

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (the “Agreement”) is entered into by and between Plaintiff Mercedes De La Cruz (“Plaintiff”), on the one hand, and Defendants Hightower Metal Products, a California Corporation (“HM”), Hightower Plating & Mfg. Co., a California corporation (“HP”), and Anillo Industries, Inc., a California corporation (“Anillo”) (HM, HP, and Anillo are referred to collectively as “Defendants”), on the other hand (Plaintiff and Defendants are sometimes referred to collectively as the “Parties” and individually as a “Party”), and subject to the approval of the Court, that the Action (as defined below) is hereby being compromised and settled pursuant to the terms and conditions set forth in this Agreement and that the Court shall make and enter judgment, subject to the continuing jurisdiction of the Court as set forth below, subject to the definitions, recitals and terms set forth herein, all of which by this reference become an integral part of this Agreement:

ADDITIONAL DEFINITIONS

1. “Action” means the Class Action Complaint known as *De La Cruz v. Hightower Metal Products, et al.* filed in the Orange County Superior Court on July 23, 2020 bearing Case No. 30-2020-01150713-CU-OE-CXC.

2. “Class Counsel” means Marcus J. Bradley of Bradley/Grombacher, LLP and Sahag Majarian II of the Law Offices of Sahag Majarian, II.

3. “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution of this Action and their expenses and costs incurred in connection with the Action, paid from the Gross Settlement Fund as described in Paragraph 58 below.

4. “Class Information” means information regarding Settlement Class Members that Defendants will in good faith compile from their records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Settlement Class Member’s full name; last known address; Social Security Number; start date of employment; end date of employment (if any).

5. “Class Member” means all current and former hourly-paid, non-exempt employees who worked for Defendants at any time during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).

6. “Class Period” means the period from July 23, 2016 through the hearing date of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement or 150 days from the December 11, 2020 execution of the Memorandum of Understanding following mediation of this Action, whichever is sooner.

7. “Class Representative Enhancement Payment” means the award provided to Plaintiff in recognition of her participation in this litigation as described in Paragraph 56 below.

8. “Compensable Weeks” means the number of weeks during which members of the Settlement Class were employed by Defendants during the Class Period. Compensable Weeks for

each Settlement Class Member shall be calculated by calculating the total number of days of employment during the Class Period and dividing the total number of days of employment during the Class Period by seven (7).

9. "Costs" means those amounts of money reasonably expended to litigate, and settle, this matter.

10. "Court" means the Orange County Superior Court.

11. "Defense Counsel" means Annigian Ryan LLP.

12. "Effective Date" means the date upon which the Court grants final approval of the Settlement if no objections to the Agreement are raised during the Court's approval process. If any objection to the Agreement is raised, the Effective Date shall be sixty days after notice of entry of judgment is given. If an appeal or other appellate proceeding is initiated, the Effective Date shall be the date the trial court regains jurisdiction following the latter of termination of all appellate proceedings or the expiration of the time to bring further appeal.

13. "Former Employee" means those Settlement Class Members who are former hourly-paid, non-exempt employees of Defendants (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification) as of the date of upon which the Court grants preliminary approval of the Settlement.

14. "Gross Settlement Fund" means the maximum settlement amount of Six Hundred Thirty-Five Thousand Dollars (\$635,000.00) to be paid by Defendants in full satisfaction of all claims arising from the Action, which includes all Individual Settlement Payments to Settlement Class Members, Class Counsel Award, Class Counsel Costs, the Class Representative Enhancement Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, and the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA") Payment. This Gross Settlement Fund has been agreed to by the Parties based on the aggregation of the agreed-upon settlement value of individual claims. In no event will Defendants be liable for more than the Gross Settlement Fund absent written agreement of the Parties arising out of the Parties' obligations triggered by conditions set forth in Paragraph 61 below. Defendants maintain no reversionary right to any portion of the Gross Settlement Fund. The entire Gross Settlement Fund will be distributed and no part of the Gross Settlement Fund will revert to Defendants.

15. "Individual Settlement Payment" means the amount payable to each Settlement Class Member as described in Paragraph 55 below.

16. "LWDA Payment Amount" means 75% of the PAGA Settlement Fund.

17. "Net Settlement Amount" or "NSA" means the Gross Settlement Fund, less Class Counsel Award, Costs, Class Representative Enhancement Payment, the PAGA Settlement Fund, and Settlement Administrator Costs.

18. "Notice Packet" means the Notice of Proposed Class Action Settlement

(substantially in the form attached as **Exhibit A**).

19. “PAGA Employee Share” means 25% of the PAGA Settlement Fund.

20. “PAGA Settlement Class” means all current or former employees of Defendants who were employed between July 23, 2019 and the date the Court preliminary approves the Settlement (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).

21. “PAGA Settlement Fund” means the portion of the Gross Settlement Fund that the Parties have agreed will be allocated and paid to settle all claims and remedies under the PAGA. The amount of the PAGA Payment is subject to court approval pursuant to California Labor Code section 2699(l). The Parties have agreed that Thirty Thousand Dollars (\$30,000.00) of the Gross Settlement Fund shall be allocated to the resolution of any Settlement Class Members’ claims arising under PAGA. Pursuant to the PAGA, 75%, or Twenty-Two Thousand Five Hundred Dollars (\$22,500.00), of the PAGA Settlement Fund shall be paid to the California Labor and Workforce Development Agency (“LWDA”), and 25%, or Seven Thousand Five Hundred Dollars (\$7,500.00), of the PAGA Settlement Amount shall be part of the Net Settlement Amount to be distributed to the PAGA Settlement Class.

22. “Released Claims” means all disputes, claims, and/or causes of action pleaded or which could have been pleaded in or arising from the facts pleaded and allegations of wrongdoing in the Action for the Class Period, including the following alleged violations of California Labor Code: (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to timely pay wages each pay period; (d) failure to timely pay final wages under Labor Code section 203; (e) failure to provide accurate wage statements under Labor Code section 226 (included, but not limited to, actual damages); (f) failure to pay meal period penalties under Labor Code section 226.7; (g) failure to pay rest period penalties under Labor Code section 226.7; (h) penalties pursuant to the California Private Attorney General Act of 2004 (“PAGA”); (i) failure to adopt standards that minimize excessive indoor heat; (j) damages, penalties, interest and other amounts recoverable under said causes of action under California law and/or Federal law, including but not limited to the California Labor Code and California Unfair Competition Law; (k) unfair competition; and (l) interest, attorney’s fees, and costs concerning any of the above. The claims include statutory, constitutional, contractual and common law claims for wages, damages, unpaid costs, liquidated damages, punitive damages stemming from the claims in the Action, or penalties of any nature, interest, attorney’s fees, litigation costs, restitution, and equitable relief, off-the-clock, late payments of wages, claims for penalties, off-the-clock claims, meal and rest break claims, security/bag check claims, rounding, walking time, overtime and double time.

23. “Released Parties” means Defendants including their former and present parent companies, subsidiaries, divisions, concepts, related or affiliated companies, shareholders, officers, directors, employees, partners, agents, representatives, attorneys, insureds, successors, and assigns, and any individual or entity that could be jointly liable with any of the Released Claims who are not Settlement Class Members.

24. “Relevant Pay Period” means any period for which wages are or were due and payable on regular paydays, and for which wage statements were issued during the Class Period.

25. "Response Deadline" means the date sixty (60) days after the Settlement Administrator mails Notice Packets to Settlement Class Members and the last date on which Settlement Class Members may request for exclusion and/or objection to the Settlement.

26. "Settlement" means the disposition of the Action pursuant to this Agreement.

27. "Settlement Administration Costs" means the amount to be paid to the Settlement Administrator from the Gross Settlement Fund for administration of this Settlement.

28. "Settlement Administrator" means CPT Group, with its corporate headquarters located at 50 Corporate Park Drive, Irvine, California.

29. "Settlement Class Members" means all Class Members who do not submit a timely and valid request for exclusion as provided in this Agreement.

30. "Former Employee Ratio" means the portion of the Former Employee Settlement Fund divided by the total number of Settlement Class Members who are identified as a Former Employee.

31. "Former Employee Fund" means 20% of the Net Settlement Amount as described in Paragraph 55 below.

32. "Former Employee Sub-Class" means all Former Employees of Defendants whose employment terminated at any time during the period of July 23, 2017 through the end of the Class Period, inclusive (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification) who does not submit a timely and valid request for exclusion as provided in this Agreement.

RECITALS

33. Class Certification. The Parties stipulate and agree to the certification of this Action for purposes of this Settlement only. Should the Settlement not become final and effective as herein provided, class certification shall immediately be set aside and the Settlement Class immediately decertified (subject to further proceedings on motion of any party to certify or deny certification thereafter). The Parties' willingness to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in or considered in connection with, the issue of whether a class should be certified in a non-settlement context in this Action and shall have no bearing on, and shall not be admissible or considered in connection with, the issue of whether a class should be certified in any other lawsuit or arbitration.

34. Procedural History. Plaintiff initiated the Action by filing a Class Action Complaint on July 23, 2020. Thereafter, on October 23, 2020, Plaintiff filed a First Amended Class Action Complaint to add a claim for relief pursuant to PAGA.

35. The Parties agreed to mediate the Action with an experienced and well-respected wage and hour mediator, Christopher Barnes, Esq. In preparation for mediation, Defendants voluntarily provided time records for the Settlement Class up to and including July 31, 2020.

Defendants produced data for over 38,492 shifts during the liability period.

36. On December 11, 2020, the Parties participated in an all-day mediation with Mr. Barnes via Zoom, where an agreement-in-principle was reached.

37. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, including the possibility that one or more of the alleged classes may not be certified, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendants' anticipated defenses thereto, and the difficulties in establishing damages for the Settlement Class Members. Plaintiff and Class Counsel have also taken into account the extensive settlement negotiations conducted. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Settlement Class Members.

38. Defendants' Reasons for Settlement. Defendants have concluded that any further defense of the Action would be protracted and expensive for all Parties. Substantial amounts of time and resources of Defendants have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff and Settlement Class Members. Defendants have also taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by Plaintiff, Defendants have, nonetheless, agreed to settle in the manner and upon the terms set forth in this Agreement to resolve the claims as set forth in the Action. Defendants have claimed, and continue to claim, that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendants as to the merits or lack thereof of the claims asserted. The monies being paid as part of the Settlement are genuinely disputed and the Parties agree that the provisions of Labor Code section 206.5 are not applicable to this Settlement.

39. Settlement Class Members' Claims. Settlement Class Members have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendants. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the claims asserted.

TERMS OF AGREEMENT

40. Filing of Lawsuit. In order to effectuate this Agreement, Plaintiff shall file a Second Amended Complaint in the Action to add additional claims and to add HP as an additional party to the Action, and Plaintiff shall seek preliminary and final approval of this Settlement from the Court. Defense Counsel shall have an opportunity to review a draft of the Second Amended

Complaint prior to Plaintiff's filing.

41. Release As To All Settlement Class Members. As of the Effective Date, in exchange for the Gross Settlement Fund, Plaintiff and the Settlement Class Members release the Released Parties from the Released Claims for the Class Period.

42. Plaintiff and the Settlement Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the final judgment shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

43. Release As To Plaintiff. In consideration for the Class Representative Enhancement Award and as an inducement for Defendants to enter into this Agreement, Plaintiff's Released Claims additionally include any and all claims including Unknown Claims against Defendants that accrued during her employment with Defendants, and expressly waives the following provisions of California Civil Code § 1542:

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.

44. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Class Members are not relying on any statement or representation by the Parties or by the Settlement Administrator in this regard. Settlement Class Members understand and agree that withholdings, including, but not limited to Settlement Class Members' FICA contributions, will be taken from that portion of the Gross Settlement Fund designated as wages, and that they will be responsible for the payment of any employee taxes and penalties assessed on the payments described herein and will hold the Parties free and harmless from and against any claims, liabilities, costs and expenses, including attorney's fees, resulting in any way from personal tax treatment of the payments made pursuant to this Agreement, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. However, Defendants' share of employer payroll taxes and other required employer withholdings, including but not limited to Defendants' FICA and FUTA contributions, shall be paid separate and apart from the Gross Settlement Fund.

45. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the "Acknowledging Party" and each Party to this Agreement other than the acknowledging party, an "Other Party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their

attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party, and (3) no attorney or adviser to any Other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

46. Settlement Administration. Within twenty (20) calendar days after the Court grants preliminary approval of this Agreement, Defendants shall provide the Settlement Administrator with the Class Information for purposes of mailing Notice Packets to Settlement Class Members.

47. Notice By First Class U.S. Mail. Upon receipt of the Class Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within fourteen (14) calendar days after receiving the Class Information from Defendants as provided herein, the Settlement Administrator shall mail copies of the Notice Packet, written in English and Spanish, to all Settlement Class Members via First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Settlement Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or Social Security Number of the Settlement Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. Settlement Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended fourteen (14) days from the original Response Deadline.

48. Claims. This is a no-claims settlement. All Settlement Class Members, who do not properly seek exclusion from the Settlement (as outlined in Paragraph 51 of this Agreement) will receive Individual Settlement Payments from the Net Settlement Amount. The calculation of Individual Settlement Payments shall be as described in Paragraph 55 below.

49. Disputes Regarding Individual Settlement Payments. Settlement Class Members will have the opportunity, should they disagree with Defendants' records regarding the dates of employment on their Notice, to provide documentation and/or an explanation to show contrary employment dates, by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. Counsel for the Parties will confer in good faith to resolve the dispute(s) and advise the Settlement Administrator if the Parties were able to resolve the dispute. Any dispute resolved by the Parties following

conferring in good faith shall be binding upon the Settlement Class Member and the Parties. In the event that the Parties are unable to resolve the dispute, the Settlement Administrator shall determine the eligibility for and amount of any Individual Settlement Payment and provide its determination to the Parties in writing at least fifteen (15) days prior to any fairness hearing in this matter. Any Party shall have the right to raise the dispute to the trial court for resolution; however, the Party challenging the Settlement Administrator's determination shall have the burden of proof as to any error in the Settlement Administrator's determination and shall bear its own costs related thereto.

50. Disputes Regarding Administration of Settlement. Any disputes regarding or relating to the administration of the Settlement shall be resolved by the same process described in Paragraph 49.

51. Exclusions. The Notice Packet shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a written request for exclusion by the Response Deadline. The written request for exclusion must state that the Settlement Class Member wishes to exclude himself or herself from the Settlement and (1) must contain the name, address, telephone number and the last four digits of the Social Security number of the person requesting exclusion; (2) must be signed by the Settlement Class Member; (3) must be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address, and (4) must clearly state the intention to be excluded from the Settlement. The request for exclusion will not be valid if it is not timely submitted, if it is not signed by the Settlement Class Member, or if it does not contain the name and address of the Settlement Class Member and articulate the intent to be excluded. The date of the postmark on the return mailing envelope on the request for exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Settlement Class Member who validly requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Settlement Class Members who fail to submit a valid request for exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with the total number of Settlement Class Members who have submitted valid written requests for exclusion. In addition to providing the list of individuals who have requested an exclusion to Defendant, if the total number of Settlement Class Members who have submitted valid written requests for exclusion is equal to or exceeds three percent (3%) of the Settlement Class, the Settlement Administrator shall provide the Parties with a list of the Settlement Class Members who have submitted valid written requests for exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Settlement Class to submit requests for exclusion from the Settlement.

52. Objections. The Notice Packet shall state that Settlement Class Members who wish to object to the Settlement may be required by the Court to deliver to the Settlement Administrator a written statement of objection ("Notice of Objection") no later than the Response Deadline. The date of receipt by the Settlement Administrator shall be deemed the exclusive means for determining that a Notice of Objection was timely. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3) the last four digits of the Settlement

Class Member's Social Security number; (4) the basis for the objection; and (5) if the Settlement Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. Absent modification of the requirement to provide Notice of Objection prior to the Final Approval/Settlement Fairness Hearing, Settlement Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Settlement Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval/Settlement Fairness Hearing in order to have their objections heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Class Counsel shall not represent any Settlement Class Members with respect to any such objections. Any Settlement Class Member who submits a timely request for exclusion and who also objects to this Settlement shall be deemed to have validly excluded himself or herself from the Settlement and the objection shall be waived.

53. Funding and Allocation of Gross Settlement Fund. This is a non-reversionary, non-claims-made Settlement in which Defendants are required to pay the entirety of the Gross Settlement Fund as specified in this Agreement. No amount of the Gross Settlement Fund will revert to Defendants. Defendants' share of payroll taxes and other required withholdings from Individual Settlement Payments, including but not limited to FICA and FUTA contributions, shall be paid separate and apart from the Gross Settlement Fund. Within thirty (30) calendar days after the Effective Date, Defendants shall provide the Gross Settlement Fund and Defendants' share of payroll taxes to the Settlement Administrator.

54. Individual Settlement Payments. Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be mailed by First Class U.S. Mail to Settlement Class Members' last known mailing address within fourteen (14) calendar days after Defendants provide funds to the Settlement Administrator for disbursement under this Agreement. Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. After that time, any such unclaimed checks will be distributed to *Cy Pres* Recipients as described in Paragraph 58, below. In such event, those Class Members will nevertheless remain bound by the Settlement. Individuals will be entitled to payment from the Net Settlement Amount based on their status as the Settlement Class Members, Former Employee Sub-Class Members, and PAGA Settlement Class Members as defined in Paragraphs 20, 29, and 32 above.

55. Calculation of Individual Settlement Payments. The calculation of Individual Settlement Payments will involve the following steps:

- A. The Net Settlement Amount will be divided and allocated as follows:
 - i. Eighty percent (80%) of the Net Settlement Fund shall be designated as wages, penalties, damages, and interest thereon and payable to the Settlement Class according to the formula stated below.
 - ii. Twenty percent of the NSA shall be designated as the Former

Employee Settlement Fund.

- B. The portion of the NSA designated as wages, penalties, damages, and interest thereon shall be divided by the total Compensable Weeks worked by the whole of the Settlement Class to establish the value of each Compensable Week. The number of Compensable Weeks attributable to each individual Settlement Class Member shall then be multiplied by the value of each Compensable Week to determine the amount due to each individual Settlement Class Member. Of the portion of the NSA designated as wages, penalties, damages, and interest thereon, twenty-five percent (25%) (or 20% of the NSA as a whole) shall be designated as wages for which each Settlement Class Member shall be issued an IRS Form W2.
- C. The PAGA Employee Share shall be divided by the total number of Compensable Weeks during the period of July 23, 2019 through the end of the Class Period in order to establish the PAGA Payment Ratio. The PAGA Payment Ratio will then be multiplied by the number of Compensable Weeks attributable to each member of the PAGA Settlement Class in order to determine the correct amount to be paid to each PAGA Settlement Class Member out of the PAGA Employee Share.
- C. The Former Employee Settlement Fund shall be divided by the number of Former Employees in order to determine the Former Employee Payment Ratio. Each Former Employee Sub- Class Member shall be entitled to receive the Former Employee Payment Amount.

56. Class Representative Enhancement Payment. Plaintiff Mercedes De La Cruz agreed to serve as the class representative without the expectation of a Class Representative Enhancement Payment. However, Plaintiff has now identified herself, in the public record, as an individual who is willing to make class action employment claims. Among the considerations for any Class Representative Enhancement Payment are (a) that the Agreement provides a substantial benefit to the Settlement Class Members; (b) Plaintiff is not seeking an extraordinary amount, but a number that is reasonable and represents the amount of time and the risks associated with her participation in this litigation; and (c) that Plaintiff is providing a general release of all claims. Plaintiff contends a Class Representative Enhancement Payment of \$7,500.00 is reasonable and fair. The Class Representative Enhancement Payment shall be paid to Plaintiff from the Gross Settlement Fund no later than fourteen (14) calendar days after Defendants provide funds to the Settlement Administrator for disbursement under this Agreement. Defendants do not oppose Plaintiff's requested Class Representative Enhancement Payment.

57. Class Counsel Award. Class Counsel will submit an application for attorneys' fees not to exceed one-third of the Gross Settlement Fund (or Two Hundred Eleven Thousand Six Hundred Sixty-Six and 67/100 Dollars (\$211,666.67), plus actual Costs not to exceed Twenty-Five Thousand Dollars (\$25,000). Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Class Counsel Award shall be paid to Class Counsel from the Gross Settlement Fund no later than fourteen (14) calendar days after

Defendants provide funds to the Settlement Administrator for disbursement under this Agreement. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to each Class Counsel for the payments made pursuant to this paragraph. Defendants do not oppose this application. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys’ fees and costs.

58. Cy Pres. Any checks that remain unclaimed for 180 days after issuance shall be distributed to nonprofit organizations or foundations designated by Defendants and Plaintiff to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent (“*Cy Pres* Recipients”). One Hundred percent (100%) of the funds resulting from unclaimed checks shall be distributed *Cy Pres* Recipient, Bet Tzedek.

59. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Fund. The costs of administration for the disbursement of the Gross Settlement Fund are currently estimated to be Ten Thousand Dollars (\$10,000.00). This figure represents the Settlement Administrator’s estimate of its fees to administer this Settlement, based on information it was provided about the issues in the case, the complexity of the Settlement, and the approximate sizes of the putative Classes. To the extent actual Settlement Administration Costs are greater than \$10,000.00, such excess amount shall be taken out of the Net Settlement Amount, unless it is determined by the Court that such increased costs were caused by misconduct by Defendants, whether collectively or individually. No fewer than twenty-one (21) days prior to the Final Approval Hearing, the Settlement Administrator shall provide the Parties with a statement detailing the costs of administration of this Settlement. The Settlement Administrator shall be paid the Settlement Administration Costs no later than fourteen (14) calendar days after Defendants provide funds to the Settlement Administrator for disbursement under this Agreement. The Settlement Administrator, on Defendants’ behalf, shall have the authority and obligation to make payments, credits and disbursements, including payments and credits in the manner set forth herein, to Settlement Class Members calculated in accordance with the methodology set out in this Agreement and orders of the Court.

- A. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.
- B. The Settlement Administrator shall be responsible for:
 - 1. Calculating the amount each Settlement Class Member is eligible to receive, processing and mailing payments to the Plaintiff, Class Counsel, and Settlement Class Members;

2. Printing, translating and mailing the Notice Packets to the Settlement Class Members as directed by the Court;
3. Receiving and reporting the requests for exclusion and objections submitted by Settlement Class Members;
4. Deducting taxes from Individual Settlement Payments and distributing tax forms;
5. Establishing and maintaining a toll-free informational telephone support line to assist Class Members who have questions regarding the Notice;
6. Issuing to Plaintiff, Settlement Class Members, and Class Counsel, W-2, 1099 forms or other tax forms as may be required by law for all amounts paid pursuant to this Agreement;
7. Conducting additional address searches for mailed Notices that are returned as undeliverable. These searches may be done through a class action locator service. To the extent new and more current addresses are found, the Settlement Administrator will also reprint and re-mail Notices accordingly;
8. Calculating Settlement Class Members settlement share, fielding inquiries from Class Members, and administration of any requests for exclusion. This service will include settlement proceed calculations, printing and issuance of checks, and preparation of W-2, 1099 Forms. Basic accounting for and payment of employee tax withholdings will also be included as part of this service;
9. Informing Defendants of their employer-side tax liability, if any;
10. Processing and mailing tax payments to the appropriate state and federal taxing authorities;
11. Providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement;
12. Other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform;
13. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities; and
14. No later than twenty-five (25) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with an accounting of the Gross Settlement Fund and report the amount of all payments to be made to each Settlement Class Member

by name and Social Security number.

- C. No person shall have any claim against Defendants, Defense Counsel, Plaintiff, Settlement Class Members, Class Counsel or the Settlement Administrator based on distributions and payments made in accordance with this Agreement.

60. Defendants' Option to Terminate Settlement. If, after the Response Deadline and before the Final Approval/Settlement Fairness Hearing, the number of Settlement Class Members who submitted valid requests for exclusion from the Settlement is three percent (3.00%) or greater of all Settlement Class Members, Defendants shall have, in their sole discretion, the option to terminate this Settlement. If Defendants exercise their option to terminate this Settlement, Defendants shall: (a) provide written notice to Class Counsel within fifteen (15) calendar days after the Settlement Administrator provides counsel for the Parties with the final list of Settlement Class Members who have submitted valid requests for exclusion and (b) pay all Settlement Administration Costs incurred up to the date and as a result of the termination; and the Parties shall proceed in all respects as if this Agreement had not been executed. However, in the event that the number of Settlement Class Members who submitted valid requests for exclusion is reduced to less than three percent (3.00%) by withdrawal of said requests for exclusion during the fifteen-day period following the Settlement Administrator's provision of the final list of excluded Settlement Class Members, then Defendants shall have no right to terminate this Settlement.

61. Plaintiff's Option to Exclude New Hires. As of July 31, 2020, Defendants' best estimate of the number of Class Members is 271 and the best estimate of workweeks worked by the prior to August 1, 2020 is 28,313. If the actual number of Class Members is more than ten percent (10%) greater than this estimate by the time that Defendants provide the data to the Settlement Administrator, then the Parties will meet and confer to determine whether the Class should be limited to exclude any of Defendants' employees hired on or after August 1, 2020. In the event that the Parties duty to meet and confer is triggered as a result of the increase in Settlement Class size, Plaintiff shall have, in her sole discretion, the option to limit the Class to exclude any of Defendants' employees hired on or after August 1, 2020. Plaintiff's exercise of this option shall not any impact on any other term in this Settlement Agreement.

62. Non-Interference. No Party may solicit, encourage, or otherwise aid in obtaining exclusions from Settlement Class Members. In the event that any either Plaintiff or Defendants are determined to have solicited, encouraged, or otherwise aided in obtaining exclusions from Settlement Class Members, that party shall waive its right to terminate the settlement pursuant to Paragraphs 64 and 65 above. Determination of whether a Party solicited, encouraged, or otherwise aided in obtaining exclusions from Settlement Class Members shall be made by the Court.

63. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration of the Response Deadline, with the Court's permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for (i) the Class Counsel Award, (ii) the Class Representative Enhancement Payment, (iii) Individual Settlement Payments, and (iv) the Settlement Administration Costs. Pursuant to California Rule of Court 3.769(h), after granting Final Approval, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment.

64. Nullification of Settlement Agreement. In the event: (i) the Court does not grant preliminary approval; (ii) the Court does not grant final approval; (iii) the Court does not enter a final judgment as provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed, except that any costs already incurred by the Settlement Administrator shall be paid equally between Plaintiff and Defendants, which may be claimed as a recoverable cost by the prevailing party in this litigation, such issue to be decided by the Court or Arbitrator, as appropriate, when ruling on what costs, if any, may be recovered by the prevailing party. In the event an appeal is filed from the Court's final judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator within thirty (30) days of said notification.

65. No Effect on ERISA plans. Amounts paid to Plaintiff or other Settlement Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on any ERISA plan of the Plaintiff or Settlement Class Members.

66. No Admission By the Parties. Defendants deny any and all claims alleged in this Action and deny all wrongdoing whatsoever. This Agreement is not a concession or admission and shall not be used against Defendants as an admission or indication with respect to any claim of any fault, concession or omission by Defendants.

67. Exhibits and Headings. The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

68. Interim Stay of Proceedings. The Parties agree to stay and hold all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

69. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed all Parties or their successors-in-interest. Non-material terms to this Agreement may be amended or modified by a written instrument signed by counsel for the Parties if all parties are in agreement that the proposed amendment or modification is a non-material term.

70. Entire Agreement. This Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in the Agreement and its

Exhibits.

71. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. The persons signing this Agreement on behalf of Defendants represent and warrant that they are authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that she is authorized to sign this Agreement and that she has not assigned any claim, or part of a claim, covered by this Settlement to a third party.

72. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

73. California Law Governs. All terms of this Agreement and the Exhibits hereto and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.

74. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

75. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

76. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h), the Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

77. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement as valid and enforceable.

78. Waiver of Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only.

[PARTY SIGNATURES APPEAR ON NEXT PAGE]

*Signature page to Settlement Agreement –
De La Cruz v. Hightower Metal Products, et al.*

DocuSigned by:



Mercedes De La Cruz, Plaintiff

1/27/2021

Date

HIGHTOWER METAL PRODUCTS,
A CALIFORNIA CORPORATION

By: 

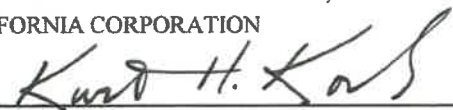
Kurt H. Koch

Its: President & CEO

2-1-21

Date

HIGHTOWER PLATING & MFG. CO.,
A CALIFORNIA CORPORATION

By: 

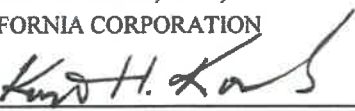
Kurt H. Koch

Its: President & CEO

2-1-21

Date

ANILLO INDUSTRIES, INC.,
A CALIFORNIA CORPORATION

By: 

Kurt H. Koch

Its: President & CEO

2-1-21

Date

APPROVED AS TO FORM:

BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN II,

By: 

Marcus J. Bradley, Esq.
Attorneys for Plaintiff
MERCEDES DE LA CRUZ

ANNIGIAN RYAN LLP

By: 

Jason D. Annigian, Esq.
Attorneys for Defendants
HIGHTOWER METAL PRODUCTS, INC.
HIGHTOWER PLATING & MFG. CO.
ANILLO INDUSTRIES, INC.