

## STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("Settlement Agreement") is reached by and between Plaintiff Eduardo Gonzalez ("Plaintiff" or "Class Representative"), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Guardian Industries, LLC ("Defendant"), on the other hand. Plaintiff and Defendant are referred to herein collectively as the "Parties." Plaintiff and the Settlement Class are represented by Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC (collectively, "Class Counsel"). Defendant is represented by Mollie M. Burks and Amber A. Eklof of Gordon Rees Scully Mansukhani, LLP.

On June 20, 2019, Plaintiff filed a class action complaint against Defendant in Fresno County Superior Court titled *Eduardo Gonzalez, et al. v. Guardian Industries, LLC*, Case No. 19CECG02134 (the "Lawsuit"). The Lawsuit alleges that Defendant: (i) failed to pay minimum wages; (ii) failed to pay overtime wages; (iii) failed to provide all meal periods; and (iv) engaged in unfair and unlawful business practices.

On April 27, 2020, the Parties attended private mediation with Francis J. Ortman, Esq. and reached a class-wide resolution of all claims at issue in the Lawsuit. As a material term of the Parties' settlement, Plaintiff agreed to file a First Amended Complaint ("FAC") adding class and representative claims for Defendant's alleged: (i) failure to pay all final wages upon separation of employment and (ii) violations of the Private Attorneys General Act ("PAGA").

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt hourly employees of Guardian Industries, LLC in the State of California from June 20, 2015 through May 27, 2020 (the "Class Period").

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter, or in any claims brought on the same or similar allegations, and the Parties will revert to the respective positions held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who affirmatively opt out) fully release and discharge Defendant and its respective predecessors, successors, and assigns, parent companies, subsidiaries, affiliates, shareholders, members, agents, investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees (collectively, the "Released Parties"), as follows:

A. Settlement Class Members release the Released Parties from all claims that have been asserted in the Lawsuit, or which could have been asserted in the Lawsuit

during the Class Period (subject to administrative exhaustion to the California Labor & Workforce Development Agency ("LWDA") and amendment to add PAGA claims), including but not limited to: failure to pay all minimum wages (Labor Code §§ 1182.12, 1194, 1194.2, 1197); failure to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); failure to provide all meal periods (Labor Code §§ 226.7, 512, 558); alleged violations of Business and Professions Code § 17200 *et seq.*; failure to pay all wages owed to employees upon their separation of employment (Labor Code §§ 201-203, 204, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198); and civil penalties pursuant to PAGA (Labor Code § 2698 *et seq.*). The release includes all associated claims (based on the same facts and circumstances as alleged in the Lawsuit and subject to administrative exhaustion to the LWDA and amendment to add PAGA claims) for restitution and other equitable relief, liquidated damages, punitive damages, attorneys' fees and costs, and other civil penalties (collectively the "Released Claims"). The time period covered by this release is June 20, 2015 through May 27, 2020. The release will become effective upon the court's order granting final approval of the settlement (the "Effective Date").

- B. In light of Plaintiff's Class Representative Enhancement Payment, Plaintiff agreed to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. The Parties understand and agree that Plaintiff is not, by way of this release, releasing any workers' compensation claims or any other claims which cannot be released as a matter of law. Specifically excluded from this general release are any and all claims pertaining to Plaintiff's closed workers' compensation action, EAMS Case No. ADJ11313408, including claims brought under Labor Code Section 132a, which Plaintiff does not intend to file. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

Plaintiff acknowledges that he has read all of this Agreement, including the above Civil Code section, and that he fully understands both the Agreement and the Civil Code section.

3. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary "Maximum Settlement Amount" of \$500,000.00, which includes all settlement funds, any class representative service award, settlement administrator's expenses, Class Counsel's attorneys' fees and costs, and an amount to be designated by the parties for civil penalties under PAGA, in full and complete settlement of the Lawsuit, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.
- B. Defendant will fund the Maximum Settlement Amount within 30 calendar days of the Effective Date.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class Members;
  - (2) All costs of the Settlement Administrator which are anticipated to be no greater than \$10,000.00;
  - (3) Up to \$5,000.00 for Plaintiff's Class Representative Enhancement Payment in recognition for Plaintiff's contributions to the Lawsuit and Plaintiff's service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff will not have the right to revoke the Settlement Agreement for that reason, and the Settlement will remain binding;
  - (4) Up to 1/3 of the Maximum Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$166,666.67), plus actual costs and expenses incurred by Class Counsel related to the Lawsuit as supported by declaration, which are currently estimated to be no greater than \$45,000.00. In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel will not have the right to revoke the Settlement Agreement based on that reason, and the Settlement will remain binding; and
  - (5) \$30,000.00 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. In accordance with Labor Code section 2699(i), 75% of this amount (\$22,500.00) will be payable to the LWDA, and the remaining 25% (\$7,500.00) will be payable to the Settlement Class Members as the "PAGA Amount," as described below.
- D. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class Members who do not opt-out.
- E. **Escalator Clause.** Defendant represents there were approximately 50,950 workweeks worked from the beginning of the Class Period through early April 2020. If, at the time the Court issues its Order granting preliminary approval, the actual number of workweeks worked during the Class Period has increased by 10% or more (i.e., if there are 56,045 or more workweeks worked in the Class Period), then Defendant agrees to increase the Maximum Settlement Amount on a proportional basis (e.g. if the actual number of workweeks worked during the Class Period was 12% greater than represented, Defendant would increase the Maximum Settlement Amount by 12%).

- F. **Blow-up Provision.** Defendant retains the right, in the exercise of its sole discretion, to withdraw from the settlement within seven (7) business days after expiration of the Response Deadline (see Section 9.D), if more than five percent (5%) of the Settlement Class Members opt out / request exclusion from this settlement. Withdrawal shall be by written notice to Class Counsel (email will suffice). If this option is exercised by Defendant, Defendant shall be solely responsible for the costs incurred for settlement administration up to the date of nullification.
- G. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include any employer-side payroll taxes, which will be paid by Defendant separate and apart from, and in addition to, the Maximum Settlement Amount.

4. **Payments to the Settlement Class.** Settlement Class Members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:

- A. The Settlement Administrator will first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount will be known as the "Net Settlement Amount."
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Payment based on the following formula:
- i. Wage Statement/PAGA Amount: 10% of the Net Settlement Amount plus the \$7,500.00 payable to the Settlement Class Members as the PAGA Amount will be designated as the "Wage Statement/PAGA Amount." Each participating Settlement Class Member who was employed by Defendant in California between June 20, 2018, and the close of the Class Period will receive a portion of the Wage Statement/PAGA Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
  - ii. Waiting Time Amount: 10% of the Net Settlement Amount will be designated as the "Waiting Time Amount." The Waiting Time Amount will be distributed in equal shares to each participating Settlement Class Member who separated their employment with Defendant on or after June 20, 2016.
  - iii. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is

the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.

- C. Within ten (10) business days following the funding of the Maximum Settlement Amount, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Payment and will prepare and mail Individual Settlement Payments to Settlement Class Members.
  - D. Each Individual Settlement Payment will be allocated as one third (1/3) wages and two thirds (2/3) penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). The Settlement Administrator will be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Individual Settlement Payment.
  - E. Each member of the Settlement Class who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class Members whose checks are not cashed within 180 days after mailing will be transferred by the settlement administrator to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class Member to whom the check was issued, until such time that the property is claimed.
  - F. Neither Plaintiff nor Defendant will bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to 1/3 of the Maximum Settlement Amount, which is currently estimated to be \$166,666.67. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$45,000.00 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. The Settlement Administrator will issue an IRS Form 1099 to Class Counsel by the for the fee award approved by the Court.
6. **Class Representative Enhancement Payment.** Defendant will not object to a request for Class Representative Enhancement Payment of \$5,000.00, from the Maximum Settlement Amount, for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This Enhancement Payment will be in addition to Plaintiff's Individual

Settlement Payment as a Settlement Class Member and will be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$10,000.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator will be responsible for depositing into an account and holding the various payments from Defendant comprising the Maximum Settlement Amount, sending Notice Packets to the Settlement Class Members, calculating Individual Settlement Payments and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator will be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all participating Settlement Class Members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff will apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Eduardo Gonzalez as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Settlement Award), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class will be notified as follows:

- A. Within 30 calendar days after entry of an order preliminarily approving the Settlement Agreement, Defendant will provide the Settlement Administrator with the names, addresses, dates of employment, social security numbers, and relevant workweek information for each Settlement Class Member during the Class Period.
- B. Within 10 business days from receipt of this information, the Settlement Administrator will (i) run the names of all Settlement Class Members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement

Class Member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class Member; and (iv) mail a Notice Packet to each Settlement Class Member at his or her last known address, or at the updated address found through the NCOA search, and retain proof of mailing.

- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline will be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator will resend the Notice Packet to the Settlement Class Member immediately, and in any event within five (5) days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address will be presumed to be the best mailing address for each Settlement Class Member. Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator will have an additional seven (7) calendar days after the Response Deadline to opt-out, object, or dispute their Individual Settlement Payment. Notice Packets that are re-mailed will inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Any Settlement Class Member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
- i. The Notice Packet will state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class Member; (2) contain a statement that the Settlement Class Member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement. The date of the postmark on the Request for Exclusion will be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who submits a timely, and valid request to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
  - ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Member to object to the Settlement or opt-out of the

Settlement Class or encourage any Settlement Class Member to appeal from the final judgment.

- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who will serve all objections as received on Class Counsel and Defendant's counsel on a weekly basis) within the Response Deadline. Defendant's counsel and Class Counsel will file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class Member who wishes to may also appear in person or through their own counsel and raise an objection at the Final Approval Hearing.
- F. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class Member will disclose the amount of the Settlement Class Member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator will determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.
- G. Defendant understands its legal obligation not to retaliate against the Settlement Class Members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Lawsuit.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff will apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement will operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If the Settlement does not receive final approval by the Court, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Confidentiality.** The Parties and their counsel agree to keep the Settlement, the Settlement-related documents, and their Settlement negotiations confidential, and will not disclose that information to any third party until after the date of filing of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. Plaintiff and his counsel agree that they have not and will not publish the Settlement Agreement. Plaintiff's counsel will not report the Settlement Agreement or Maximum Settlement Amount in any medium or in any publication, will not post or report anything regarding the claims of Plaintiff or the Settlement Class or the Settlement Agreement on their website, and will not contact any reporters or media regarding the Settlement Agreement. However, Plaintiff's attorneys are authorized to make a limited disclosure to the Court for the purposes of obtaining the approval of the settlement. This disclosure is limited to court filings and submission to the LWDA, and neither Plaintiff nor his counsel or representatives are permitted to disseminate or publish, distribute or discuss the information provided to the Court and the LWDA in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court. Notwithstanding anything herein to the contrary, this Confidentiality provision is not intended to prohibit Plaintiff's Counsel from discussing the terms of the Settlement with the Settlement Class Members and/or otherwise answering their questions regarding the Settlement.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement will be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

to Plaintiff: Fletcher W. Schmidt of Haines Law Group, APC  
2155 Campus Drive, Suite 180, El Segundo, CA 90245  
fschmidt@haineslawgroup.com

to Defendant: Mollie M. Burks of Gordon Rees Scully Mansukhani, LLP  
275 Battery Street, Suite 2000, San Francisco, CA 94111  
mburks@grsm.com

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations,

presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed electronically by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together will be deemed to constitute one and the same instrument.

17. **Enforcement Action.** In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

18. **Continuing Jurisdiction.** The Parties stipulate that, pursuant to California Code of Civil Procedure section 664.6, the Fresno County Superior Court will retain jurisdiction over the Parties to enforce this Settlement Agreement until full performance of the terms of the settlement has been completed.

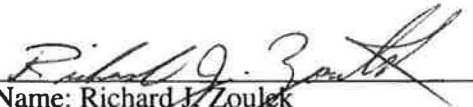
19. **Mutual Cooperation.** The Parties and their counsel shall use their best efforts to cause the Court to grant preliminary and final approval to this Settlement Agreement, and agree to cooperate in good faith to perform all acts and execute and deliver all documents, data, and declarations necessary to effectuate all provisions of this Settlement Agreement.

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**[SIGNATURES BEGIN ON FOLLOWING PAGE]**

DATED: 9/17/2020

DEFENDANT GUARDIAN INDUSTRIES, LLC

By:   
Name: Richard J. Zoulek  
Title: Executive Vice-President

DATED: Oct 28, 2020

PLAINTIFF EDUARDO GONZALEZ

By:   
Eduardo Gonzalez (Oct 28, 2020 16:55 PDT)  
Plaintiff and Settlement Class Representative

**APPROVED AS TO FORM:**

DATED: 9/17/2020

GORDON REES SCULLY MANSUKHANI, LLP

By:   
Mollie M. Burks  
Amber A. Eklof  
Attorneys for Defendant

DATED: 10-28-2020

HAINES LAW GROUP, APC

By:   
Fletcher W. Schmidt  
Andrew J. Rowbotham  
Attorneys for Plaintiff