenses, estimated not to exceed \$25,000.00;
2. Class Counsel's attorney fees not to exceed \$308,333.33;
3. Class Counsel's litigation costs and expenses not to exceed \$18,000.00;
4. The Incentive Award, not to exceed \$10,000.00; and
5. PAGA Payment to LWDA of \$15,000.00.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement Administrator shall recalculate the final Net Settlement Amount based on the actual values of the amounts in each category.

8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a "checks cashed" basis based on the proportional number of weeks worked by each Class Member during the Class Period.

Defendant will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of workweeks for each Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. Defendant shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement Agreement, shall have no involvement in or responsibility for the determination or payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors made with respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants represent and understand that they shall be solely responsible for any and all tax obligation associated with their respective Individual Settlement Amounts and Incentive Awards.

8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF THE PAGA SETTLEMENT CLASS

Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.

The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required Withholding with respect to their share of the PAGA Payment and shall hold Defendant harmless from any and all liability with regard thereto.

1 Defendant will provide the Settlement Administrator with any information reasonably
2 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class
3 member, and any other reasonably required information the Settlement Administrator requests to
4 perform the calculations required under this Settlement Agreement. Defendant shall have no
5 responsibility for deciding the validity of the individual payment amounts allocated to each member of
6 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall
7 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
8 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
9 Taxes and Required Withholding.

10 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
11 obligation associated with their respective shares of the PAGA Payment.

12 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

13 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
14 approved by the Court no later than twenty (20) days after the Effective Date.

15 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

16 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
17 Court no later than twenty (20) days after the Effective Date.

18 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

19 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
20 due to it and approved by the Court no later than twenty (20) days after the Effective Date.

21 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
22 **INDIVIDUAL SETTLEMENT AMOUNTS**

23 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
24 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
25 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
26 last-known address no later than twenty (20) days after the Effective Date. If the Settlement
27 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
28 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required

1 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
2 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
3 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
4 remaining monetary obligations have been calculated and accounted for.

5 Within one hundred twenty (120) days of mailing the Individual Settlement Amounts to Class
6 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
7 declaration of payment. In the event that any Class Participant is deceased, payment shall be made
8 payable to the estate of that Class Member and delivered to the executor or administrator of that estate,
9 unless the Settlement Administrator has received an affidavit or declaration pursuant to California
10 Probate Code section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

11 **8.8. NON-CASHED SETTLEMENT CHECKS**

12 Any funds associated with checks that have not been cashed within one hundred eighty (180)
13 days, will become void and the Individual Settlement Amount associated with the uncashed check will
14 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
15 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. For
16 the purposes of determining whether Defendant has met their financial obligation to pay the Individual
17 Settlement Payment, Defendant will be deemed to have fulfilled its obligation upon the mailing of the
18 check to the Class Member, regardless of whether such Class Member subsequently negotiates the
19 check.

20 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR** 21 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

22 Class Member Workweeks and the corresponding Individual Settlement Amount shall be
23 calculated using the employment and payroll records of Defendant, which presumptively shall be
24 deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome
25 that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount
26 of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other
27 written employment records, to the Settlement Administrator. Each Class Member may dispute the
28 number of Workweeks or their estimated Individual Settlement Amount contained on their Class

Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed or faxed to the Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for Defendant, shall inform Class Counsel of the dispute without disclosing the identity of the Class Member making the dispute, and shall immediately attempt to resolve all such disputes directly with relevant Class Members with the assistance of Defendant, Defense Counsel, and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement Amount has been distributed, the initial calculation shall stand (as Defendant shall be under no obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT

9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT

The Class Settlement and conditional class certification shall be considered null and void, and neither the Class Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with the Court, if any of the following occur: **(a)** the Court should for any reason fail to approve this Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties shall attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

9.2. PARTIES’ RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR PROVISION

If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendant shall have the right (but not the obligation) to void this Settlement Agreement. If the number of

workweeks is greater than 10% above what was represented by Defendant, as described above, then the Gross Settlement Amount shall be increased proportionately for each additional week worked.

9.3. INVALIDATION

Invalidation of any material portion of this Settlement Agreement shall invalidate the Class Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions of the Class Settlement are to remain in full force and effect.

9.4. STAY ON APPEAL

In the event of a timely appeal from the approval of the Class Settlement and judgment, the judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any other actions required by this Settlement Agreement until all appeal rights have been exhausted by operation of law.

10. MOTIONS FOR COURT APPROVAL

10.1. PRELIMINARY APPROVAL

As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary approval in a timely fashion.

10.2. FINAL APPROVAL

The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the Settlement Class for settlement purposes only and approving the Class Settlement as being fair, reasonable, and adequate to the Class Participants within the meaning of California Rules of Court, Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

1 **11. RELEASES AND WAIVERS**

2 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

3 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released
4 Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It
5 is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise,
6 and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant,
7 will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of
8 the final judgment and the satisfaction of such judgment.

9 Class Participants will be deemed to have acknowledged and agreed that their claims for wages
10 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes
11 payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged
12 and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement
13 Amount. That section provides in pertinent part as follows:

14 “An employer shall not require the execution of a release of a claim or right on account
15 of wages due, or to become due, or made as an advance on wages to be earned, unless
16 payment of those wages has been made.”
17

18 **11.2. RELEASE OF CLAIMS BY PLAINTIFF**

19 Plaintiff, on behalf of herself and her dependents, heirs and assigns, beneficiaries, devisees,
20 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,
21 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
22 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
23 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
24 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
25 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
26 law or in equity, which she may now have or may have after the signing of this Settlement Agreement,
27 arising out of or in any way connected with her employment with Defendant including, the Released
28 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all

1 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement
2 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,
3 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII
4 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age
5 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the
6 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget
7 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the
8 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California
9 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California
10 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,
11 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory
12 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of
13 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
14 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,
15 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter
16 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
17 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
18 and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees
19 to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs
20 arising out of the matters released in this Settlement Agreement.

21 Plaintiff specifically acknowledges that she is aware of and familiar with the provisions of
22 California Civil Code section 1542, which provides as follows:

23 “A general release does not extend to claims that the creditor or releasing party does not
24 know or suspect to exist in his or her favor at the time of executing the release and that,
25
26
27
28

1 if known by him or her, would have materially affected his or her settlement with the
2 debtor or released party.”

3
4 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and
5 relinquishes all rights and benefits she may have under section 1542 as well as any other statutes or
6 common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or
7 different from those which she now knows or believes to be true with respect to the subject matter of
8 all the claims referenced herein, but agrees that, upon the Effective Date, Plaintiff shall and hereby
9 does fully, finally, and forever settle and release any and all claims against the Released Parties, known
10 or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
11 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
12 of such different or additional facts.

13 **11.3. CIRCULAR 230 DISCLAIMER**

14 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
15 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
16 acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written
17 communication or disclosure between or among the parties or their attorneys and other advisers, is or
18 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
19 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
20 C.F.R. Part 10); **(2)** the Acknowledging Party **(a)** has relied exclusively upon her or its own
21 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
22 Agreement, **(b)** has not entered into this Settlement Agreement based upon the recommendation of any
23 other party or any attorney or advisor to any other party, and **(c)** is not entitled to rely upon any
24 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that
25 may be imposed on the Acknowledging Party; and **(3)** no attorney or adviser to any other party has
26 imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies
27 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
28

1 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
2 Settlement Agreement.

3 **12. DUTIES OF THE PARTIES**

4 **12.1. MUTUAL FULL COOPERATION**

5 The Parties agree to cooperate fully with one another to accomplish and implement the terms
6 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
7 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
8 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
9 by this Settlement Agreement and any other efforts that may become necessary by court order or
10 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
11 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and
12 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
13 this Settlement Agreement.

14 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

15 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
16 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
17 legal challenge, whether by appeal or collateral attack.

18 **12.3. DUTIES PRIOR TO COURT APPROVAL**

19 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
20 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly
21 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
22 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
23 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form
24 and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**,
25 respectively, and directing the mailing of the Class Notice to Class Members. While Defendant can
26 reserve its right to object to facts or assertions made in the moving papers, Defense Counsel shall file
27 a notice of non-opposition to the granting of the motion for preliminary approval or join in the motion.
28

1 **13. MISCELLANEOUS PROVISIONS**

2 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

3 Pending Court approval and other than as provided herein, if any of the conditions set forth in
4 this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the option of
5 either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and may not be
6 used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.
7 If either Party decides to void the Settlement Agreement, then the Settlement Agreement and
8 conditional class certification shall be considered void, and neither the Settlement Agreement,
9 conditional class certification, nor any of the related negotiations or proceedings, shall be of any force
10 or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement
11 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the
12 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator
13 fees and costs actually incurred.

14 **13.2. DIFFERENT FACTS**

15 The Parties acknowledge that, except for matters expressly represented herein, the facts in
16 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
17 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
18 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
19 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
20 and binding despite such difference.

21 **13.3. NO PRIOR ASSIGNMENTS**

22 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
23 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
24 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
25 except as set forth herein.

26 **13.4. NON-ADMISSION**

27 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
28 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other

1 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
2 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
3 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
4 and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or
5 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
6 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to
7 claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
8 an admission by Defendant that the Action was properly brought as a class or representative action
9 other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each
10 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,
11 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
12 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
13 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
14 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the
15 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of
16 any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in
17 any court, administrative agency, or other tribunal.

18 **13.5. NON-EVIDENTIARY USE**

19 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
20 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any
21 individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their
22 respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
23 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and
24 the Released Parties to prove or defend against any claim released herein by any Class Member in any
25 judicial, quasi-judicial, administrative, or governmental proceeding.

26 **13.6. MEDIA OR PRESS**

27 Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the
28 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the

1 Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and
2 all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
3 obtained during the course of the Action, shall not be discussed with or presented to the media or press.

4 **13.7. NON-RETALIATION**

5 Defendant understands and acknowledges that it has a legal obligation to not retaliate against
6 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class
7 Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement
8 Administrator or Class Counsel and will not discourage Class Members who are employees, directly
9 or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties,
10 or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or
11 indirectly, to Opt Out of the Class Settlement.

12 **13.8. CONSTRUCTION**

13 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
14 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
15 Agreement is not to be construed in favor of or against any party by reason of the extent to which any
16 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
17 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
18 next business day.

19 **13.9. GOVERNING LAW**

20 This Settlement Agreement is intended to and shall be governed by the laws of the State of
21 California, without regard to conflict of law principles, in all respects, including execution,
22 interpretation, performance, and enforcement.

23 **13.10. NOTICES**

24 Except for Class Member notices required to be made by the Settlement Administrator, all
25 notices or other communications required or permitted under this Settlement Agreement shall be in
26 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
27 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
28 party appearing in this Settlement Agreement.

1 **13.11. CAPTIONS AND INTERPRETATIONS**

2 Section titles or captions contained herein are inserted as a matter of convenience and for
3 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
4 or any provision thereof.

5 **13.12. MODIFICATION**

6 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
7 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement
8 Agreement has been granted by the Court, then any such amendments or modifications to this
9 Settlement Agreement shall be approved by the Court. This Settlement Agreement may not be
10 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

11 **13.13. INTEGRATION CLAUSE**

12 This Settlement Agreement contains the entire agreement between the Parties relating to the
13 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
14 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
15 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
16 Settlement Agreement may be waived except in writing as provided above.

17 **13.14. SUCCESSORS AND ASSIGNS**

18 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
19 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
20 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,
21 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
22 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
23 successors, and assigns.

24 **13.15. CORPORATE SIGNATORIES**

25 Any person executing this Settlement Agreement or any such related document on behalf of a
26 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
27 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
28 this Settlement Agreement or any such related document.

13.16. EXECUTION IN COUNTERPARTS

This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

13.17. ATTORNEY FEES, COSTS, AND EXPENSES

Except as otherwise specifically provided for herein, each party shall bear her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

13.18. ACTION TO ENFORCE AGREEMENT

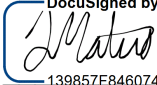
In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

14. EXECUTION

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

APPROVAL AND EXECUTION BY PARTIES**CLASS REPRESENTATIVE:**

Dated: 12/1/2021 _____

DocuSigned by:

 139857E8460742A

Jocelyn Matus
 Plaintiff and Class Representative

DEFENDANT:

Dated: _____

Flory Industries

By: _____

Title: _____

1 **13.16. EXECUTION IN COUNTERPARTS**

2 This Settlement Agreement shall become effective upon its execution by all of the undersigned.
3 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall
4 have the same force and effect as if all Settling Parties had signed the same instrument.

5 **13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

6 Except as otherwise specifically provided for herein, each party shall bear her or its own
7 attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action
8 and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

9 **13.18. ACTION TO ENFORCE AGREEMENT**

10 In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be
11 entitled to recover her or its attorney fees and costs.

12 **14. EXECUTION**

13 The Parties and their counsel have executed this Settlement Agreement on the date below their
14 signatures or the signature of their representatives. The date of this Settlement Agreement shall be the
15 date of the latest signature.

16 **APPROVAL AND EXECUTION BY PARTIES**

17 **CLASS REPRESENTATIVE:**

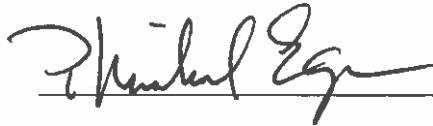
18
19 Dated: _____

Jocelyn Matus
Plaintiff and Class Representative

21
22 **DEFENDANT:**

23 Dated: 1/11/2022

Flory Industries



By:

Title: President / COO

APPROVED AS TO FORM BY COUNSEL

CLASS COUNSEL:

Dated: 12/1/21

Melmed Law Group P.C.



Jonathan Melmed
Attorneys for Plaintiff

EXHIBIT 1

Notice of Proposed Class Action Settlement

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

JOCELYN MATUS, an individual, on behalf of
herself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

FLORY INDUSTRIES, a California
Corporation; and DOES 1 TO 50,

Defendants.

Case Number: CV-20-003117

Notice of Proposed Class Action Settlement

A court authorized this notice. This is not a solicitation from a lawyer.

1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

2 *You may be eligible to receive a settlement payment. Please read this notice carefully.*

3 A proposed class action settlement agreement (the “Settlement”) has been reached between:
4 **(1)** Plaintiff Jocelyn Matus (“Plaintiff”), individually and in her representative capacity on behalf of a
5 group of prospective class members defined below, and as a private attorney general on behalf of the
6 State of California; and **(2)** Defendant Flory Industries (“Defendant”). The Settlement resolves
7 disputed claims against Defendant arising out of its compensation practices during the period from July
8 21, 2016, through August 31, 2021 (the “Class Period”) as applied to all individuals who are or were
9 employed by Defendant as hourly, non-exempt employees in California during the period from July
10 21, 2016, to August 31, 2021 (“Class Members”).

11 The Court has granted preliminary approval of the Settlement and ordered this notice to be sent
12 to you because you may be entitled to money under the Settlement and because the Settlement affects
13 your legal rights.

14 **NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE**
15 **SETTLEMENT:** If you are a Class Member (as defined above) and received this notice, you are
16 automatically included in the Settlement and do not need to take any further action to receive a
17 payment. If you accept your settlement amount, you will release the claims described below.

18 **1. DESCRIPTION OF THE LAWSUIT**

19 On July 21, 2020, Plaintiff, individually and in her representative capacity on behalf of the
20 Class Members, and as a private attorney general on behalf of the State of California, filed a complaint
21 against Defendant in the Superior Court of California for the County of Stanislaus in the matter of
22 ***Jocelyn Matus v. Flory Industries***, case number **CV-20-003117** (the “Action”). The Action sought
23 recovery for Defendant’s alleged: **(1)** failure to provide compliant rest periods and pay missed rest
24 break premiums; **(2)** failure to provide compliant meal periods and pay missed meal period premiums;
25 **(3)** failure to pay proper overtime wages; **(4)** failure to provide complete and accurate wage statements;
26 **(5)** failure to pay all wages due and owing at separation; **(6)** failure to pay timely wages during
27 employment; **(7)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing
28

1 in violation of California’s Unfair Competition Law; and **(8)** statutory penalties based on the foregoing
2 pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”).

3 **Defendant denies all liability, denies all allegations in the Action, and has raised various**
4 **defenses to the claims.** Defendant asserts that it fully complied with all applicable wage and hour laws,
5 and contends that civil penalties under PAGA are not warranted. Defendant also denies that the Action
6 is suitable for class certification. Defendant has entered into the Settlement solely for purposes of
7 resolving this dispute to avoid costly, disruptive, and time-consuming litigation and does not admit to
8 any wrongdoing or liability.

9 The Court has not ruled on the merits in the Action. By approving the Settlement and issuing
10 this notice, the Court is *not* suggesting which side would win or lose the case if it went to trial or
11 whether the claims are suitable for class certification. To avoid the additional expense, inconvenience,
12 and risk of continued litigation, however, Plaintiff and Defendant (the “Parties”) have concluded that
13 it is in their respective best interests and the interests of the Class Members to settle the Action on the
14 terms summarized in this notice. The Settlement was reached after Defendant provided extensive
15 information and documents to Plaintiff’s counsel, and after lengthy arms-length non-collusive
16 negotiations between the Parties, including mediation with an experienced and well-respected mediator
17 in California. In these negotiations, both sides recognized the substantial risk of the Court deciding
18 against them at trial and determined that the Settlement was a fair, reasonable, and adequate way to
19 resolve the disputed claims.

20 Plaintiff and Plaintiff’s counsel—Jonathan Melmed and Kyle Smith of Melmed Law Group
21 P.C. and Martin Sullivan of Sullivan Employment Law PC (“Class Counsel”)—support the Settlement.
22 Among the reasons for support are the defenses to liability potentially available to Defendant, the risk
23 of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties
24 associated with litigation. Plaintiff and Class Counsel believe that the settlement described in this notice
25 is fair, adequate, reasonable, and in the best interests of Plaintiff and the Class Members.

26 Under the Settlement, the following settlement class will be certified under California law: *all*
27 *individuals who are or were employed by Defendant as hourly, non-exempt employees in California*
28 *during the period from July 21, 2016, to August 31, 2021.* The “Class Period” is defined as the period

1 from July 21, 2016, through August 31, 2021. The Settlement provides for a gross settlement amount
2 of \$925,000.00, a share of which is to be distributed to the Class Members based on the pro rata number
3 of weeks worked by the Class Members during the Class Period as a proportion of all weeks worked
4 by all Class Members. In exchange for their share of the settlement amount, all participating Class
5 Members will be deemed to have released Defendant from liability on the terms described in this notice.

6 On [date of preliminary approval], the Court preliminarily approved the Settlement and
7 conditionally certified the settlement class. This notice is being sent to you because Defendant's records
8 indicate that you worked for Defendant during the Class Period and that you meet the definition
9 required to be treated as a Class Member.

10 **2. IF YOU ARE STILL EMPLOYED BY DEFENDANT, THIS SETTLEMENT WILL**
11 **NOT AFFECT YOUR EMPLOYMENT.**

12 California law strictly prohibits retaliation. Further, Defendant is prohibited by law from taking
13 any adverse action against or otherwise target, retaliate, or discriminate against any Class Member
14 because of the Class Member's participation or decision not to participate in the Settlement.

15 **3. TERMS OF THE SETTLEMENT**

16 Defendant has agreed to pay \$925,000.00 (the "Gross Settlement Amount") to resolve the
17 claims in the Action. The Parties agreed to the following payments from the Gross Settlement Amount:

- 18 1. **Settlement Administration Costs.** The Court has approved ILYM Group, Inc. to act
19 as the "Settlement Administrator," who is sending this notice to you and will perform
20 many other duties relating to the Settlement. Under the Settlement, up to \$25,000.00
21 will be paid from the Gross Settlement Amount to pay the Settlement Administration
22 Costs.
- 23 2. **Attorneys' Fees and Expenses.** Class Counsel have been prosecuting the Action on
24 behalf of the Class Members on a contingency fee basis (that is, without being paid any
25 money to date) and have been paying all litigation costs and expenses. To date, the
26 Parties have aggressively litigated many aspects of the case including investigation,
27 settlement efforts, and a full-day mediation session. The Court will determine the actual
28 amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross

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 one-third of the Gross Settlement Amount (i.e., \$308,333.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in the Action. Class Counsel also will ask for reimbursement of up to \$18,000.00 for the costs Class Counsel incurred in connection with the Action.

3. **Service Payment to Class Representative.** Class Counsel will ask the Court to provide a service payment to Plaintiff in the amount of \$10,000.00 for Jocelyn Matus to compensate her for her efforts on behalf of the Class Members in the Action, including assisting in the investigation and consulting with Class Counsel and providing crucial documents to Class Counsel. Plaintiff also may receive a share of the Settlement as a Class Member.

4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five percent (25%) (i.e., \$5,000.00) to the individuals who come within the definition of an "aggrieved employee" for the purposes of the Settlement (i.e., all individuals who are or were employed by Defendant as hourly, non-exempt employees in California during the period from July 21, 2019, to August 31, 2021). The "PAGA Period" is defined for these purposes to mean the period from July 21, 2019, through August 31, 2021.

After deducting the amounts above, the balance of the settlement amount will form the "Net Settlement Amount" for distribution to the Class Members.

4. **DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS**

Each eligible Class Member who does not request exclusion from the Settlement will be deemed a "Class Participant" and will receive a share from the Net Settlement Amount which will be distributed pro rata based on the proportional number of weeks worked by each Class Member during the Class

1 Period (the “Individual Settlement Amount”). If any Class Member requests exclusion from the
2 Settlement, his or her share will be distributed to the remaining Class Participants.

3 Twenty percent (20%) of each Individual Settlement Amount will constitute payment in the
4 form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him
5 or her), and Eighty percent (80%) of each Individual Settlement Amount will constitute penalties and
6 interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

7 Defendant, or its proxies, shall take all usual and customary deductions from the Individual
8 Settlement Amount payments that are distributed as wages, including, but not limited to, state and
9 federal tax withholding, disability premiums, and unemployment insurance premiums. There will be
10 no deduction taken from the interest or penalty distribution—it will, however, be reported on IRS Form
11 1099 as income. Class Participants are responsible for the proper income tax treatment of their
12 Individual Settlement Amount. The Settlement Administrator, Defendant and its counsel, and Class
13 Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors
14 concerning the tax consequences and treatment of payments they receive under the Settlement.

15 The workweeks you worked for Defendant during the Class Period will be calculated based on
16 Defendant’s records. If you feel that you were not credited with the correct number of workweeks
17 worked during the Class Period, you may submit evidence to the Settlement Administrator on or before
18 [Response Deadline] with documentation to establish the number of workweeks you claim to have
19 actually worked during the Class Period. **Documentation sent to the Settlement Administrator will**
20 **not be returned or preserved, so do not send originals.** The Parties and the Settlement Administrator
21 will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should
22 be credited. The Settlement Administrator will make the final decision as to how many weeks are
23 credited and report the outcome to the Class Participant. If you are unsatisfied with the decision, you
24 may submit an objection, which is explained below.

25 Settlement checks will be mailed to all Class Participants after the Court grants final approval
26 of the Settlement and judgment is entered.

1 **5. THE RELEASE OF CLAIMS**

2 If the Court approves the Settlement, the Court will enter judgment and the Settlement will bind
3 all Class Participants. The Class Participants will then be barred from bringing any “Released Claims”
4 against the “Released Parties” as those terms are defined below.

5 The “Released Parties” are Defendant Flory Industries and all of Defendant’s subsidiaries,
6 affiliates, shareholders, members, agents, predecessors, successors, and assigns.

7 The “Released Claims” are those claims arising out of or related to the allegations set forth in
8 the Action and/or the PAGA notice to the California Labor & Workforce Development Agency, which
9 arose during the Class Period, including claims for: **(1)** failure to provide compliant rest periods and
10 pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage
11 Orders; **(2)** failure to provide compliant meal periods and pay missed meal period premiums in
12 violation of Labor Code sections 226.7 and 512, and the Applicable Wage Orders; **(3)** failure to pay
13 proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable
14 Wage Orders; **(4)** failure to provide complete and accurate wage statements in violation of Labor Code
15 sections 226 and 226.3; **(5)** failure to pay all wages due and owing at separation in violation of Labor
16 Code sections 201, 202, and 203; **(6)** failure to pay timely wages during employment in violation of
17 Labor Code sections 204, 210; **(7)** deceptive, fraudulent, or otherwise unlawful business practices
18 based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§
19 17200–17210); **(8)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-
20 2699.6); and **(9)** all claims for liquidated damages, penalties, interest, fees, costs based on the
21 foregoing. The Release Period is the Class Period. No other claims are released other than those claims
22 specifically plead in the operative complaint in the Action.

23 The Settlement does *not* release Defendant or any person, party, or entity from claims, if any,
24 by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor
25 does it release any claims, actions, or causes of action which may be possessed by Class Members
26 under state or federal discrimination statutes, including, without limitation, the California Fair
27 Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code,
28 § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.);

1 the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income
2 Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and
3 interpretive guidelines.

4 Class Members who do not request exclusion from the Settlement will be deemed to have
5 acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that
6 the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be
7 deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable
8 to the Settlement payments. That section provides in pertinent part as follows:

9 “An employer shall not require the execution of a release of a claim or right on account
10 of wages due, or to become due, or made as an advance on wages to be earned, unless
11 payment of those wages has been made.”
12

13 **6. YOUR OPTIONS**

14 **6.1. DO NOTHING AND RECEIVE YOUR PORTION OF THE SETTLEMENT**

15 If you do nothing, you will be automatically included as a Class Participant in the Settlement
16 and will receive a settlement payment. You do *not* have to take any further action to receive your
17 settlement payment. It is, however, the responsibility of all Class Members to ensure that the Settlement
18 Administrator has your current address on file, or you may not receive important information or a
19 settlement payment. The estimated amount of your settlement payment if you do nothing is included
20 on the attached *Class Action Settlement Share Form*.

21 **6.2. REQUEST EXCLUSION FROM THE CLASS AND THE SETTLEMENT**

22 If you do *not* wish to take part in the class action portion of the Settlement (the “Class
23 Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by sending the Settlement
24 Administrator a letter or card postmarked no later than [Response Deadline] that specifically requests
25 exclusion from the Class Settlement in this case. The request for exclusion must include your name,
26 address, telephone number, and signature, and it should state:
27
28

1 “I wish to be excluded from the settlement class in the case of *Jocelyn Matus v. Flory*
2 *Industries*. I understand that if I ask to be excluded from the settlement class, I will not
3 receive any money from the settlement of this lawsuit and will not be releasing any
4 claims I might have.”

5 Send the request for exclusion directly to the Settlement Administrator at the following address
6 by no later than **[Response Deadline]**:

7
8 ILYM Group, Inc.
9 14751 Plaza Drive, Suite J
Tustin, California 92780

10 Any person who submits a timely request for exclusion from the Class Settlement shall, upon
11 receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and
12 shall receive no benefits from the class action portion of the Settlement. If you want confirmation of
13 receipt of your request for exclusion, please send it by United States certified mail, return receipt
14 requested, or contact the Settlement Administrator.

15 **Importantly**, Class Members who timely and validly request exclusion from the Class
16 Settlement will *not* be excluded from their share of the PAGA Payment. Requesting exclusion from
17 the Class Settlement applies solely to the Class Members' entitlement to the class action portion of the
18 Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class
19 Settlement you will still be entitled to your share, if any, of the PAGA Payment.

20 **6.3. OBJECT TO THE SETTLEMENT**

21 You have the right to object to the terms of the Settlement if you do not request exclusion. If,
22 however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you
23 wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator
24 and the Court a written objection stating your name, address, telephone number, dates of employment
25 with Defendant, the case name and number, each specific reason in support of your objection, and any
26 legal support for each objection. Objections in writing must be mailed to the Settlement
27 Administrator—ILYM Group, Inc., 14751 Plaza Drive, Suite J, Tustin, California 92780—by no later
28

than **[Response Deadline]** to be considered. **Objections that do not include all required information, or that are not timely submitted, might not be considered by the court.**

If you choose to object to the Settlement, you may also appear to speak at the final approval and fairness hearing scheduled for **[Final Approval Hearing Date]**, at **[Final Approval Hearing Time]** in Department 23 of the Superior Court of California for the County of Stanislaus, located at 801 Tenth Street, Fourth Floor, Modesto, California 95354. You have the right to appear either in person or through your own attorney at this hearing.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

The Court may, at the time of the final approval and fairness hearing, have certain social distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose information is provided below, for more information about the Court's current social distancing procedures. You may also review the Court's website for the most current information.

7. HOW TO UPDATE OR CHANGE YOUR ADDRESS

If you move after receiving this notice or if it was misaddressed, please contact the Settlement Administrator, ILYM Group, Inc., at **(888) 250-6810** or by email at **claims@ilymgroupclassaction.com**, as soon as possible. **This is important to ensure that future notices and/or the Settlement payment reach you.**

8. NOTICE OF FINAL JUDGMENT IF THE SETTLEMENT IS APPROVED

Within ten (10) days after the Court has held a final and fairness approval hearing and entered a final order approving the Settlement, if it chooses to do so, the Settlement Administrator will post a copy of that order and final judgment on its website at the following website address:

[Case-Specific Settlement URL (to be added by Settlement Administrator)]

9. IF THE SETTLEMENT IS NOT APPROVED

If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the Settlement may be voided, in which case no money will be paid, and the case will return to litigation. If that happens, there is no assurance: **(1)** that the class will be certified by the Court; **(2)** that any decision at trial would be in favor of Class Members; **(3)** that a trial decision, if any, would be as favorable to the Class Members as the Settlement; or **(4)** that any favorable trial decision would be upheld if an appeal was filed.

10. QUESTIONS OR COMMENTS

PLEASE DO NOT CALL OR CONTACT THE COURT. If you have any questions about the settlement, you may contact the Settlement Administrator at: **(888) 250-6810** or by e-mail at **claims@ilymgroupclassaction.com**. You may also contact Class Counsel at the addresses or phone numbers listed below.

Lawyers Representing Plaintiff and the Class Members

MELMED LAW GROUP P.C.

Jonathan Melmed
jm@melmedlaw.com
Kyle D. Smith
ks@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Phone: (310) 824-3828
Fax: (310) 862-6851

SULLIVAN EMPLOYMENT LAW PC

Martin E. Sullivan
martin@sullivanlawgrp.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Phone: (323) 645-5470

EXHIBIT 2

Class Action Settlement Share Form

CLASS ACTION SETTLEMENT SHARE FORM

Jocelyn Matus v. Flory Industries

Case Number CV-20-003117

Superior Court of California for the County of Stanislaus

The proposed class action settlement agreement (the “Settlement”) described in the accompanying *Notice of Proposed Class Action Settlement* resolves disputed claims against Defendant Flory Industries (“Defendant”) arising out of its compensation practices during the period from July 21, 2016, through August 31, 2021 (the “Class Period”) as applied to all individuals who are or were employed by Defendant as hourly, non-exempt employees in California during the period from July 21, 2016, to August 31, 2021 (“Class Members”).

You are receiving this form because you are believed to be a Class Member. **According to Defendant’s records, you worked [REDACTED] workweeks for Defendant during the Class Period. Accordingly, your share of the Settlement is currently estimated to be \$ [REDACTED],** which is an estimate of your allocated portion the Net Settlement Amount, as that term is defined in the accompanying *Notice of Proposed Class Action Settlement*. Your estimated share of the Settlement may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement.

You do not need to do anything to receive money under the Settlement.

If you believe the information provided above as to the number of your workweeks is incorrect and wish to dispute it, please contact the Settlement Administrator no later than **[Response Deadline]** at:

ILYM Group, Inc.
claims@ilymgrouppclassaction.com
(888) 250-6810
14751 Plaza Drive, Suite J
Tustin, California 92780

If you dispute the information stated above, the information Defendant provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked no later than **[Response Deadline]**.

Do not send originals; documentation sent to the claims administrator will not be returned or preserved.