

Isaac Ramos v. Monschein Industries, Inc.

Stanislaus County Superior Court Case No. CV-20-004287

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement is entered into by and between Plaintiff Isaac Ramos, individually and on behalf of all others similarly situated, and Defendant Monschein Industries, Inc., and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers to the case entitled *Ramos v. Monschein Industries, Inc.*, Case No. CV-20-004287, filed in the Stanislaus County Superior Court.

2. "Allegedly Aggrieved Employees" means all non-exempt, hourly employees who work or worked for Defendant in California during the PAGA Period, as defined below.

3. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean this Class Action and PAGA Settlement Agreement, including any attached Exhibits.

4. "Class Claims" or "Released Class Claims" will include all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, California Industrial Commission Wage Orders, Cal. Code Regs., Title. 8, section 11040, *et seq.*, California Code of Civil Procedure section 1021.5, and Business and Professions Code sections 17200, *et seq.*, and including all claims for or related to alleged unpaid wages, overtime or double time wages, minimum wages, regular rate of pay, timely payment of wages during employment, timely payment of wages at separation, meal periods and meal period premiums, rest periods and rest period premiums, off-the-clock work, wage statements, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved

party claims, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action.

5. “Class Counsel” refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C.

6. “Class Data” means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator and shall include: each respective Settlement Class Member’s full name; last known address; last known telephone number; Social Security Number; and dates of employment and/or number of workweeks worked during the Class Period and the number of PAGA Pay Periods worked during the PAGA Period, if applicable. At no time during the Settlement process will any Class Member’s identifying information, as described in this paragraph above, be filed with the Court, except under seal and only if ordered by the Court.

7. “Class Period” and “Class Release Period” shall mean October 1, 2016 through July 24, 2023.

8. “Class Representative” or “Plaintiff” means and refers to Isaac Ramos.

9. “Complaint” refers to the First Amended Complaint filed in Stanislaus County Superior Court action entitled *Ramos v. Monschein Industries, Inc.*, Case No. CV-20-004287.

10. “Court” means the California Superior Court, County of Stanislaus or any Court of competent jurisdiction.

11. “Defendant” means and refers to Monschein Industries, Inc.

12. “Defendant’s Counsel” or “Defense Counsel” mean and refer to Heather A. Barnes and M. Nicole Engler of Murphy, Pearson, Bradley and Feeney.

13. “Effective Date” means the latter of (a) The Court’s final approval of the settlement if no objection(s) by or on behalf of Class Members have been filed and not withdrawn; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or has been filed and withdrawn; or (c) the final resolution of any appeal that has been filed. “Final”

1 means that the Settlement has been granted “Final Approval” by the Court and the “Effective
2 Date” has occurred.

3 14. “Final Approval” refers to the order of the Court granting final approval of this
4 Settlement Agreement and entering a judgment approving this Settlement on substantially the
5 same terms provided herein or as may be modified by subsequent agreement of the Parties or
6 order of the Court.

7 15. “Final Settlement Class” means, collectively, all Participating Class Members and
8 all Allegedly Aggrieved Employees.

9 16. “First Amended Complaint” means the First Amended Complaint filed in this
10 Action.

11 17. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
12 48(d) below.

13 18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 48(c)
14 below.

15 19. “Notice” means the Notice of Proposed Class Action Settlement and Final
16 Approval Hearing that will be sent to the Settlement Class Members and Allegedly Aggrieved
17 Employees and is attached to this Agreement as **Exhibit “A”**.

18 20. “Notice Response Deadline” is forty-five (45) calendar days from the date the
19 Notice is mailed to the Settlement Class Members.

20 21. “Objecting Settlement Class Member” means a Settlement Class Member, other
21 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
22 respect to the Class Claims pursuant to Paragraph 71(c) below.

23 22. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
24 of 2004, California Labor Code Sections 2698–2699.5.

25 23. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims for
26 civil and statutory penalties pursuant to PAGA based on the allegations stated in the PAGA Notice
27 and that were or could have been pled in the Complaint, as defined above, based on the facts
28 alleged therein, including claims arising under the California Labor Code (including, but not

1 limited to, sections 201, 202, 203, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 510, 512, 516,
2 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.* as alleged in the
3 Complaint) and the wage orders of the California Industrial Welfare Commission and any other
4 Labor Code section or Wage Order based the facts alleged in the Action, regardless of whether
5 Plaintiff and/or an Allegedly Aggrieved Employee negotiates their settlement checks sent
6 pursuant to this Settlement and regardless of whether any such Allegedly Aggrieved Employee
7 opts out and excludes himself or herself from the class action portion of the Settlement.

8 24. "PAGA Notice" shall refer to the notices sent by Plaintiff, by and through counsel,
9 to the Labor and Workforce Development Agency ("LWDA") and to Defendant, alleging that
10 Defendant engaged in violations of the California Labor Code and California Wage Order(s).

11 25. "PAGA Period" and "PAGA Release Period" shall mean September 4, 2019
12 through July 24, 2023.

13 26. "Participating Class Member" means any and all Settlement Class Members who
14 are deemed to participate and receive an Individual Settlement Amount for the Class Claims and
15 who do not opt-out of the settlement of the Class Claims by submitting timely valid Requests for
16 Exclusion.

17 27. "Parties" or "Settling Parties" mean Plaintiff, the Settlement Class Members, the
18 Allegedly Aggrieved Employees, and Defendant, collectively.

19 28. "Preliminary Approval Date" means the date the Court preliminarily approves the
20 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

21 29. "Preliminary Approval Order" means the judicial Order to be entered by the Court,
22 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and
23 providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt
24 out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of
25 this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of
26 Settlement, including approval of attorneys' fees and costs.

27 30. "QSF" means the Qualified Settlement Fund set up by the Settlement
28 Administrator for the benefit of the Final Settlement Class, and from which the settlement

1 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
2 Code Section 468.

3 31. "Release" shall mean the release and discharge of the Class Claims by Plaintiff
4 and all of the Participating Class Members and the release and discharge of the PAGA Claims by
5 Plaintiff and all of the Allegedly Aggrieved Employees.

6 32. "Released Parties" shall refer to Defendant; (ii) its respective past, present and
7 future direct and indirect subsidiaries and affiliates of any of the foregoing; (iii) the past, present
8 and future shareholders, directors, officers, owners, agents, employees, clients, attorneys,
9 insurers, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or
10 entity which could be jointly liable with any of the foregoing.

11 33. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 71(a)
12 below.

13 34. "Service Payment" or "Service Award" means the amount approved by the Court
14 to be paid to Class Representative in addition to his Individual Settlement Amount as a
15 Participating Class Member.

16 35. "Settlement Administration Costs" means the costs payable from the Settlement
17 Amount to the Settlement Administrator for administering this Settlement, including, but not
18 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due
19 diligence, reporting and remittance obligations, distributing the Settlement Amount, and
20 providing necessary reports and declarations, as requested by the Parties and the Court. The
21 Settlement Administration Costs shall be paid from the Settlement Amount.

22 36. "Settlement Administrator" means and refers to ILYM Group, Inc., which the
23 Parties have mutually agreed will provide the Notice to the Class Members and distribute the
24 settlement amounts as described in this Agreement.

25 37. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning
26 ascribed to it in Paragraph 48(a) below.

27 38. "Settlement Class Member" or "Class Member" refers to individual members of
28 the Settlement Class.

39. “Settlement Class” and “Settlement Class Members” refers to all persons who are or were previously employed by Defendant in California classified as a non-exempt, hourly employee during the Class Period, except any person who previously settled or released any of the claims covered by this Settlement, or any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement.

40. “Workweeks Worked” and “PAGA Pay Periods Worked” for each Settlement Class Member and Allegedly Aggrieved Employee means any workweek during the Class Period and/or pay period during the PAGA Period, as applicable, in which the Settlement Class Member and/or Aggrieved Employee was employed by Defendant as a non-exempt, hourly employee in California and worked at least one shift during the workweek or pay period, respectfully, for or on behalf of Defendant for which a prior release of claims has not been signed. Workweeks Worked and PAGA Pay Periods Worked shall not include weeks or pay periods where a Settlement Class Member and/or Aggrieved Employee only had sick time, vacation time, was on leave, or otherwise did not record any actual work time in Defendant’s timekeeping system. Workweeks Worked and PAGA Pay Periods Worked will be calculated based on Defendant’s business records.

B. General Terms

41. On or about October 1, 2020, Plaintiff filed a Class Action Complaint in the Court against Defendant, including allegations of: (1) failure to pay overtime wages, (2) meal period violations, (3) rest period violations, (4) wage statement violations, (5) waiting time penalties, (6) unfair competition, and (7) PAGA penalties. On or about October 12, 2020, Plaintiff filed a First Amended Class Action and PAGA Complaint that also included a failure to pay minimum wages cause of action.

42. Defendant denies Plaintiff’s claims and allegations in the PAGA Notice, the original Class Action Complaint and the First Amended Complaint in their entirety and contends that the Action is meritless and is not suitable for class certification and/or representative treatment. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant bears any liability to

1 Plaintiff, the Settlement Class Members, or the Allegedly Aggrieved Employees on those claims
2 or any other claims. Nevertheless, Defendant has taken into account the uncertainty and risks
3 inherent in any litigation and has also concluded that further defense of the Action would be
4 protracted and expensive. Defendant, therefore, has determined that it is desirable and beneficial
5 that the Action be settled in a manner and upon the terms and conditions set forth in this
6 Settlement Agreement.

7 43. Class Representative believes he can proceed with his class and representative
8 claims, that the Action is meritorious, and that class certification is appropriate.

9 44. The Parties have conducted a thorough investigation into the facts of the Action.
10 This includes conducting extensive exchange of formal and informal discovery, including
11 Defendant's written policies and practices and the production of a representative sample of
12 payroll and timekeeping records for Settlement Class Members and Allegedly Aggrieved
13 Employees. Class Counsel is both knowledgeable about and has done extensive research with
14 respect to the applicable law and potential defenses to the claims of the Settlement Class Members
15 and Allegedly Aggrieved Employees. Class Counsel has diligently pursued an investigation of
16 the Class Members' claims against Defendant. Based on the foregoing data and on their own
17 independent investigation and evaluation, Class Counsel is of the opinion that the settlement with
18 Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair,
19 reasonable, and adequate and is in the best interest of the Settlement Class Members and
20 Allegedly Aggrieved Employees in light of all known facts and circumstances, including the risk
21 of significant delay and uncertainty associated with litigation, various defenses asserted by
22 Defendant, and numerous potential appellate issues.

23 45. On May 25, 2023, the Parties participated in mediation before Steve Serratore,
24 Esq., a highly experienced class and PAGA/representative action mediator. After a full-day
25 mediation and the issuance of a mediator's proposal, the Parties reached a settlement and entered
26 into a Memorandum of Understanding. The Parties agree that the terms and conditions of this
27 Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties
28 supervised by a highly experienced class and representative action mediator. This Agreement

1 represents a compromise and settlement of highly disputed claims, and is intended to settle,
2 compromise and discharge the Released Claims against the Released Parties fully, finally, and
3 forever.

4 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
5 to be performed or judgments to be entered pursuant to the terms of the Settlement and
6 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
7 any statute or law or liability on the claims or allegations in the Action.

8 47. Stipulation for Class Certification and Representative Treatment. For settlement
9 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
10 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement
11 class and that the Allegedly Aggrieved Employees are appropriate for representative treatment
12 for purposes of settlement. This stipulation to certification and representative treatment is in no
13 way an admission that class action certification and/or representative treatment is proper and shall
14 not be admissible in this or in any other action except for the sole purposes of enforcing this
15 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
16 stipulation to class certification and representative treatment as part of the Settlement shall
17 become null and void *ab initio* and shall have no bearing on and shall not be admissible in
18 connection with the issue of whether or not class certification and/or representative treatment
19 would be appropriate in a non-settlement context. Defendant expressly reserves its rights and
20 declares that it will continue to oppose class certification, representative treatment, and the
21 substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly
22 reserves his rights and declares that he will continue to pursue class certification and
23 representative treatment and a trial should the Court fail to issue Final Approval.

24 **C. Terms of Settlement**

25 48. The financial terms of the Settlement are as follows:

26 (a) Gross Settlement Amount: The Parties agree to settle this Action for One Million
27 Nine Hundred Thousand Dollars (\$1,900,000) ("the Gross Settlement Amount"). The Gross
28 Settlement Amount is the maximum amount that will be paid by Defendant, and includes

Individual Settlement Amounts, attorneys' fees of Class Counsel, Class Counsel's costs and expenses, the Service Payment to Class Representative, all Settlement Administration Costs, and payment to the Labor Workforce Development Agency (LWDA) for PAGA penalties. Defendant shall separately pay the employers' share of applicable payroll taxes.

(b) Plaintiff and Defendant negotiated the Settlement based on Defendant's representation that there are 702 Class Members who worked approximately 75,000 total workweeks from October 1, 2016 to February 20, 2023. In the event that the number of workweeks worked from October 1, 2016 to February 20, 2023, which formed the basis for the Settlement, increases by more than ten percent (10%) above 75,000 workweeks, then Defendant at its sole discretion shall either: (1) increase the Gross Settlement amount by the proportional amount for the percentage of workweeks above ten (10) percent (i.e., by the percentage of workweeks above 82,500 workweeks); or (2) end the Class Period at the point in time where workweeks equal 82,500 workweeks.

(c) Net Settlement Amount: The "Net Settlement Amount" is defined as the Gross Settlement Amount less Class Counsel's attorneys' fees and litigation costs as approved and awarded by the Court, the Service Payment to Class Representative as approved and awarded by the Court, the Settlement Administration Costs as approved and awarded by the Court, and the Twenty Five Thousand Dollars (\$25,000.00) allocated to payment for PAGA penalties as described in paragraph 49(d) below. In the event that the Court reduces the attorneys' fees and litigation costs or Service Awards, Settlement Administration Costs, or either increases or decreases the amount allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly.

(d) Individual Settlement Amounts for the Settlement Class: The Settlement Administrator will use the Class Data provided by Defendant to calculate each Participating Class Member's and Aggrieved Employee's "Individual Settlement Amount" based on the following formula:

i. PAGA Amount: \$25,000 of the Gross Settlement Amount has been designated to the PAGA claims. Twenty-five percent (25%), or \$6,250, shall be paid out to

1 Allegedly Aggrieved Employees, while seventy-five percent (75%), or \$18,750, will be paid to
2 the LWDA. Each Aggrieved Employee shall receive a portion of the \$6,250 proportionate to the
3 number of PAGA Pay Periods Worked by the Allegedly Aggrieved Employees during the PAGA
4 Period compared to the total number of PAGA Pay Periods Worked by all Allegedly Aggrieved
5 Employees during the PAGA Period. Allegedly Aggrieved Employees shall have their settlement
6 amount for the Released PAGA claims paid one hundred percent (100%) as civil penalties for
7 which no taxes will be withheld and for which a Form 1099 will be issued by the Settlement
8 Administrator.

9 ii. Class Amount: The Net Settlement Amount shall be allocated to each
10 Participating Class Member based on his/her/their proportionate Workweeks Worked during the
11 Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the
12 numerator of which is the Participating Class Member's total Workweeks Worked during the
13 Class Period, and the denominator of which is the total Workweeks Worked by all Participating
14 Class Members during the Class Period. If there are any timely submitted Requests for Exclusion,
15 the Settlement Administrator shall proportionately increase the Individual Settlement Amounts
16 for each Participating Class Member so that the amount actually distributed to Participating Class
17 Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

18 (e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts
19 will be allocated for tax purposes based on the allegations in the Action as follows: ten percent
20 (10%) of each Participating Class Member's Class Amount will be paid as wages subject to
21 withholding of all applicable local, state, and federal taxes; forty five percent (45%) will be paid
22 as interest; and forty five percent (45%) will be paid as penalties. Pursuant to, *e.g.*, California
23 Labor Code Sections 203, 226, no taxes will be withheld from the ninety percent (90%) that will
24 be paid as interest and as civil penalties. The Settlement Administrator will issue to each
25 Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms
26 with respect to the wage allocation, and a Form 1099 with respect to the civil penalties and interest
27 allocations.
28

1 (f) Service Payment to Class Representative: The amount awarded to Class
2 Representative as a Service Payment will be set by the Court in its discretion, not to exceed
3 Twelve Thousand Five Hundred Dollars (\$12,500). Defendant agrees not to oppose this request.
4 The Service Payment to Class Representative will be paid out of the Gross Settlement Amount.
5 Class Representative will be issued an IRS Form 1099 in connection with this payment. Plaintiff
6 shall be solely and legally responsible to pay any and all applicable taxes on this payment. The
7 Parties agree that any amount awarded by the Court as the Service Payment to Plaintiff less than
8 the requested amount shall not be a basis for Plaintiff or Class Counsel to void this Agreement.
9 Should the Court approve a lesser amount for the Service Payment, the difference shall be added
10 to the Net Settlement Amount to be distributed to the Participating Class Members. In the event
11 of any appeal of the amount of the service award (if any) approved by the Court, if, after the
12 exhaustion of any such appellate review, additional amounts not awarded to Class Representative
13 shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

14 (g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class
15 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Gross Settlement
16 Amount (approximately \$633,333.33), plus reasonable litigation costs not to exceed Twenty Five
17 Thousand Dollars (\$25,000) ("Attorneys' Fees and Cost Award"). For purposes of this
18 Settlement, Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees
19 should be based on the common fund theory. The Attorneys' Fee and Cost Award shall be paid
20 from the Gross Settlement Amount, and except for this award, Defendant shall have no further
21 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
22 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
23 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order
24 awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
25 Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount
26 of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and
27 administration of the portion of the attorneys' fees and/or costs award in dispute will be
28 segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any

1 such appellate review, additional amounts not awarded to as attorneys' fees and costs shall be
2 added to the Net Settlement Amount to be distributed to the Participating Class Members and/or
3 Allegedly Aggrieved Employees. The Settlement Administrator shall issue to Class Counsel an
4 IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class
5 Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney
6 representing or claiming to represent the Class Members shall be the sole responsibility of Class
7 Counsel.

8 (h) Settlement Administration Costs: The fees and other charges of the Settlement
9 Administrator will be paid from the Gross Settlement Amount, not to exceed \$10,000 subject to
10 Court approval, unless approved by all Parties and the Court.

11 (j) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no
12 representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder,
13 and Plaintiff and the Settlement Class Members are not relying on any statement or representation
14 by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Participating
15 Settlement Class Members understand and agree that they will be solely responsible for the
16 payment of any taxes and penalties assessed on their respective Settlement Amounts described
17 herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or
18 local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times
19 and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent
20 with this Settlement Agreement. If the Code, the regulations promulgated thereunder, or other
21 applicable tax law, are changed after the date of this Agreement, the processes set forth in this
22 Section may be modified in a manner to bring Defendant into compliance with any such changes.

23 (k) No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel
24 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement
25 Agreement be relied upon as such within the meaning of United States Treasury Department
26 Circular 230 (31 CFR Part 10, as amended) or otherwise.

27 49. No Credit Towards Benefit Plans. The Individual Settlement Payments and
28 Individual PAGA Payments made to Participating Class Members and/or Allegedly Aggrieved

1 Employees under this Settlement Agreement, as well as any other payment made pursuant to this
2 Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit
3 plans to which any Participating Class Members and/or Allegedly Aggrieved Employees may be
4 eligible, including but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
5 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather,
6 it is the Parties' intention that this Settlement Agreement will not affect the rights, contributions,
7 or amounts to which any Participating Class Member and/or Allegedly Aggrieved Employees
8 may be entitled under benefit plans.

9 50. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
10 no circumstances will any portion of the Settlement Amount revert to Defendant. Participating
11 Settlement Class Members will not have to make a claim to receive an Individual Settlement
12 Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to
13 each Participating Settlement Class Member. The Settlement Administrator shall be responsible
14 for accurately and timely reporting any remittance obligations with respect to unclaimed funds as
15 a result of a Participating Settlement Class Member not cashing an Individual Settlement Amount
16 by the check cashing deadline, as set forth herein.

17 51. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
18 adequate, and will so represent same to the Court.

19 **D. Release by Plaintiff and the Final Settlement Class**

20 52. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class
21 Member, for themselves and for their respective agents, spouses, domestic partners, marital
22 community, children, estates, trusts, attorneys, heirs, predecessors, successors, beneficiaries,
23 devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and
24 representatives, will forever completely release and discharge the Released Parties from the
25 Released Class Claims for the Class Release Period.

26 53. Each Participating Class Member will be deemed to have made the foregoing
27 Release as if by manually signing it.

28 54. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each

1 Aggrieved Employee, for themselves and for their respective agents, spouses, domestic partners,
2 marital community, children, estates, trusts, attorneys, heirs, predecessors, successors,
3 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
4 assigns, and representatives, will forever completely release and discharge the Released Parties
5 from the Released PAGA Claims for the PAGA Release Period.

6 55. Each Aggrieved Employee and the LWDA will be deemed to have made the
7 foregoing Release as if by manually signing it.

8 56. Plaintiff and Defendant intend that the Settlement described in this Agreement will
9 release and preclude any further claim, whether by lawsuit, administrative claim or action,
10 arbitration, demand, or other action of any kind, by each and all of the Participating Class
11 Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released
12 Class Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph
13 does not apply to any Settlement Class Member who timely and validly opts out of the Settlement
14 for purposes of Class Claims.

15 57. Plaintiff and Defendant intend that the Settlement described in this Agreement will
16 release and preclude any further claim, whether by lawsuit, administrative claim or action,
17 arbitration, demand, or other action of any kind, by each and all of the Allegedly Aggrieved
18 Employees and the LWDA to obtain a recovery based on, arising out of, and/or related to any and
19 all of the Released PAGA Claims. The Allegedly Aggrieved Employees and the LWDA shall be
20 so notified in the Notice.

21 58. Class Representative, on behalf of himself and the Participating Settlement Class
22 Members, acknowledges and agrees that the Class Claims or Released Class Claims are disputed,
23 and that the payments set forth herein constitute payment of all sums allegedly due to him. Class
24 Representative, on behalf of himself and the Participating Settlement Class Members,
25 acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties
26 hereto. Section 206.5 provides in pertinent part as follows:

27 An employer shall not require the execution of any release of any claim or right on
28 account of wages due, or to become due, or made as an advance on wages to be

1 earned, unless payment of those wages has been made.

2 **E. Release by Class Representative**

3 59. As a material inducement to Defendant to enter into this Settlement Agreement, in
4 addition to Class Representative's release of the Released Class Claims and Released PAGA
5 Claims, as discussed in Paragraphs 52 and 54 above, Class Representative does hereby, for
6 himself and for his respective agents, spouses, domestic partners, marital community, children,
7 estates, trusts, attorneys, heirs, predecessors, successors, beneficiaries, devisees, legatees,
8 executors, administrators, trustees, conservators, guardians, assigns, and representatives, forever
9 completely release and discharge the Released Parties from any and all charges, complaints,
10 claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions,
11 causes of action, suits, rights, demands, costs, losses, debts, and expenses (including for back
12 wages, meal and rest break premium pay, statutory penalties, civil penalties, liquidated damages,
13 exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the
14 beginning of time through the execution of this Settlement Agreement, whether known or
15 unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims
16 arising out of, based upon, or relating to Class Representative's employment with Defendant or
17 the remuneration for or termination of such employment (collectively, the "Class Representative's
18 Claims").

19 60. Without limiting the generality of the foregoing release, Class Representative also
20 expressly releases all claims or rights against Released Parties arising out of or relating to alleged
21 violations of any contracts, express or implied (including but not limited to any contract of
22 employment); any contract or covenant of good faith and fair dealing (express or implied); any
23 tort, including but not limited to, negligence, fraud, misrepresentation and violation of California
24 Labor Code Section 970, negligent infliction of emotional distress, intentional infliction of
25 emotional distress, defamation, "retaliation" claims and claims for violation of public policy, any
26 claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid
27 wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and
28 alleged "off the clock" work under federal and state law, including, but not limited to, California

1 Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Code
2 Section 203, damages, or penalties pursuant to California Labor Code Section 226, meal period
3 and rest break payments and penalties pursuant to California Labor Code Sections 226.7 and 512,
4 failure to provide itemized wage statements pursuant to California Labor Code Section 226,
5 statutory or civil penalties pursuant to California Labor Code Section 210, failure to indemnify
6 for business expenses pursuant to Labor Code Section 2802, failure to provide one day of rest in
7 seven pursuant to California Labor Code Sections 551 and 552, unfair competition and unfair
8 business practices pursuant to Business and Professions Code Section 17200, *et seq.*, interest and
9 costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6,
10 statutory or common law rights to attorneys' fees and costs, including those pursuant to California
11 Labor Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor
12 Code Sections 2699, *et seq.*, and the alleged violation or breach of any other state or federal
13 statute, rule, and or regulation or local ordinance; including all applicable Industrial Welfare
14 Commission Wage Orders, and all similar causes of action, including but not limited to, any claim
15 for restitution, equitable relief, interest, penalties, costs, or attorneys' fees in connection with any
16 of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional
17 distress, and defamation; any "wrongful discharge," "constructive discharge," and "retaliation"
18 claims; any claims relating to any breach of public policy; any legal restrictions on Defendant's
19 right to discharge employees; and any federal, state, or other governmental statute, regulation, or
20 ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color,
21 religion, sex, and national origin discrimination or harassment, including retaliation for reporting
22 discrimination or harassment); (2) 42 U.S.C. Section 1981 (discrimination); (3) Equal Pay Act,
23 29 U.S.C. Section 209(d)(1) and California Labor Code Section 1197.5 (equal pay); (4)
24 Americans with Disabilities Act, 42 U.S.C. Section 12100, *et seq.* (disability discrimination); (5)
25 Family and Medical Leave Act, 29 U.S.C. Section 2601, *et seq.* (family/medical leave); (6)
26 California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*
27 (discrimination or harassment in employment and/or housing, including discrimination or
28 harassment based on race, religious creed, color, national origin, ancestry, disability, marital

status, sex (including pregnancy), age, or any other protected characteristic, including retaliation for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code Section 12945.1, *et seq.* (family/medical leave); (8) California Labor Code, including but not limited to, Section 1720 *et seq.*, or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits); (14) the California Civil Code; (15) the California Labor Code; (16) the California Constitution; (17) the National Labor Relations Act; (18) the Americans with Disabilities Act of 1990; (19) the Occupational Safety and Health Act; (20) the Consolidated Omnibus Budget Reconciliation Act of 1985; (21) the Worker Adjustment and Retraining Notification Act (“WARN”); (22) the Employee Retirement Income Security Act of 1974; (23) the Rehabilitation Act of 1973; (23) the Internal Revenue Code of 1986, as amended; (24) the California Government Code; (25) the California Constitution; (26) the Families First Coronavirus Response Act; (27) the California Healthy Workplace Healthy Family Act; and (28) any other federal, state, or local statute or legislation. Further, Class Representative agrees to the fullest extent permitted by law, that other than this Action, Class Representative will not pursue any putative class action, collective action, or representative action against the Released Parties, or any of them, and that if such action is filed by any other person, Class Representative will withdraw as a participant.

61. Class Representative expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

“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.”

1 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
2 full and complete release and discharge of all Released Parties, Class Representative, and Class
3 Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect,
4 without limitation, all claims that Class Representative knew of, as well as all claims that he does
5 not know or suspects to exist in his favor against the Released Parties, or any of them, for the time
6 period from the beginning of time to the execution of this Settlement Agreement, and that this
7 Settlement Agreement contemplates the extinguishment of any and all such Class
8 Representative's claims.

9 **F. Interim Stay of Proceedings**

10 62. Pending completion of all of the prerequisites necessary to effectuate this
11 Settlement, the Parties agree, subject to Court approval, to a stay of all formal and informal
12 discovery and all proceedings in the Action, except such as are necessary to effectuate the
13 Settlement.

14 **G. Notice Process**

15 63. Appointment of Settlement Administrator. The Parties have agreed to the
16 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
17 including mailing the Notice, using standard devices to obtain forwarding addresses,
18 independently reviewing and verifying documentation associated with any claims or opt-out
19 requests, resolving any disputes regarding the calculation or application of the formula for
20 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
21 Participating Settlement Class Members and Allegedly Aggrieved Employees, issuing Forms W-
22 2 and 1099, reporting to taxing authorities, due diligence, reporting and remittance obligations,
23 and performing such other tasks as set forth herein or as the Parties mutually agree or that the
24 Court orders. The Settlement Administrator shall also be responsible for issuing to Plaintiff,
25 Participating Settlement Class Members, and Class Counsel any Forms W-2, Forms 1099, or
26 other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The
27 Settlement Administrator shall also be responsible for setting up all necessary tax accounts and
28 forwarding all payroll taxes and penalties to the appropriate government authorities.

1 64. Disputes Regarding Settlement Administration. Any and all disputes relating to
2 administration of the Settlement by the Settlement Administrator (except for disputes regarding
3 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
4 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
5 the Court that all payments and obligations contemplated by this Settlement Agreement have been
6 fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in
7 good faith to resolve the dispute without the necessity of Court intervention.

8 65. Class Data. Within fourteen (14) calendar days after entry of the Preliminary
9 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
10 Settlement Administrator will run a check of the Class Members' addresses against those on file
11 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
12 Settlement Administrator will not be provided to Class Counsel and it will remain confidential, it
13 shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone,
14 except as required by applicable tax authorities, pursuant to Defendant's express written consent,
15 or by order of the Court.

16 66. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
17 Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within
18 fourteen (14) calendar days following the Settlement Administrator's receipt of the Class Data.
19 The Settlement Administrator shall use standard devices, including a skip trace, to obtain
20 forwarding addresses of Settlement Class Members if any envelopes are returned.

21 67. Returned Notices. The Settlement Administrator will take steps to ensure that the
22 Notice is received by all Settlement Class Members, including utilization of the National Change
23 of Address Database maintained by the United States Postal Service to review the accuracy of
24 and, if possible, update a mailing address. If no forwarding address is provided, the Settlement
25 Administrator will promptly attempt to determine the correct address using a skip-trace, or other
26 search using the name, address, and/or Social Security number of the Class Member involved and
27 will then perform a single re-mailing. In the event the procedures in this Paragraph are followed
28 and the intended recipient of a Notice packet still does not receive the Notice packet, the Class

1 Member shall be bound by all terms of the Settlement and any Judgment entered by the Court if
2 the Settlement is approved by the Court. Notices will be re-mailed to any Settlement Class
3 Member for whom an updated address is located within five (5) calendar days following both the
4 Settlement Administrator learning of the failed mailing and its receipt of the updated address. The
5 Notice shall be identical to the original Notice, except that it shall notify the Settlement Class
6 Member that the exclusion (opt-out) request or objection must be returned by the later of the
7 Notice Response Deadline or ten (10) calendar days after the remailing of the Notice.

8 68. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
9 if an envelope has not been returned within thirty (30) calendar days of the mailing that the
10 Settlement Class Member received the Notice.

11 69. Disputes Regarding Class Data. Settlement Class Members are deemed to
12 participate in the Settlement unless they opt-out. The Notice will inform Settlement Class
13 Members and Allegedly Aggrieved Employees of their estimated Individual Settlement Amount
14 and the number of Workweeks Worked during the Class Period and PAGA Periods Worked
15 during the PAGA Period. Settlement Class Members may dispute their Workweeks Worked if
16 they feel they were employed more workweeks in the Class Period in California than Defendant's
17 records show by timely submitting evidence to the Settlement Administrator. Defendant's records
18 will be presumed determinative absent reliable evidence to rebut Defendant's records, but the
19 Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member
20 and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet
21 and confer in good faith about the evidence to determine the Class Member's actual number of
22 Workweeks Worked and estimated Individual Settlement Amount. If Class Counsel and Defense
23 Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to
24 render a final decision. All disputes will be decided within ten (10) business days of the Notice
25 Response Deadline. Settlement Class Members will have until the Notice Response Deadline to
26 dispute Workweeks Worked, object, or opt out, unless extended by the Court. In the event that
27 the Settlement Administrator increases the number of Workweeks Worked for any Settlement
28 Class Member, then the Settlement Administrator will recalculate the Participating Class

Members' Individual Settlement Amounts; accordingly, in no event will Defendant be required to increase the Gross Settlement Amount.

70. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

71. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of the Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Class Claims provisions of the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Participating Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. Allegedly Aggrieved Employees are not entitled to opt out of the Released PAGA Claims. The Request for Exclusion from Settlement Class Members should state in words to this effect:

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE RAMOS V. MONSCHEIN INDUSTRIES, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.

Any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address in the Notice. Any such Request for Exclusion must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these

requirements: (i) will not have any rights under this Agreement with respect to the Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Class Claims.

(b) Binding Effect on Participating Settlement Class Members. Except for those Settlement Class Members who exclude themselves in compliance with the procedures set forth above, all Settlement Class Members will: (i) be deemed to be Participating Settlement Class Members for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement of Class Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims and may appear at the Final Approval Hearing and object whether or not they have filed a written objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the full name, address, telephone number, dates of employment with Defendant of the Objecting Settlement Class Member, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his/her/their counsel. If any Objecting Settlement Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Settlement Class Member's written submission should include a request to be heard, and the Court will determine whether Objecting Settlement Class Members will be permitted to speak. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence it files with the Court prior to the Final Approval Hearing. Any

1 Participating Class Member who files an objection remains eligible to receive monetary
2 compensation from the Settlement and will be bound by the terms of this Agreement including
3 all releases. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses
4 incurred by any Settlement Class Member and/or his/her/their counsel related to any objections
5 to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment.
6 Rather, the right to appeal is preserved by becoming a party of record by timely and properly
7 intervening or filing a motion to vacate the judgment under Code of Civil Procedure Section 663.
8 Settlement Class Members and Allegedly Aggrieved Employees may not object to or opt out of
9 the Settlement with respect to the PAGA Claims. At no time will any of the Parties or their
10 counsel seek to solicit or otherwise encourage Settlement Class Members to submit Requests for
11 Exclusion, Notices of Objection, or disputes regarding Class Data or to appeal from the Final
12 Approval judgment. To the extent a timely Notice of Objection is withdrawn before Final
13 Approval, such an objection shall be treated as though no objection has been made.

14 (d) Failure to Object. Any Settlement Class Member who desires to object
15 with respect to the Class Claims but fails to timely submit a written objection waives any right to
16 object will be foreclosed from making any objection to this Settlement. Any Settlement Class
17 Member who does not timely and properly become a party of record by intervening or filing a
18 motion to vacate the judgment waives any and all rights to appeal from the judgment, including
19 all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate
20 judgment, motion for new trial, a motion under California Code of Civil Procedure Section 473,
21 and extraordinary writs.

22 (e) Responses to Objections. Counsel for the Parties may file a response to any
23 objections submitted by Objecting Settlement Class Members at least five (5) court days before
24 the date of the Final Approval hearing.

25 72. Settlement Class Members will have until the Notice Response Deadline to object
26 or submit a Request for Exclusion or a dispute regarding Class Data to the Settlement
27 Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel
28 and Defendant's Counsel what objections or Requests for Exclusion or disputes regarding Class

1 Data were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense
2 Counsel.

3 73. Funding of the Settlement Amount. Defendant, on behalf of the Released Parties,
4 will pay to the Settlement Administrator, by depositing into a Qualified Settlement Fund (QSF),
5 one-half of the Gross Settlement Amount (i.e., \$950,000.00) by December 31, 2023, for timely
6 and valid claims, and for Court-approved Class Counsel's attorneys' fees, Class Counsel's
7 litigation expenses and costs, the Service Payment, and settlement administration expenses.
8 Assuming the Settlement is final and effective, the second one-half of the Gross Settlement
9 Amount (i.e., \$950,000.00) shall be due and payable to the Settlement Administrator on or before
10 August 1, 2024. Defendant shall separately pay its share of employer payroll taxes as calculated
11 and directed by the Settlement Administrator.

12 74. Distribution of Funds. Prior to the disbursement of any funds, the Settlement
13 Administrator will provide a disbursement summary of the calculations for the payments
14 described above for review and approval by Class Counsel and Defense Counsel. Following
15 approval by Class Counsel and Defense Counsel, the Settlement Administrator will make the first
16 distribution within 30 calendar days following the Court's final approval effective date (after the
17 60-day appeal period has expired without appeals or challenges), and will make the second
18 distribution within 30 calendar days of receiving the second payment from Defendant of the Gross
19 Settlement Payment.

20 75. Deadline for Cashing Settlement Checks. Participating Settlement Class Members
21 and Allegedly Aggrieved Employees shall have one hundred eighty (180) calendar days after
22 mailing by the Settlement Administrator to cash their settlement checks. If any Participating
23 Settlement Class Member or Allegedly Aggrieved Employee's check is not cashed within that
24 period, the check will be void and a stop-payment will be issued. All unclaimed funds shall be
25 donated as follows: 50% to Koinonia Family Services, which is a non-profit IRS 501(c)(3)
26 charitable organization, to be used for child advocacy programs in the State of California, and
27 50% to Legal Aid at Work, as expressly permitted by Code of Civil Procedure section 384(b),
28 and subject to approval by the Court; should the Court not approve Koinonia Family Services and

Legal Aid at Work as the *cy pres* recipients, the Parties agree the uncashed checks will be earmarked to the affected Class Members and distributed to the Office of the California State Controller. The release will be binding upon all Participating Settlement Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within one hundred eighty (180) days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. If a new address is located by these means, the Settlement Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Settlement Class Member notifies the Settlement Administrator that he/she/they believe that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

76. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

77. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Approval

78. Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order, attached to this Agreement as **Exhibit "B"**, accomplishing

1 the following:

2 (a) Scheduling the Final Approval hearing on the issue of whether this
3 Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members
4 and a hearing on fees, costs, and the Service Payment;

5 (b) Approving as to form and content the proposed Notice;

6 (c) Directing the mailing of the Notice by first class mail to the Settlement
7 Class Members;

8 (d) Preliminarily approving this Settlement;

9 (e) Preliminarily certifying the class for purposes of this Settlement only; and

10 (f) Enjoining Plaintiff and all Settlement Class Members and Allegedly
11 Aggrieved Employees from filing or prosecuting any other cases, claims, suits or administrative
12 proceedings (including filing claims with the Division of Labor Standards Enforcement of the
13 California Department of Industrial Relations) regarding the Released Class Claims, and the
14 Released PAGA Claims, unless and until such Settlement Class Members have filed valid
15 Requests for Exclusion with the Settlement Administrator and the time for filing Requests for
16 Exclusion with the Settlement Administrator has elapsed.

17 79. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this
18 Settlement Agreement, and will include the proposed Notice packet, which will include the Notice
19 of Class Action Settlement document and proposed Mailing Envelope.

20 80. In accordance with Section 2699(1)(2) of the California Labor Code, Plaintiff shall
21 provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiff files his
22 motion for Preliminary Approval of this Settlement with the Court.

23 81. Reallocation of Settlement Proceeds. In the event the Court declines to approve
24 this Agreement because the amount of the PAGA penalties is not adequate, then the Parties shall
25 cooperate in good faith to reallocate the total settlement proceeds within this Agreement, without
26 increasing the Gross Settlement Amount, to try to achieve Final Approval of the Agreement upon
27 any subsequent Court hearings.
28

1 **I. Duties of the Parties Following Court's Final Approval**

2 82. In connection with the Final Approval hearing provided for in this Settlement
3 Agreement, Class Counsel shall submit a proposed Final Approval Order, attached to this
4 Agreement as **Exhibit "C"**,:

5 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and
6 adequate, and directing consummation of its terms and provisions;

7 (b) Approving Class Counsel's application for an award of attorneys' fees and
8 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
9 and the payment to the Settlement Administrator for costs of administering the settlement;

10 (c) Entering judgment approving settlement, thereby permanently barring all
11 Participating Settlement Class Members from prosecuting any Released Class Claims against any
12 of the Released Parties and permanently barring all Allegedly Aggrieved Employees and the
13 LWDA from prosecuting any Released PAGA Claims against any of the Released Parties; and

14 (d) Scheduling a conference or hearing to confirm all payments referenced above have
15 been made in accordance with this Agreement and to dismiss the Action.

16 **J. Voiding the Agreement**

17 83. If the Court fails or refuses to issue the Final Approval Order or fails to approve
18 any material condition of this Settlement Agreement which effects a fundamental change of the
19 Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to
20 all Parties herein at the option of either Party.

21 84. If fifteen percent (15 %) or more of the Settlement Class Members timely submit
22 a Request for Exclusion, Defendant shall have the option of terminating or modifying this
23 Agreement without prejudice to its pre-settlement positions and defenses in the Action. If
24 Defendant exercises such option under this paragraph, it shall be relieved of any obligation to pay
25 the Gross Settlement Amount or any other obligations from the Settlement by giving notice to
26 Class Counsel and the Settlement Administrator within fourteen (14) calendar days of the Notice
27 Response Deadline and Defense Counsel's receipt of all Request for Exclusion reports from the
28 Settlement Administrator. If Defendant exercises its option under this paragraph, Defendant shall

1 be solely responsible for all Settlement Administration Costs incurred up to the date Defendant
2 exercises its option.

3 85. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
4 have no further obligations under the Settlement, including any obligation by Defendant to pay
5 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
6 Settlement.

7 86. If the Settlement is voided or fails for any reason, any costs incurred by the
8 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
9 specified in this Agreement.

10 **K. Other Terms**

11 87. Full and Complete Defense. This Agreement may be pleaded by any Released
12 Party as a full and complete defense to and may be used as the basis for an injunction against, any
13 action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted,
14 asserting any Released Claim.

15 88. Waiver. The waiver by one Party of any breach of this Agreement by another Party
16 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

17 89. Parties' Authority. The signatories hereto represent that they are fully authorized
18 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
19 hereof.

20 90. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
21 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
22 such documents and to take such other action as may reasonably be necessary to implement the
23 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
24 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
25 may become necessary by order of the Court, or otherwise, to effectuate this Settlement
26 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement
27 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and
28 Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval

1 of the settlement and the final entry of judgment. This shall include Class Counsel providing
2 Defense Counsel with drafts of the proposed Preliminary Approval Order and proposed Final
3 Approval Order and/or Judgment for review, comment and approval within a reasonable time
4 before the aforementioned documents are filed or submitted to the Court. Class Counsel and
5 Defense Counsel will meet and confer regarding any proposed revisions to the foregoing
6 documents in advance of the documents being submitted to the Court, and if any unresolved issue
7 remains, counsel will bring the outstanding issue or concern to the Court's attention at the
8 appropriate hearing.

9 91. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
10 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
11 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
12 cause of action, or rights released and discharged by this Settlement Agreement.

13 92. No Admission. Defendant denies any and all liability to Plaintiff and/or any
14 Settlement Class Member or Allegedly Aggrieved Employee in this Action, as to any and all
15 causes of action that were asserted or that might have been asserted in this Action. Nonetheless,
16 Defendant wishes to settle and compromise to avoid further substantial litigation expense and the
17 inconvenience and distraction of protracted litigation. Defendant also has taken into account the
18 uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses
19 that they have asserted or could assert against Plaintiff, have determined that it is desirable and
20 beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set
21 forth in this Agreement.

22 93. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
23 order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
24 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
25 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
26 Settlement Agreement with the intention of avoiding further disputes and litigation with the
27 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and
28 it, along with all related documents such as the notices, and motions for Preliminary Approval

and Final Approval, shall, pursuant to California Evidence Code Section 1152 and/or Federal Rule of Evidence Section 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the Settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

94. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing via email and United States mail and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Settlement Class Members and Allegedly Aggrieved Employees:

Mehrdad Bokhour <i>mehrdad@bokhourlaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (310) 975-1493; Fax: (310) 675-0861	Joshua Falakassa <i>josh@falakassalaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (818) 456-6168; Fax: (888) 505-0868
---	---

To Defendant:

Heather A. Barnes <i>hbarnes@mpbf.com</i> 580 California Street, Ste 1100 San Francisco, CA 94104	
---	--

95. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

96. Captions and Interpretations. Paragraph titles or captions contained herein are

1 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
2 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
3 Settlement Agreement is contractual and not merely a recital.

4 97. Modification. This Settlement Agreement may not be changed, altered, or
5 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
6 Settlement Agreement may not be discharged except by performance in accordance with its terms
7 or by a writing signed by all of the Parties hereto.

8 98. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
9 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
10 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
11 Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to
12 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
13 bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other
14 proceeding instituted by any person or entity other than Plaintiff or Defendant.

15 99. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
16 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
17 Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
18 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
19 of this Agreement.

20 100. Choice of Law. This Settlement Agreement shall be governed by and construed,
21 enforced, and administered in accordance with the laws of the State of California, without regard
22 to its conflicts-of-law rules.

23 101. Integration Clause. This Settlement Agreement contains the entire agreement
24 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
25 or contemporaneous agreements, understandings, representations, and statements, whether oral
26 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
27 hereunder may be waived except in writing.

28 102. Binding On Assigns. This Settlement Agreement shall be binding upon and inure

1 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
2 successors, and assigns.

3 103. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
4 because the members of the Settlement Class are numerous, it is impossible or impractical to have
5 each Participating Settlement Class Member and Allegedly Aggrieved Employee executes this
6 Settlement Agreement. The Notice will advise all Settlement Class Members and Allegedly
7 Aggrieved Employee of the binding nature of the releases provided herein and such shall have
8 the same force and effect as if this Settlement Agreement were executed by each Participating
9 Settlement Class Member and Allegedly Aggrieved Employee.

10 104. Counterparts. This Settlement Agreement may be executed in counterparts, and
11 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
12 deemed an original, and, when taken together with other signed counterparts, shall constitute one
13 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
14 Electronic signatures shall have the same force and effect as an original.

15 105. Publicity. Plaintiff and Class Counsel agree that they will not issue any press
16 releases, initiate any contact with the press, respond to any press inquiry, post any material on
17 any internet websites, or have any communication with the press about the Lawsuit, and/or the
18 fact, amount, or terms of the Settlement. Plaintiff and Class Counsel will not initiate any contact
19 with the Class Members or anyone else about the Settlement, except that: (a) Class Counsel, if
20 contacted by a Class Member, may respond that a settlement has been reached and that the details
21 will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by
22 a Settlement Class Member or Allegedly Aggrieved Employee, may respond only that the
23 Settlement Class Member or Aggrieved Employee should contact Class Counsel. Nothing in this
24 paragraph shall prevent Class Counsel and Plaintiff from undertaking all required submissions to
25 the LWDA as required by the PAGA statute in connection with this Settlement. Class Counsel
26 and Plaintiff will also provide Defendant's Counsel with a copy of the papers submitted to the
27 LWDA, either prior to or on the same day as the submission to the LWDA.
28

APPROVAL AND EXECUTION BY PARTIES:

Dated: August __, 2023

CLASS REPRESENTATIVE:

DocuSigned by:

4FD50632482B422....

Isaac Ramos

Dated: August __, 2023

DEFENDANT:
MONSCHEIN INDUSTRIES, INC.

Karen Monschein
Co-Owner & Manager
Monschein Industries, Inc.

APPROVED AS TO FORM:

CLASS COUNSEL

8/17/2023
Dated: August __, 2023

FALAKASSA LAW, P.C.

DocuSigned by:
Joshua Falakassa
15A628B2C5A149C...

Joshua Falakassa
Attorneys for Plaintiff,
Isaac Ramos

8/17/2023
Dated: August __, 2023

BOKHOUR LAW GROUP, P.C.

DocuSigned by:
Mehrdad Bokhour
D8D3643F271940F...

Mehrdad Bokhour
Attorneys for Plaintiff,
Isaac Ramos

Dated: August __, 2023

DEFENDANT'S COUNSEL:

MURPHY, PEARSON, BRADLEY & FEENEY

Heather A. Barnes
Attorneys for Defendant,
Monschein Industries, Inc.