

**CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This Class Action and PAGA Settlement Agreement and Release of Claims is entered into by and between Plaintiff Robert Jungers ("Plaintiff") individually and on behalf of all Settlement Class Members and Aggrieved Employees (as defined below), on the one hand; and Defendants U.S. Borax Inc., Rio Tinto America Inc., Rio Tinto Services Inc., and Amanda Smith (collectively, "Defendants"), on the other hand; and is approved as to form by their respective counsel of record, subject to the terms and conditions hereof and the State Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers collectively to the cases entitled *Robert Jungers v. U.S. Borax Inc., Rio Tinto America Inc., Rio Tinto Services Inc. and Amanda Smith*, Kern County Superior Court, Case No. BCV-21-100003 (the "State Court Action"); and *Robert Jungers v. U.S. Borax Inc., Rio Tinto America Inc., Rio Tinto Services Inc. and Amanda Smith*, United States District Court, Eastern District, Case No. 1:21-cv-00400-NONE-JLT (the "Federal Court Action").

2. "Agreement" or "Settlement Agreement" shall mean this Class Action and PAGA Settlement Agreement and Release of Claims, including its attached Exhibits.

3. "Aggrieved Employees" means all current and former employees of Defendants who worked in California at any time during the PAGA Period as non-exempt, hourly paid employees.

4. "Amended State Court Complaint" shall refer to the First Amended State Court Complaint to be filed by Plaintiff in the State Court Action and that will include all class-action claims now pending in the Federal Court Action.

5. "Attorneys' Fees and Costs Award" means the amount approved by the State Court for Class Counsel's attorneys' fees and costs.

6. "Class Counsel" refers to David D. Bibiyan, Esq. and Sara Ehsani-Nia, Esq. of Bibiyan Law Group, P.C.

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1 7. “Class Data” means a complete list that U.S. Borax will diligently and in good
2 faith compile from its available records and provide to the Settlement Administrator on one
3 spreadsheet and shall include, to the extent available, the Settlement Class Members’ full names;
4 last known addresses; telephone numbers; Social Security Numbers; the total Work Weeks
5 Worked during the PAGA Period for each Aggrieved Employee; and the total Work Weeks
6 Worked during the Class Period for each Settlement Class Member.

7 8. “Class Notice” means the Notice of Settlement of Class Action that will be sent to
8 the Settlement Class Members.

9 9. “Class Period” is the period from December 10, 2016, through December 31,
10 2021, or the Preliminary Approval Date, whichever is sooner.

11 10. “Class Representative” or “Plaintiff” means and refers to Robert Jungers.

12 11. “Defendants” means and refers collectively to U.S. Borax Inc. (“U.S. Borax”),
13 Rio Tinto America Inc., Rio Tinto Services Inc., and Amanda Smith.

14 12. “Defendants’ Counsel” or “Defense Counsel” means and refers to David A.
15 Wimmer, Esq. and Meghan O’Kane, Esq. of Swerdlow Florence Sanchez Swerdlow & Wimmer,
16 A Law Corporation.

17 13. “Effective Date” occurs after the Federal Court Complaint is dismissed without
18 prejudice and the latest of the following dates is reached: (i) sixty-one (61) calendar days
19 following the date the State Court enters an order granting Final Approval, assuming no appeal,
20 objection, or request to intervene is filed; or (ii) if a timely appeal, objection, or request to
21 intervene is filed, the date of final resolution of that appeal, objection, or intervening action
22 (including any requests for rehearing and/or petitions for writs of *certiorari*) resulting in final
23 judicial approval of the Settlement.

24 14. “Federal Court” means the United States District Court for the Eastern District of
25 California.

26 15. “Federal Court Complaint” refers to the Complaint pending in the Federal Court,
27 Case No. 1:21-cv-00400-NONE-JLT.
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1 16. “Final Approval” refers to the order of the State Court granting final approval of
2 this Settlement Agreement and entering a judgment approving this Agreement on substantially
3 the terms provided herein or as the same may be modified by subsequent agreement of the
4 Parties.

5 17. “Final Approval Hearing” refers to the hearing at which the State Court is
6 requested to grant Final Approval of this Settlement Agreement.

7 18. “Final Settlement Class” means, collectively, all Settlement Class Members who
8 have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

9 19. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph
10 46(a) below, as the same may be escalated subject to Paragraph 61(b) below.

11 20. “Individual Settlement Payment” shall have the meaning ascribed to it in
12 Paragraph 61(d) below.

13 21. “Individual PAGA Payment” shall refer to the individual payments made to
14 Aggrieved Employees for their *pro rata* share of the PAGA Payment.

15 22. “LWDA Payment” shall refer to the portion of the PAGA Penalties payable to the
16 LWDA.

17 23. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 61(c)
18 below.

19 24. “Notice Packet” means the Class Notice and PAGA Notice that will be sent to the
20 Class Members and Aggrieved Employees.

21 25. “Notice Response Deadline” is 45 calendar days from the date the Notice Packet
22 is mailed to the Settlement Class Members.

23 26. “Objecting Settlement Class Member” means a Settlement Class Member, other
24 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
25 respect to the Released Class Claims, pursuant to Paragraph 84(c) below.

26 27. “PAGA Notice” means the Notice of Settlement of PAGA claims that will be sent
27 to all Aggrieved Employees.

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1 28. “PAGA Payment” shall refer to the \$25,000 in PAGA Penalties to be paid
2 pursuant to this Settlement to Aggrieved Employees.

3 29. “PAGA Penalties” means the \$100,000 that the Parties have agreed to pay to the
4 California Labor and Workforce Development Agency (“LWDA”) in connection with the claims
5 brought under the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code
6 §§ 2698, *et seq.*) (“PAGA”), as well as the Individual PAGA Payments allocated to each
7 Aggrieved Employee, as more fully described in Paragraph 61 (i).

8 30. “PAGA Period” is the period from October 31, 2019, through December 31,
9 2021, or the Preliminary Approval Date, whichever is sooner.

10 31. “Participating Class Member” means any and all Final Settlement Class Members
11 who are deemed to participate, who will receive an Individual Settlement Payment, and who do
12 not opt-out by submitting a timely valid Request for Exclusion.

13 32. “Parties” or “Settling Parties” refers to Plaintiff, the Aggrieved Employees, the
14 Settlement Class, and Defendants, collectively.

15 33. “Preliminary Approval Date” means the date the State Court approves the Motion
16 for Approval of Class Action and PAGA Settlement, and the exhibits thereto, and enters the
17 Preliminary Approval Order.

18 34. “Preliminary Approval Order” means the judicial Order to be entered by the State
19 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
20 and providing for the issuance of the Notice Packet to the Settlement Class and Aggrieved
21 Employees, an opportunity to opt out of the Final Settlement Class, an opportunity to submit
22 timely objections to the Settlement, and setting a hearing on the fairness of the terms of
23 Settlement, including approval of attorneys’ fees and costs. Defendants will not object to
24 Plaintiff’s motion for preliminary approval, provided the motion is consistent with the
25 Agreement. Plaintiff agrees to endeavor to provide the Motion for Preliminary Approval, and
26 any supporting papers, to Defense Counsel five court days before it is filed.

27 35. “QSF” means the Qualified Settlement Fund set up by the Settlement
28 Administrator for the benefit of the Final Settlement Class and Aggrieved Employees, and from

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

3 36. "Released Class Claims" or "Class Claims" means any and all claims, demands,
4 rights, liabilities, and causes of action that were or could have been pled under local, state or
5 federal law arising out of or based on the facts alleged in the Amended State Court Complaint
6 against Defendants arising during the Class Period, including but not limited to claims for (a)
7 failure to pay minimum and regular wages, (b) failure to pay overtime wages, (c) failure to
8 provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay wages each
9 period and upon separation of employment, (f) failure to provide accurate itemized wage
10 statements, (g) failure to pay sick leave, (h) failure to provide one day of rest in seven, (g) failure
11 to reimburse necessary business expenses, and (h) alleged unfair business practices arising from
12 the Labor Code violations alleged to have been violated in the Federal Court Action.

13 37. "Released PAGA Claims" means any and all claims for civil penalties under
14 PAGA that Plaintiff alleged against the Released Parties, including, without limitation, under
15 Labor Code Sections 210, 226.3, 558, 1197.1 and 2699, on behalf of Aggrieved Employees and
16 the State of California, based on the facts stated in Plaintiff's Amended State Court Complaint
17 and in Plaintiff's October 28, 2020 notice letter to the LWDA (including any amendments
18 thereto), including all PAGA claims seeking civil penalties for (a) failure to pay minimum and
19 regular wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure
20 to provide rest breaks, (e) failure to timely pay wages each period and upon separation of
21 employment, (f) failure to provide accurate itemized wage statements, (g) failure to pay sick
22 leave, (h) failure to provide one day of rest in seven, (h) failure to reimburse necessary business
23 expenses, and (i) alleged unfair business practices based on or arising from alleged violations of
24 the California Labor Code, including Sections 200, 201, 202, 203, 204, 226, 226a, 226.7, 227.3
25 510, 512, 1174, 1194, 1194.2, 1197, and 2802 arising during the PAGA Period.

26 38. "Released Parties" means Defendants and each of their divisions, subsidiaries,
27 partnerships, parents, affiliated companies, trusts, or other related entities, past and present, and
28 each of them, as well as each of their directors, officers, shareholders, partners, members,

1 representatives, executors, trustees, fiduciaries, administrators, beneficiaries, assignees,
2 successors, business managers, agents, contractors, insurers, attorneys, and employees, past and
3 present, and each of them and their marital community.

4 39. "Release" shall mean the release and discharge of the Released Class Claims by
5 Plaintiff and all of the Participating Class Members, and the release and discharge of the
6 Released PAGA Claims by Plaintiff, the LWDA (to the extent permissible by law), and all
7 Aggrieved Employees. The *res judicata* effect of the Judgment will be the same as that of the
8 Release of the Released Class Claims and Released PAGA Claims.

9 40. "Request for Exclusion" means and refers to a valid and timely request for
10 exclusion from the Settlement of the Released Class Claims, which may be submitted by any
11 Settlement Class Member, other than Plaintiff, pursuant to Paragraph 84(a) below.

12 41. "Service Payment" or "Service Award" means the combined amount approved by
13 the State Court to be paid to the Class Representative as an enhancement award and a separate
14 award in consideration for his provision of a general release and Section 1542 waiver to the
15 Released Parties, in addition to his Individual Settlement Payment as a Participating Class
16 Member.

17 42. "Settlement Administrator" means and refers to the ILYM Group, Inc., the third-
18 party class action settlement administrator agreed to by the Parties, that will provide the Notice
19 Packet to the Settlement Class Members and Aggrieved Employees, and distribute the settlement
20 amounts as described in this Agreement, as well as any other related services requested and
21 agreed to by the Parties.

22 43. "Settlement Administration Costs" means the costs payable from the Gross
23 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
24 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
25 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
26 due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount,
27 and providing necessary reports and declarations, as requested by the Parties. The Settlement
28 Administration Costs shall be paid from the Gross Settlement Amount, as approved by the State

1 Court.

2 44. "Settlement Class" consists of all current and former non-exempt, hourly-paid
3 employees of Defendants who worked in California at any time during the Class Period.

4 45. "Settlement Class Member" or "Class Member(s)" refers to individual members
5 of the Settlement Class.

6 46. "State Court" means the California Superior Court, County of Kern.

7 47. "State Court Complaint" refers to the Complaint filed by Plaintiff in Kern County
8 Superior Court Case No. BCV-21-100003.

9 48. "Work Weeks Worked" or "Eligible Work Weeks," in the context of Settlement
10 Class Members, means all work weeks during the Class Period in which the Settlement Class
11 Member was employed by Defendants as a non-exempt, hourly-paid employee in California and
12 worked at least one shift during the work week. Likewise, in the context of Aggrieved
13 Employees, these phrases mean all work weeks during the PAGA Period in which the Aggrieved
14 Employee was employed by Defendants as a non-exempt employee in California and worked at
15 least one shift during the work week.

16 **B. Procedure**

17 49. On or about December 10, 2016, Plaintiff filed a putative class-action complaint
18 in the State Court against Defendants, Case No. BCV-20-102912, including the following causes
19 of action: (1) failure to pay overtime wages, (2) failure to pay minimum wages, (3) failure to
20 provide meal periods, (4) failure to provide rest periods, (5) waiting time penalties, (6) wage
21 statement violations, (7) failure to indemnify, and (8) unfair competition.

22 50. On or about January 4, 2020, Plaintiff filed a PAGA representative case in Kern
23 County Superior Court against Defendants, Case No. BCV-20-102912, seeking civil penalties for
24 alleged California Labor Code violations by Defendants, including allegations of: unpaid wages
25 (including failure to pay all regular and overtime wages and minimum wages), meal and rest
26 break violations, failure to timely pay final wages, failure to provide accurate itemized wage
27 statements, failure to pay sick leave, failure to provide one day of rest in seven, and failure to
28 reimburse necessary business expenses.

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2 51. Defendants removed the class-action complaint, Kern County Case No. BCV-20-
3 102912, to the United States District Court, Eastern District of California, where it was assigned
4 Case No. 1:21-cv-00400-NONE-JLT.

5 52. In conjunction with and conditioned upon the State Court granting Preliminary
6 Approval of this Settlement, Plaintiff will file the Amended State Court Complaint in the State
7 Court Action and add the class-action claims now pending in the Federal Court Action. The
8 Parties shall agree that the statute of limitations of the class-action claims shall be deemed to
9 relate back to December 10, 2016. In addition, the Amended State Court Complaint will include
10 all other amendments necessary to give full effect to this settlement.

11 53. Concurrently with Plaintiff's filing of the Amended State Court Complaint in
12 State Court as described in Paragraph 52, the Parties shall file a Joint Request for Stay of the
13 Federal Court Action pending State Court approval of the Settlement of the entire Action.

14 54. If the Federal Court rejects the stay request, the Parties will stipulate to dismiss
15 the Federal Court Action without prejudice and, if for any reason the State Court does not
16 approve the settlement of the Action, and if Plaintiff wishes to assert any class-action claims
17 against Defendants, Plaintiff will dismiss without prejudice his class-action claims in the State
18 Court Action and will file a new complaint in United States District Court, Eastern District of
19 California, and Defendants will agree that the statute of limitations as to any refiled class-action
20 claims in the newly filed federal case would relate back to December 10, 2016.

21 **C. General Terms**

22 55. Defendants deny Plaintiff's claims and allegations and contend that the Action is
23 not suitable for class certification or manageable as a class or representative action.

24 56. The Class Representative believes he can proceed with his representative and
25 class claims, that the Action is meritorious, and that class certification is appropriate.

26 57. The Parties have conducted a thorough investigation into the facts of the Action.
27 This includes conducting an extensive exchange of informal discovery, including collective
28 bargaining agreements between U.S. Borax and ILWU Local 20 and ILWU Local 30 and the

1 production of payroll and timekeeping records for Settlement Class Members. Class Counsel is
2 both knowledgeable about and has done extensive research with respect to the applicable law and
3 potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an
4 investigation of the Class Members' claims against Defendants. Based on the foregoing data and
5 on their own independent investigation and evaluation, Class Counsel is of the opinion that the
6 Settlement with Defendants for the consideration and on the terms set forth in this Settlement
7 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in
8 light of all known facts and circumstances, including the risk of significant delay and uncertainty
9 associated with litigation, various defenses asserted by Defendants, and numerous potential
10 appellate issues.

11 58. On October 12, 2021, Plaintiff and Defendants participated in mediation before
12 Lynn Frank, a highly experienced wage-and-hour class action mediator. The matter resolved at
13 mediation pursuant to a mediator's proposal.

14 59. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
15 to be performed or judgments to be entered pursuant to the terms of the Settlement and
16 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
17 any statute or law or liability on any of the claims or allegations in the Action.

18 60. Stipulation for Class Certification and Representative Treatment. For settlement
19 purposes only, Defendants will stipulate that the Settlement Class Members described herein
20 who do not submit a Request for Exclusion from the Settlement Class may be conditionally
21 certified as a settlement class and that the Aggrieved Employees are appropriate for
22 representative treatment. This stipulation to certification and representative treatment is in no
23 way an admission that class-action certification and/or representative treatment is proper and
24 shall not be admissible in this or in any other action except for the sole purpose of enforcing this
25 Agreement. Should, for whatever reason, the State Court fail to issue Final Approval, the
26 Parties' stipulation to class certification and representative treatment as part of the Settlement
27 shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in
28 connection with, the issue of whether or not certification and/or representative treatment would

1 be appropriate in a non-settlement context. Defendants expressly reserve their rights and declare
2 that they would continue to oppose class certification, representative treatment, and the
3 substantive merits of the case should the State Court decline to issue Final Approval. Plaintiff
4 expressly reserves his rights and declares that he will continue to pursue class certification,
5 representative treatment, and a trial should the State Court decline to issue Final Approval.

6 **D. Terms of Settlement**

7 61. The financial terms of the Settlement are as follows:

8 (a) Gross Settlement Amount: The Parties agree to settle this Action for Four
9 Million Dollars (\$4,000,000) ("the Gross Settlement Amount"), unless it shall be escalated
10 pursuant to Paragraph 58(b) below. The Gross Settlement Amount is the maximum amount that
11 will be paid and includes Individual Settlement Payments, Attorneys' Fees and Costs Award, the
12 Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA
13 Penalties. Defendants shall separately pay the employer's share of applicable payroll tax
14 obligations, which shall be paid and reported through the Settlement Administrator.

15 (b) The Settlement is based on Defendants' representation that there are
16 approximately 140,000 Work Weeks Worked included in the Class Period. In the event that the
17 actual number of Work Weeks Worked by all Settlement Class Members during this period
18 increases by 14,000, then Defendants shall increase the Gross Settlement Amount on a
19 proportional basis in excess of 154,000 by the Gross Workweek Value. The Gross Workweek
20 Value shall be calculated by dividing the Gross Settlement Amount prior to potential escalation
21 (\$4,000,000) by 140,000, which amounts to a Gross Work Week Value of \$28.57. Thus, for
22 example, should there be 160,000 Work Weeks Worked in the Class Period, then the Gross
23 Settlement Amount shall be increased by \$171,420. (160,000 Work Weeks – 154,000 Work
24 Weeks x \$28.57/Work Week.)

25 (c) Net Settlement Amount: The "Net Settlement Amount" is defined as the
26 Gross Settlement Amount less the Attorneys' Fees and Costs Award, the Service Award to the
27 Class Representative, the Settlement Administration Costs, and the LWDA Payment, all as
28 approved by the State Court. If the State Court reduces the requested Attorneys' Fees and Costs

1 Award, Service Award, or Settlement Administration Costs, or either increases or decreases the
2 amount allocated to the PAGA Penalties, the Net Settlement Amount shall be increased or
3 decreased accordingly.

4 (d) Individual Settlement Payments for the Settlement Class: Individual
5 Settlement Payments will be calculated and apportioned from the Net Settlement Amount based
6 on the number of Eligible Work Weeks a Settlement Class Member worked during the Class
7 Period. Specific Calculations of Individual Settlement Payments will be made as follows:

- 8 • Defendants will calculate the total number of Work Weeks Worked by each
9 Settlement Class Member during the Class Period and the aggregate total
10 number of Work Weeks Worked by all Settlement Class Members during the
11 Class Period.
- 12 • To determine each Settlement Class Member's estimated Individual
13 Settlement Payment, the Settlement Administrator will use the following
14 formula: The Net Settlement Amount will be divided by the aggregate total
15 number of Work Weeks Worked by all Settlement Class Members during the
16 Class Period, resulting in the "Class Work Week Value." Each Settlement
17 Class Member's Individual Settlement Payment will be calculated by
18 multiplying his or her total number of Work Weeks Worked during the Class
19 Period by the Class Work Week Value. Additionally, the Settlement
20 Administrator will determine the total number of Work Weeks Worked by
21 each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's
22 Work Weeks Worked"), as well as the aggregate number of Work Weeks
23 Worked by all Aggrieved Employees during the PAGA Period ("PAGA Work
24 Weeks Worked").
- 25 • Individual Settlement Payments will be reduced by any required deductions
26 for each Participating Class Member as specifically set forth herein, including
27 employee-side tax withholdings and deductions.
- 28 • The entire Net Settlement Amount will be disbursed to all Participating Class

Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of Work Weeks Worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

- To determine each Aggrieved Employee's Individual PAGA Payment the Settlement Administrator will use the following formula: Aggrieved Employee's Individual PAGA Payment = (Aggrieved Employee's Work Weeks Worked / PAGA Workweeks) x \$25,000.00 (the PAGA Payment).

This amount is to be paid out to Aggrieved Employees by way of check. The Settlement payment for a Participating Class Member who is also an Aggrieved Employee will therefore include the Participating Class Member's Individual Settlement Payment and Individual PAGA Payment. A Settlement Class Member who is also an Aggrieved Employee who submits a valid Request for Exclusion will nevertheless be bound by any release of claims under PAGA related to the Released Claims and will still receive their Individual PAGA Payment.

(e) Tax Allocation of Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: Twenty percent (20%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and eighty percent (80%) will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203 & 226) from which no taxes will be withheld or other deductions made. The Individual PAGA Payments will be one hundred percent (100%) allocated to civil penalties from which no taxes will be withheld or other deductions made. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 to each Participating Class Member and/or Aggrieved Employee with respect to the penalties and interest allocations.

1 (f) Service Payment to Class Representative: The amount, if any, awarded to
2 the Class Representative as a Service Payment will be set by the State Court in its discretion, not
3 to exceed \$25,000, made up of a \$10,000 enhancement award in exchange for the services
4 Plaintiff performed on behalf of the Class (including taking steps to support the Settlement) and
5 a separate \$15,000 award in consideration for entering into the general and expansive release and
6 California Civil Code Section 1542 waiver discussed hereinafter. Defendants agree not to
7 oppose this request if Plaintiff does not request exclusion from the Settlement Class and does not
8 take any action, directly or indirectly, to undercut or otherwise interfere with the success of this
9 Settlement. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount.
10 The Class Representative will be issued an IRS Form 1099 by the Settlement Administrator in
11 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
12 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
13 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel or the
14 Class Representative to void this Settlement Agreement nor to appeal this aspect of the State
15 Court's ruling. Should the State Court approve a lesser amount for the Service Payment, the
16 difference shall be added to the Net Settlement Amount to be distributed to the Participating
17 Class Members.

18 (g) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
19 request by Class Counsel to the State Court for an award of attorneys' fees of not more than
20 thirty five percent (35%) of the Gross Settlement Amount, as the same may be escalated pursuant
21 to Paragraph 61(b) of this Agreement, plus reasonable litigation costs estimated not to exceed
22 \$25,000. ("Attorneys' Fees and Costs Award"). Defendants agree not to oppose any contention
23 by Class Counsel that attorneys' fees should be based on the common fund theory. The
24 Attorneys' Fee and Costs Award shall be paid from the Gross Settlement Amount, and except for
25 this award, unless there is a failure to fund this Settlement Agreement by Defendants that
26 requires remedial efforts by Class Counsel, Defendants shall have no further obligation to pay
27 any attorneys' fees, costs or expenses to Class Counsel. Should the State Court approve a lesser
28 amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement

1 Amount to be distributed to the Participating Class Members. The Parties agree that any amount
2 awarded as attorneys' fees and costs to Class Counsel less than the requested amount shall not be
3 a basis for Class Counsel or the Class Representative to rescind or otherwise void this Settlement
4 Agreement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099
5 reflecting the amount of attorneys' fees and costs awarded by the State Court.

6 (h) Settlement Administration Costs: The fees and other charges of the
7 Settlement Administrator will be paid from the Gross Settlement Amount, estimated not to
8 exceed \$25,000. If the actual amount of the Settlement Administration Costs is less than
9 \$25,000, then the difference between \$25,000 and the actual Settlement Administration Costs
10 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
11 \$25,000, then such excess will be paid solely from the Gross Settlement Amount and Defendants
12 will not be responsible for paying any additional funds in order to pay these additional costs.

13 (i) PAGA Penalties: The Parties agree that \$100,000 is allocated to PAGA
14 Penalties and is to be paid from the Gross Settlement Amount, subject to State Court approval.
15 Of this amount, \$75,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
16 PAGA, and \$25,000 (25%) will be paid to the Aggrieved Employees based on a Work Weeks
17 Worked basis during the PAGA Period, i.e., the PAGA Payment, which will be treated entirely
18 as civil penalties and shall be reported as required on an IRS Form 1099. U.S. Borax will
19 calculate the total number of Work Weeks Worked by each Aggrieved Employee during the
20 PAGA Period and the aggregate total number of Work Weeks Worked by all Aggrieved
21 Employees during the PAGA Period. Class Counsel shall give proper notice to the LWDA of
22 the Settlement.

23 (j) Tax Liability: Class Counsel, Defendants, and Defendants' counsel make
24 no representations as to the tax treatment or legal effect of Settlement Amounts called for
25 hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or
26 representation by Class Counsel, Defendants, or Defendants' counsel in this regard. The amount
27 of federal income tax withholding will be based upon a flat withholding rate for supplemental
28 wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or

1 supplemented. Income tax withholding will also be made pursuant to applicable state and/or
2 local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at
3 times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and
4 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
5 applicable tax law, are changed after the date of this Agreement, the processes set forth in this
6 Section may be modified in a manner to bring Defendants into compliance with any such
7 changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand and
8 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
9 their respective payments described herein and will hold Defendants harmless from and against
10 any claims resulting from treatment of such payments as non-taxable damages.

11 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
12 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY"
13 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
14 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO
15 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
16 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
17 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
18 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
19 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
20 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
21 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
22 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
23 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
24 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
25 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
26 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
27 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
28 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO

1 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
2 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
3 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
4 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
5 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
6 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

7 62. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
8 Participating Class Members under this Agreement, as well as any other payments made
9 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
10 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
11 to: profit-sharing plans, bonus plans, 401(k) plans, pension plans, retirement plans, stock
12 purchase or other types of equity plans, vacation plans, sick leave plans, PTO plans, and any
13 other benefit or incentive plan. Rather, it is the Parties' intention that this Settlement will not
14 affect any rights, contributions, or amounts to which any Settlement Class Members may be
15 entitled under any benefit plans or collective bargaining agreements. The Parties agree that the
16 amounts paid pursuant to this Settlement are not for days or hours worked, and are not included
17 toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

18 63. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
19 no circumstance will any portion of the Gross Settlement Amount revert to Defendants.
20 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
21 receive an Individual Settlement Payment, and Aggrieved Employees will not have to make a
22 claim in order to receive their Individual PAGA Payments. Distributions, in the form of
23 Individual Settlement Payments and Individual PAGA Payments, will be made directly to each
24 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
25 responsible for accurately and timely reporting and remittance obligations with respect to
26 unclaimed funds as a result of a Participating Class Member or Aggrieved Employee not cashing
27 an Individual Settlement Payment or Individual PAGA Payment by the check cashing deadline,
28 as set forth herein.

1 64. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
2 adequate, and will so represent same to the State Court and, if necessary, to the Federal Court.

3 **E. Release by Plaintiff, Aggrieved Employees and the Settlement Class**

4 65. Upon entry of the Final Approval Order and Defendants' funding of the Gross
5 Settlement Amount, along with any taxes necessary to be paid by Defendants to effectuate the
6 Settlement, and except as to such rights or claims as may be created by this Settlement
7 Agreement, the Participating Class Members, for themselves and for their respective spouses,
8 domestic partners, children, estates, heirs, and representatives, will forever completely release
9 and discharge the Released Parties from the Released Class Claims that have arisen or accrued
10 during the Class Period. It is the intent of the Parties that the Final Approval Order and
11 judgment entered by the State Court shall have full equitable and collateral estoppel and *res*
12 *judicata* effect and be final and binding upon Participating Class Members regarding the
13 Released Class Claims.

14 66. Each Participating Class Member will be deemed to have made the foregoing
15 Release as if by manually signing it.

16 67. Upon entry of the Final Approval Order and Defendants' funding of the
17 Settlement Amount, as well as any taxes that must be paid by Defendants to effectuate the
18 Settlement, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA to the extent
19 permitted by law, and on behalf of the State of California and all Aggrieved Employees to the
20 extent permitted by law, for themselves and for their respective spouses, domestic partners,
21 children, estates, heirs, and representatives, will forever completely release and discharge the
22 Released Parties from the Released PAGA Claims that have arisen or accrued during the PAGA
23 Period. It is the intent of the Parties that the Final Approval Order and judgment entered by the
24 State Court shall have full equitable and collateral estoppel and *res judicata* effect and be final
25 and binding upon Aggrieved Employees regarding the Released PAGA Claims.

1 68. Each Aggrieved Employee and the LWDA will be deemed to have made the
2 foregoing Release as if by manually signing it to the extent permitted by law.

3 69. Plaintiff and Defendants intend that the Settlement described in this Agreement
4 will release and preclude any further claim, whether by lawsuit, administrative claim (to the
5 extent permitted by law) or action, grievance, arbitration, demand, or other action of any kind, by
6 each and all of the Participating Class Members to obtain a recovery based on or arising out of
7 the Released Class Claims. The Class Members shall be so notified in the Notice. This
8 paragraph only applies to Participating Class Members and, thus, does not apply to any Class
9 Member who timely and validly submits a Request for Exclusion, nor does it apply to Aggrieved
10 Employees with respect to the Released PAGA Claims.

11 70. Plaintiff and Defendants also intend that the Settlement described in this
12 Agreement will release and preclude any further claim for civil penalties under the California
13 Labor Code, whether by lawsuit, administrative claim (to the extent permitted by law) or action,
14 grievance, arbitration, demand, or other PAGA action of any kind, by each and all of the
15 Aggrieved Employees to obtain a recovery based on or arising out of the Released PAGA
16 Claims. The Aggrieved Employees shall be so notified in the PAGA Notice, and Class Counsel
17 shall provide appropriate notice to the LWDA of this Agreement prior to the filing of the Motion
18 for Preliminary Approval.

19 71. Class Representative, on behalf of himself and the Participating Class Members,
20 acknowledges and agrees that the claims, including claims for unpaid wages and untimely
21 payment of wages, are disputed, and that the payments set forth herein constitute payment of all
22 sums allegedly due to them. Class Representative, on behalf of himself and the Participating
23 Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not
24 applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

25 An employer shall not require the execution of any release of any claim or
26 right on account of wages due, or to become due, or made as an advance
27 on wages to be earned, unless payment of those wages has been made.
28

1 **F. Release by Class Representative**

2 72. As a material inducement to Defendants to enter into this Settlement Agreement,
3 and in addition to the Class Representative's release of the Released Class Claims and Released
4 PAGA Claims, Class Representative does, upon entry of the Final Approval Order and
5 Defendants' funding of the Gross Settlement Amount, along with any taxes necessary to be paid
6 by Defendants to effectuate the Settlement, for himself and for his respective spouses, domestic
7 partners, marital community, children, estates, heirs, successors, beneficiaries, devisees, legatees,
8 executors, administrators, trustees, conservators, guardians, personal representatives, and
9 assignees forever and completely release and discharge and covenant not to sue the Released
10 Parties with respect to any and all claims, demands, liens, agreements, contracts, grievances,
11 covenants, actions, suits, causes of action, wages, obligations, debts, liquidated damages,
12 penalties, interest, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of
13 whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected
14 or unsuspected, concealed or hidden, which Plaintiff now owns or holds or has at any time
15 heretofore owned or held as against said Released Parties, or any of them. Such released claims
16 include specifically, but not exclusively and without limiting the generality of the foregoing, any
17 and all claims, demands, agreements, grievances, obligations and causes of action, known or
18 unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims
19 arising out of, based upon, relating to, or in any way connected with:

20 (a) Class Representative's employment with Defendants or any Related Party or the
21 remuneration for or termination of such employment;

22 (b) any allegation in the Action;

23 (c) any transactions, occurrences, acts or omissions set forth, or facts alleged, in any and
24 all charges, complaints, claims, grievances or pleadings filed by Class Representative
25 against any Released Party prior to the date hereof with any city, county, state or federal
26 agency, commission, office or tribunal whatsoever, including, but not limited to, the
27 DFEH, EEOC, DOL, OSHA and National Labor Relations Board; and/or

28 (d) any transactions, occurrences, acts or omissions occurring prior to the date hereof,

1 including specifically without limiting the generality of the foregoing any claim under
2 Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (29
3 U.S.C. Section 621 *et seq.*), the Americans with Disabilities Act, the Employee
4 Retirement Income Security Act, the National Labor Relations Act, the Fair Labor
5 Standards Act, the Family and Medical Leave Act, the California Constitution, the
6 California Labor Code, the California Civil Code, the California Government Code, the
7 California Business & Professions Code, the California Family Rights Act, the California
8 Fair Employment and Housing Act, or any other federal, state, or local statute or
9 regulation (collectively, the "Class Representative's Claims").

10 73. Class Representative agrees that there is a risk that any injury that he may have
11 suffered by reason of the Released Parties' relationship with him might not now be known, and
12 there is a further risk that said injuries, whether known or unknown, suspected or unsuspected,
13 concealed or hidden, at the date of this Settlement Agreement, might possibly become
14 progressively worse, and that as a result thereof further damages may be sustained.
15 Nevertheless, Class Representative agrees to forever and fully release and discharge the Released
16 Parties, and understands that by the execution of this Settlement Agreement no further claims for
17 any such injuries that existed at the time of the execution of this Settlement Agreement may ever
18 be asserted by Class Representative with respect to claims arising in the time period from the
19 beginning of time to the execution of this Settlement Agreement.

20 74. Upon the release of the Class Representative's Claims as set forth in Paragraph
21 72, Class Representative also expressly waives and relinquishes all rights and benefits afforded
22 by Section 1542 of the Civil Code of the State of California and does so understanding and
23 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
24 of the State of California states:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
26 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
27 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
28 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 parties, Class Representative and Class Counsel
3 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 suspect 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 such Class Representative's
8 claims. Notwithstanding the above, the general release by Class Representative shall not extend
9 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
10 that may not be released by law as part of this Agreement.
11

12 **F. Interim Stay of Proceedings**

13 75. Pending completion of all of the prerequisites necessary to effectuate this
14 Settlement, the Parties agree, subject to State Court and Federal Court approval, to a stay of all
15 proceedings in the Action except such as are necessary to effectuate the Settlement.

16 **G. Notice Process**

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

1 all payroll taxes and penalties to the appropriate government authorities.

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

10 78. Class Data. Within twenty-one (21) calendar days after entry of the Preliminary
11 Approval Order, U.S. Borax shall provide the Class Data to the Settlement Administrator. The
12 Settlement Administrator will run a check of the Class Members' addresses against those on file
13 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
14 Settlement Administrator will remain confidential, shall be used solely to administer the
15 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
16 required by applicable tax authorities, pursuant to Defendants' express written consent, or by
17 order of the State Court. The Settlement Administrator will be required to sign and provide to
18 Defendants a Certification Regarding Confidential Discovery Materials and to be bound by a
19 Stipulated Protective Order as entered by the State Court.

20 79. Notice Packet. The Notice Packet, as approved by the State Court, shall be sent
21 by the Settlement Administrator to the Settlement Class Members and Aggrieved Employees, by
22 first class mail, in English and Spanish, within seven (7) calendar days following the Settlement
23 Administrator's receipt of the Class Data. The Settlement Administrator shall use standard
24 devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members and
25 Aggrieved Employees if any envelopes are returned.

26 80. Returned Notices. The Settlement Administrator will take steps to ensure that the
27 Notice Packet is received by all Settlement Class Members and Aggrieved Employees, including
28 utilization of the National Change of Address Database maintained by the United States Postal

1 Service to review the accuracy of and, if possible, update a mailing address. Notice Packets will
2 be re-mailed to any Settlement Class Member and/or Aggrieved Employee for whom an updated
3 address is located within seven (7) calendar days following both the Settlement Administrator
4 learning of the failed mailing and its receipt of the updated address. The Notice Packet shall be
5 identical to the original Notice Packet, except that it shall notify the Settlement Class Member
6 that the exclusion (opt-out) request or objection must be returned by the later of the Notice
7 Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

8 81. Disputes Regarding Information on Notices. Class Members are deemed to
9 participate in the Settlement, unless they opt-out. The Class Notice will inform Class Members
10 of their estimated Individual Settlement Payment and the number of Work Weeks Worked
11 during the Class Period. The PAGA Notice will inform the Aggrieved Employees of their
12 estimated Workweeks Worked during the PAGA Period and estimated Individual PAGA
13 Payment. Class Members and Aggrieved Employees may dispute their Work Weeks Worked in
14 the Class Period and/or PAGA Period if they feel they should be credited with more Eligible
15 Work Weeks than U.S. Borax's records show by timely submitting evidence to the Settlement
16 Administrator. U.S. Borax's records will be presumed determinative absent reliable evidence to
17 rebut U.S. Borax's records, but the Settlement Administrator will evaluate the evidence
18 submitted by the Class Member and/or Aggrieved Employee and provide the evidence submitted
19 to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the
20 evidence to determine the Class Member's and/or Aggrieved Employee's actual number of Work
21 Weeks Worked during the Class Period and/or PAGA Period and estimated Individual
22 Settlement Payment and/or Individual PAGA Payment. If Class Counsel and Defense Counsel
23 are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a
24 final decision. Class Members and Aggrieved Employees will have until the Notice Response
25 Deadline to dispute Work Weeks Worked, object or opt out of the Class Action Settlement, or
26 object to the settlement of the PAGA Penalties and seek to intervene in the State Court Action,
27 unless extended by the State Court. In the event that the Settlement Administrator revises the
28 number of Work Weeks Worked for any Settlement Class Member or Aggrieved Employee, then

1 the Settlement Administrator will recalculate the Participating Class Members' Individual
2 Settlement Payments and/or the Aggrieved Employees' Individual PAGA Payment accordingly.
3 In no event will Defendants be required to increase the Gross Settlement Amount on this basis.

4 82. Declaration of Due Diligence. The Settlement Administrator shall provide
5 counsel for the Parties, at least seven (7) calendar days prior to the Final Approval Hearing, a
6 declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

7 83. Aggrieved Employees' Rights. Each Aggrieved Employee will be fully advised
8 of the Settlement in the PAGA Notice. In order to object to the Settlement of the Released
9 PAGA Claims, an Aggrieved Employee must request to intervene in the Action and the State
10 Court must grant such request. Aggrieved Employees may not opt out of the Released PAGA
11 Claims without objecting to the Settlement and intervening in the Action.

12 84. Settlement Class Members' Rights. Each Settlement Class Member will be fully
13 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
14 Released Class Claims, and the ability to opt out or request exclusion from the Settlement with
15 respect to the Released Class Claims. The Notice will inform the Settlement Class Members of
16 the State Court-established deadlines for filing objections or requesting exclusion from the
17 Settlement with respect to the Released Class Claims in accordance with the following
18 guidelines:

19 (a) Requests for Exclusion from Participating in the Settlement Class. Any
20 Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement
21 Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on
22 or before the Notice Response Deadline. The Request for Exclusion should state:

23 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
24 CLASS IN THE U.S. BORAX INC. LAWSUIT. I
25 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
26 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
27 MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS
28 IN THIS LAWSUIT," or a statement to that effect.

1 To be valid, any Request for Exclusion must include the full name, address, telephone
2 number, last four digits of the social security number or date of birth, and signature of the
3 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
4 mail to the Settlement Administrator at the specified address. Any such Request must be made
5 in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
6 if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
7 Any Settlement Class Member who timely requests exclusion in compliance with these
8 requirements: (i) will not have any rights under this Agreement with respect to the Released
9 Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be
10 entitled to receive any payments under this Agreement for the Released Class Claims; and (iii)
11 will not be bound by this Agreement, or the Judgment, with respect to the Released Class
12 Claims. Unless the individual also specifically objects to inclusion in the Settlement as an
13 Aggrieved Employee and requests to intervene in the Action, any Aggrieved Employee who
14 requests timely exclusion from the Settlement Class will still be subject to the Released PAGA
15 Claims to the fullest extent permitted by law and shall be sent his or her share of PAGA
16 Penalties.

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

24 (c) Objections to Settlement of the Released Class Claims or Released PAGA
25 Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this
26 Agreement. To object, a Settlement Class Member should inform the Settlement Administrator,
27 in writing, of his or her objection which must be postmarked by the Notice Response Deadline at
28 the address set forth in the Notice. Such objection shall include the objecting Settlement Class

1 Member's full name, address, telephone number, and dates of employment with Defendants, the
2 case name and number, the basis for the objection, including any legal support and each specific
3 reason in support of the objection, as well as any documentation or evidence in support thereof,
4 and, if the Objecting Settlement Class Member is represented by counsel, the name and address
5 of his or her counsel. The Settlement Administrator shall provide objections, if any, to Class
6 Counsel and Defense Counsel within three (3) calendar days of receipt, and the Settlement
7 Administrator shall attach the same to its declaration of due diligence and file with the State
8 Court prior to the Final Approval Hearing. Any Participating Class Member who files an
9 objection remains eligible to receive monetary compensation from the Settlement. Plaintiff and
10 Defendants shall not be responsible for any fees, costs, or expenses incurred by any Class
11 Member and/or his or her counsel related to any objections to the Settlement.

12 (d) Failure to Object. Any Settlement Class Member who desires to object to
13 the Released Class Claims or Released PAGA Claims in the Settlement but fails to timely submit
14 a written objection or in person objection at the Final Approval Hearing may still object and/or
15 comment on the Settlement in person and/or through counsel at the Final Approval Hearing.

16 (e) Responses to Objections. Counsel for the Parties may file a response to
17 any objections submitted by objecting Settlement Class Members at least five (5) court days
18 before the date of the Final Approval Hearing.

19 (f) Timing of Requests. Settlement Class Members will have until the Notice
20 Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator
21 by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and
22 Defendants' counsel what objections or Requests for Exclusion were timely submitted on a
23 weekly basis, and upon the request of Class Counsel or Defense Counsel.

24 (g) Defective Submissions. If a Settlement Class Member's Request for
25 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
26 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
27 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
28 defective submission to advise the Settlement Class Member that his or her submission is

1 defective and that the defect must be cured to render the Request for Exclusion or objection
2 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
3 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
4 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
5 received by fax within that period, it will be deemed untimely.

6 85. The Settlement Administrator shall create a QSF for all money paid by
7 Defendants and shall deposit all funds received from Defendants into such QSF.

8 86. Funding of the Settlement Amount. Defendants shall make a one-time payment
9 of the Gross Settlement Amount to the Settlement Administrator within fifteen (15) calendar
10 days after the Effective Date. Defendants separately shall pay their share of employer payroll
11 taxes as calculated and directed by the Settlement Administrator in a timely fashion. Once
12 Defendants have complied with their obligations set forth in this paragraph, they shall be deemed
13 to have satisfied all of the terms and conditions of this Agreement, shall be entitled to all the
14 protections afforded them under the Agreement, and shall have no further obligations under the
15 Agreement, regardless of what occurs with respect to the further administration of the
16 Settlement. The Settlement Administrator (and not Defendants) shall issue the applicable IRS
17 Forms W-2s and 1099 reflecting all payments to the Class Members.

18 87. Distribution of Funds. No later than seven (7) calendar days after Defendants'
19 payment of the Gross Settlement Amount and employer taxes, the Settlement Administrator will
20 mail the Individual Settlement Payments and Individual PAGA Payments to the Participating
21 Class Members and Aggrieved Employees, the payment to Class Counsel for the Attorneys' Fees
22 and Costs Award, any Service Payment to the Class Representative, the LWDA Payment, and
23 will pay itself the Settlement Administration Costs.

24 88. Deadline for Cashing Settlement Checks. Participating Class Members and
25 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
26 Administrator to cash their settlement checks. If any Participating Class Member's or Aggrieved
27 Employee's check is not cashed within that period, the check will be void and a stop-payment
28 will be issued, and the Settlement Administrator shall issue the unclaimed funds to Legal Aid at

1 Work, located at, 180 Montgomery St., Suite 600, San Francisco, California 94104, as a *cy pres*
2 recipient, for use in Kern County. The releases contained herein will be binding upon all
3 Participating Class Members and Aggrieved Employees who do not cash their checks within the
4 180-day period. In the event that any settlement check is returned to the Settlement
5 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5)
6 business days of receipt of the returned settlement check, perform a skip trace to locate the
7 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
8 located by these means, the Administrator will have ten (10) business days to re-issue the check.
9 Neither Defendants, Released Parties, Defense Counsel, Class Counsel, Plaintiff, nor the
10 Settlement Administrator will have any liability for lost or stolen settlement checks, forged
11 signatures on settlement checks, or unauthorized negotiation of settlement checks. Without
12 limiting the foregoing, in the event a Participating Class Member or Aggrieved Employee
13 notifies the Settlement Administrator that he or she believes that a settlement check has been lost
14 or stolen, the Settlement Administrator shall immediately stop payment on such check. If the
15 check in question has not been negotiated prior to the stop payment order, the Settlement
16 Administrator will issue a replacement check.

17 89. No person shall have any claim against Defendants, Released Parties, Defendants'
18 Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings,
19 distributions, payments or reports made in accordance with or pursuant to this Agreement. This
20 provision does not, however, prevent a Party from seeking enforcement of this Agreement.

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

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

27 91. Promptly after execution of this Settlement Agreement, Plaintiff will request a
28 stay in Federal Court of the Federal Court Action as described in Paragraph 52 and move the

1 State Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval
2 Order accomplishing the following:

- 3 (a) Filing the Amended State Court Complaint in State Court as described in
4 Paragraph 52, upon the State Court's grant of Preliminary Approval;
- 5 (b) Scheduling the Final Approval Hearing on the issue of whether this
6 Settlement should be finally approved as fair, reasonable and adequate as
7 to the Class Members and Aggrieved Employees and a hearing on fees,
8 costs and the Service Payment;
- 9 (c) Approving as to form and content the proposed Notice;
- 10 (d) Directing the mailing of the Notice by first class mail to the Settlement
11 Class Members;
- 12 (e) Preliminarily approving this Settlement; and
- 13 (f) Preliminarily certifying the class for purposes of this Settlement.

14 92. Reallocation of Settlement Proceeds. In the event the State Court fails, on its first
15 hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate,
16 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within
17 this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent
18 State Court hearings.

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

20 93. In connection with the Final Approval Hearing provided for in this Settlement
21 Agreement, Class Counsel shall submit to the State Court a Motion for Final Approval and a
22 proposed Final Approval Order:

- 23 (a) Approving the Settlement, adjudging the terms thereof to be fair,
24 reasonable and adequate, and directing consummation of its terms and provisions;
- 25 (b) Approving Class Counsel's application for an award of attorneys' fees and
26 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
27 and the payment to the Settlement Administrator for costs of administering the settlement; and
- 28 (c) Entering judgment approving settlement.

1 94. Final Judgment. The Settlement Administrator shall give the Participating Class
2 Members and Aggrieved Employees notice of the entry of Final Judgment by posting the Final
3 Judgment on its website for a period of three (3) years after entry of Judgment.

4 **J. Voiding the Agreement**

5 95. Defendants will have, in their sole discretion, the right to void and withdraw from
6 the Settlement if ten percent (10%) or more of Class Members opt out of the Settlement. To do
7 so, Defendants shall give written notice to the Settlement Administrator at least 30 calendar days
8 before the final approval hearing date.

9 96. All Parties, signatories and their counsel shall not encourage opt-outs or
10 objections to this Agreement. The Parties specifically agree not to solicit opt-outs or objections,
11 directly or indirectly, through any means.

12 97. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will
13 have no further obligations under the Settlement, including any obligation by Defendants to pay
14 the Gross Settlement Amount or any amounts that otherwise would have been owed under this
15 Settlement.

16 98. If the Settlement is voided by Defendants pursuant to Paragraph 95, any costs
17 incurred by the Settlement Administrator shall be borne by Defendants. If the Settlement is
18 voided or fails for any other reason, any costs incurred by the Settlement Administrator shall be
19 borne equally by Defendants and Plaintiffs, unless otherwise specified in this Agreement.

20 **K. Other Terms**

21 99. Waiver. The waiver by one Party of any breach of this Agreement by another
22 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

23 100. Full and Complete Defense. This Agreement may be pleaded by any Released
24 Party as a full and complete defense to and may be used by any Released Party to pursue an
25 injunction, against any action, suit or other proceeding that has been or may be instituted,
26 prosecuted or attempted, asserting any Released Claim.

27 101. Parties' Authority. The signatories hereto represent that they are fully authorized
28 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions

1 hereof.

2 102. No Publicity. Communications regarding this Settlement prior to the Final
3 Approval Date shall be limited to State Court-Approved Notices in the Action. After the Final
4 Approval Date, Class Counsel and Class Representative agree that they will not make any
5 comment or publication of the Settlement or regarding any of the Defendants that in any way
6 could reasonably identify Defendants in terms of affirmative or responsive media
7 statements/comments, press releases or conferences, website postings or content, social media
8 postings or content, other Internet postings or content, subscribed email messages, newsletters,
9 disseminated updates, mass mailings, or any other comment or publication to the press, media, or
10 public at large. Nothing herein shall be construed to prevent Class Counsel from the public
11 filing of motions or other case materials in the Action related to seeking and obtaining State
12 Court approval of this Settlement and the related awards of attorneys' fees and costs, or to
13 communications with Settlement Class Members or their representatives about this Settlement,
14 including through the posting of State Court-filed documents on Class Counsel's websites for
15 access solely by the Settlement Class Members, or to prevent the Parties or their representatives
16 from communicating with financial or legal advisors regarding the Settlement. In response to
17 any media inquiry, Class Counsel may state only that the Action has been settled on terms
18 mutually agreeable to the Parties.

19 103. No Defamatory Statements. Plaintiff will not make, or encourage anyone else to
20 make, any defamatory or maliciously false statements or remarks about Defendants, any of their
21 employees, and/or any of their services or business; this restriction includes, but is not limited to,
22 Plaintiff not making any such statements or remarks on Yelp, Glassdoor, LinkedIn, Facebook,
23 other social media, and any other online forums.

24 104. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
25 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
26 such documents and to take such other action as may reasonably be necessary to implement the
27 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
28 best efforts, including all efforts contemplated by this Settlement Agreement and any other

1 efforts that may become necessary by order of the State Court, or otherwise, to effectuate this
2 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
3 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
4 Defendants and Defendants' Counsel, take all necessary steps to secure the State Court's
5 preliminary and final approval of the settlement, and the final entry of judgment. Class Counsel
6 shall aim to provide Defendants' Counsel with copies of the Preliminary Approval Motion and
7 Final Approval Motion for review at least five calendar days prior to the filing deadline.

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

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

21 107. Inadmissibility of Agreement. Whether or not the State Court issues the Final
22 Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement,
23 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on
24 the part of Defendants or any of the other Released Parties. Each of the Parties hereto has
25 entered into this Settlement Agreement with the intention of avoiding further disputes and
26 litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
27 settlement document, and it, along with all related documents such as the notices, and motions
28 for preliminary and final approval, shall, pursuant to California Evidence Code section 1152

1 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an
2 action or proceeding to approve the settlement, and/or interpret or enforce this Settlement
3 Agreement. The stipulation for class certification and PAGA representative status as part of this
4 Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not
5 approved, the stipulation will be of no force or effect.

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

10
11 To the Settlement Class Members and Aggrieved Employees:

12 David B. Bibiyan, Esq.
13 *david@tomorrowlaw.com*
14 Bibiyan Law Group, P.C.
15 8484 Wilshire Boulevard, Suite 500
16 Beverly Hills, CA 90211
17 Tel: (310) 438-5555 | Fax: (310) 300-1705

18
19 To Defendants:

20 David A. Wimmer, Esq.
21 *dwimmer@swerdlowlaw.com*
22 Meghan E. O'Kane, Esq.
23 *mokane@swerdlowlaw.com*
24 SWERDLOW FLORENCE SANCHEZ SWERDLOW & WIMMER
25 9401 Wilshire Blvd., Suite 828
26 Beverly Hills, California 90212
27 Tel: (310) 288-3980 | Fax: (310) 733-1727

28 109. 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 his or its counsel participated in the drafting of this
Settlement Agreement. Plaintiff and Defendants expressly waive the common-law and statutory

1 rule of construction that ambiguities should be construed against the drafter of an agreement and
2 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
3 all cases construed as a whole, according to its fair meaning.

4 110. Captions and Interpretations. Paragraph titles or captions contained herein are
5 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
6 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
7 Settlement Agreement is contractual and not merely a recital.

8 111. Modification. This Settlement Agreement may not be changed, altered, or
9 modified, except in writing and signed by the Parties hereto, and approved by the State Court.
10 This Settlement Agreement may not be discharged except by performance in accordance with its
11 terms or by a writing signed by all of the Parties hereto.

12 112. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
13 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
14 provide written notice to the other Party and allow an opportunity to cure the alleged
15 deficiencies, and Plaintiff and Defendants agree to seek the help of Lynn Frank, Esq. to resolve
16 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
17 own attorneys' fees and costs. This provision shall not apply to any legal action or other
18 proceeding instituted by any person or entity other than Plaintiff or Defendants.

19 113. State Court Retains Jurisdiction. The Parties agree that upon the entry of
20 judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to California Code
21 of Civil Procedure Section 664.6, the State Court shall retain exclusive and continuing equity
22 jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms,
23 conditions, intents and obligations of this Agreement.

24 114. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
25 this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible
26 in a court of law.

27 115. Choice of Law. This Settlement Agreement shall be governed by and construed,
28 enforced and administered in accordance with the laws of the State of California.

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

6 117. Binding on Assigns. This Settlement Agreement shall be binding upon and inure
7 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
8 successors and assigns.

9 118. Signatures of All Class Members Unnecessary to Be Binding. It is agreed that,
10 because the members of the Settlement Class are numerous, it is impossible or impractical to
11 have each Class Member execute this Settlement Agreement. The Notice will advise all
12 Settlement Class Members of the binding nature of the releases provided herein and such shall
13 have the same force and effect as if this Settlement Agreement were executed by each Settlement
14 Class Member.

15 119. Invalidity of Any Provision. Before declaring any provision of this Settlement
16 Agreement invalid, the State Court will first attempt to construe the provision as valid to the
17 fullest extent possible consistent with applicable precedents so as to define all provisions of this
18 Settlement Agreement valid and enforceable.

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

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1 Dated: December 12, 2021

PLAINTIFF AND CLASS REPRESENTATIVE:

Robert G. Jungers

Robert G Jungers (Dec 13, 2021 19:51 PST)

Robert Jungers

Approved As To Form:

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4
5 Dated: December 14, 2021

CLASS COUNSEL:
BIBIYAN LAW GROUP, P.C.

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7
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9 
David R. Bibiyan
Attorneys for Plaintiff

10 Dated: December __, 2021

DEFENDANTS:
U.S. BORAX INC., RIO TINTO AMERICA INC., AND
RIO TINTO SERVICES INC.

11
12
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14
15 By: Roberta Kuehne
Title: Senior Legal Counsel, Rio Tinto

16
17
18 Dated: December __, 2021

DEFENDANT: AMANDA SMITH

19
20
21
22 Amanda Smith

Approved As To Form:

23 Dated: December __, 2021

DEFENDANTS' COUNSEL:
SWERDLOW FLORENCE SANCHEZ
SWERDLOW & WIMMER, A LAW CORPORATION

24
25
26
27
28 David A. Wimmer
Attorneys for Defendants

END OF DOCUMENT

1 Dated: December __, 2021

PLAINTIFF AND CLASS REPRESENTATIVE:

2
3 _____
Robert Jungers

4 **Approved As To Form:**

5 Dated: December __, 2021

CLASS COUNSEL:
BIBIYAN LAW GROUP, P.C.

6
7 _____
David B. Bibiyan
Attorneys for Plaintiff

8 Dated: December 15, 2021

DEFENDANTS:
U.S. BORAX INC., RIO TINTO AMERICA INC., AND
RIO TINTO SERVICES INC.

10
11 *Roberta H. Kuehne*
Roberta H. Kuehne (Dec 15, 2021 16:09 MST)

12
13 _____
By: Roberta Kuehne
Title: Senior Legal Counsel, Rio Tinto

14 Dated: December 15, 2021

DEFENDANT: AMANDA SMITH

15
16 *Amanda Smith*
Amanda Smith (Dec 15, 2021 17:42 PST)

17
18 _____
Amanda Smith

19 **Approved As To Form:**

20 Dated: December 15, 2021

DEFENDANTS' COUNSEL:
SWERDLOW FLORENCE SANCHEZ
SWERDLOW & WIMMER, A LAW CORPORATION

21
22 *David A. Wimmer*

23
24 _____
David A. Wimmer
Attorneys for Defendants

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END OF DOCUMENT