

JOSE MACIAS, JR., Bar No. 265033
jose@mra-llp.com
HECTOR J. RODRIGUEZ, Bar No. 305446
hector@mra-llp.com
TRAVIS M. ADAMS, Bar No. 303447
travis@mra-llp.com
MACIAS RODRIGUEZ ADAMS LLP
1550 The Alameda, Suite 332
San Jose, CA 95126
Telephone: 408.455.1243

Attorneys for Plaintiff
JOSE SOTO RODRIGUEZ

LINDA M. MORONEY (SBN: 172668)
NATALIE B. FUJIKAWA (SBN: 258724)
GORDON REES SCULLY MANSUKHANI, LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054
lmoroney@grsm.com
nfujikawa@grsm.com

Attorneys for Defendant
WEDGE ROOFING, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JOSE SOTO RODRIGUEZ, an individual;
and on behalf of other members of the
general public similarly situated,

Plaintiffs,

v.

WEDGE ROOFING, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. CGC-20-587823

**SECOND AMENDED JOINT STIPULATION
OF CLASS AND PAGA ACTION
SETTLEMENT AND RELEASE**

I.**PREAMBLE**

1. This Settlement Agreement (“Settlement Agreement,” “Settlement,” “Agreement” or “Joint Stipulation”) is entered into between Plaintiff Jose Soto Rodriguez (the “Named Plaintiff” or “Plaintiff”), individually and as Class Representative on behalf of putative Class Members as further defined in Section III of this Agreement (collectively, with the Named Plaintiff, the “Settlement Class”), on the one hand, and Defendant, Wedge Roofing, Inc., its present and former parent companies, affiliates and its present owners, former owners, subsidiaries, shareholders, officers, directors, employees, agents, attorneys, insurers, successors, and assigns and any individual or entity which could be jointly liable with any of them (hereinafter “Wedge Roofing,” “Defendant,” or “Released Parties”), on the other hand. The Settlement Class and Defendant will be referred to collectively herein as the “Settling Parties” or the “Parties.”

2. The Named Plaintiff is a former employee of Defendant who filed a Complaint entitled *Jose Soto Rodriguez v. Wedge Roofing, Inc.*, on November 5, 2020, in San Francisco County Superior Court, and a First Amended Complaint on June 3, 2021 (“the “Action”).

3. The Action seeks damages for Named Plaintiff and putative Class Members for alleged minimum wage violations, unpaid wages, unpaid overtime, noncompliant and missed meal and rest periods, unreimbursed expenses, waiting time penalties, wage statement penalties, penalties under the Labor Code and California Industrial Welfare Commission (“IWC”) wage orders, violation of the Business and Professions Code §17200, *et seq.*, and penalties under the Private Attorneys General Act of 2004 (“PAGA”). Defendant expressly denies all the allegations in the Action and makes no admission of liability or wrongdoing.

4. The “Class Period” refers to the time period of November 5, 2016, until preliminary approval of this class and representative action settlement.

5. The “PAGA Period” refers to the time period of October 2, 2019, until preliminary approval of this class and representative action settlement.

6. Prior to mediating the Action, the Parties engaged in extensive discovery, including the exchange of thousands of pages of documents and data related to the time and pay records of putative

1 Class Members and Defendant's corporate-wide policies. Defendant also obtained settlement releases
2 from forty-two (42) putative class members.

3 7. On September 30, 2021, the Settling Parties attended an all-day private mediation
4 before the Honorable George C. Hernandez (Retired) of ADR Services, Inc. This mediation was hotly
5 contested, and the Parties were unable to reach an agreement after a full day of mediation. However,
6 settlement discussions between the parties continued for a week thereafter and the Settling Parties
7 were able to reach a settlement in principal on October 11, 2021.

8 8. The Settling Parties have now agreed to avoid further litigation and to settle and resolve
9 the Settlement Class' claims against Defendant as set forth in this Settlement Agreement.

10 9. This Agreement shall become effective upon the "Effective Date," as set forth below.
11 The Settling Parties hereby agree to do all things and to engage in all procedures reasonably necessary
12 and appropriate to obtain final Court approval of this Agreement, in consideration for: (a) the payment
13 by Defendant of the consideration described herein, subject to the terms, conditions, and limitations
14 of this Agreement; and (b) the release by Plaintiff and members of the Settlement Class, as described
15 herein.

16 II.

17 PAYMENTS TO THE SETTLEMENT CLASS, CLASS COUNSEL, NAMED 18 PLAINTIFF, AND THE SETTLEMENT ADMINISTRATOR

19 10. Subject to Court approval, and the provisions of this Agreement, Defendant agrees to
20 pay Five Hundred Thousand Dollars (\$500,000.00) (the "Gross Settlement Amount" or "GSA") to be
21 paid in consideration for the settlement of the Action and the related release of claims the members of
22 the Settlement Class may have against Defendant, as described herein.

23 11. The Gross Settlement Amount is the maximum amount that Defendant shall be required
24 to pay for settlement of the Action, including, but not limited to, the employer's share of any payroll
25 taxes, including, but not limited to, Medicare taxes, Social Security Taxes, federal unemployment
26 taxes, state unemployment taxes, and employment training taxes (collectively, "Payroll Taxes"), on
27 all wages paid as part of the settlement of the Action. The GSA will cover compensation to the
28 Settlement Class, payment to the LWDA and the Settlement Class for PAGA claims for Class
3.

1 Members who are PAGA Aggrieved Employees, additional compensation to the Named Plaintiff as
2 Class Representative, the cost of claims administration and notice, attorneys' fees and reimbursement
3 of litigation costs and expenses to Class Counsel, and any and all other expenses relating to settlement
4 of this Action.

5 **III.**

6 **CLASS SETTLEMENT FOR CERTIFICATION PURPOSES ONLY**

7 12. Solely for the purpose of effectuating this Settlement, and subject to Court approval,
8 the Settling Parties hereby stipulate to certification of the following Settlement Class, which consists
9 of 75 individuals:

10 All persons who are currently employed, or formerly have been employed,
11 as non-exempt hourly employees engaged in roofing services by Defendant
12 in California, at any time from November 5, 2016, through the date of the
13 Court's preliminary approval of this Action.

14 Settlement Class Members who also worked during the PAGA Period (which refers to the time
15 period of October 2, 2019, until preliminary approval of this Action as provided in Paragraph 5 above),
16 are "PAGA Aggrieved Employees" and will be settling PAGA claims as described herein.

17 13. The above-described payments by Defendant, the certification of the Settlement Class,
18 the Settling Parties' settlement of the Action, and their rights and obligations hereunder, are contingent
19 upon final approval by the Court of this Agreement.

20 14. In the event that: (1) the Court does not approve this Joint Stipulation and execute an
21 Order of Final Approval; (2) the Court does not finally approve of the settlement as proposed by the
22 Parties; (3) the Order of Final Approval as submitted by the Parties does not become final for any
23 reason, or the terms and conditions set forth in this Joint Stipulation are modified in any material
24 respect; or (4) the Order of Final Approval, as defined herein, does not occur, this Joint Stipulation
25 shall be deemed null and void and shall be of no force or effect whatsoever, and shall not be admitted,
26 referred to, or utilized by any Party for any purpose whatsoever.

27 15. Defendant denies all of Plaintiff's claims as to liability and damages, as well as
28 Plaintiff's claims that any appropriate class may exist, and Defendant expressly reserves all rights to

1 challenge all such claims upon all procedural and substantive grounds, including the assertion of any
2 and all defenses, in the event that this settlement is not approved by the Court or is otherwise not
3 consummated. Moreover, this Joint Stipulation is for the purpose of settlement only, and the Court
4 and the Parties agree that the Joint Stipulation, Order of Preliminary Approval, Order of Final
5 Approval, and Final Judgment are made only for the purposes of settlement and are not determinative
6 of the propriety of the class claimed by Plaintiff or any class, other than in connection with the
7 settlement, and will not have any collateral estoppel or res judicata effect on any class certification
8 issue in any future claim or action, except a claim or action based on or barred by the Order of Final
9 Approval.

10 **IV.**

11 **APPOINTMENT OF NAMED PLAINTIFF'S COUNSEL AS SETTLEMENT CLASS**
12 **COUNSEL**

13 16. Subject to the Court's approval, the Settling Parties hereby stipulate to the Court's
14 appointment of Settlement Class Counsel as follows: Macias Rodriguez Adams LLP.

15 **V.**

16 **SETTLEMENT APPROVAL PROCEDURES, APPOINTMENT OF SETTLEMENT**
17 **ADMINISTRATOR, AND NOTICE TO CLASS MEMBERS**

18 17. The Settling Parties' settlement of the Action, and their rights and obligations
19 hereunder, are expressly conditioned on both the Court's preliminary and final approval of this
20 Settlement as to the Settlement Class defined in Section III of this Agreement. Preliminary approval
21 shall be through the entry of an "Order of Preliminary Approval," substantially in the form and content
22 of **Exhibit A** hereto.

23 18. Class Counsel shall file a motion with the Court for preliminary approval of the
24 Settlement Agreement, and for an order certifying the Settlement Class for settlement purposes only
25 and setting a date for the settlement fairness hearing ("Final Approval Hearing"). In conjunction with
26 this request, Class Counsel shall submit this Agreement and supporting papers, including proposed
27 forms of all notices and other documents, as attached hereto, necessary to implement the Settlement
28 Agreement. The Order for Preliminary Approval shall provide for notice of the Agreement and related
5.

1 matters ("Class Notice") to the Settlement Class as specified herein, including notice of the procedure
2 to withdraw from the Settlement Class or object to the Settlement (with regard to the Settlement Class,
3 with the exception of the Named Plaintiff). Said Class Notice shall be substantially in the form
4 attached hereto as **Exhibit B**, and as further described in this Agreement.

5 19. The Settling Parties and their counsel shall use their best efforts to cause the Court to
6 give preliminary and final approval to this Settlement Agreement as promptly as practical, to take all
7 steps contemplated by this Settlement Agreement to effectuate its terms and conditions, to perform all
8 acts and execute and deliver all documents, data, and declarations necessary to effectuate all provisions
9 of this Settlement Agreement, including but not limited to declarations from the Settling Parties in
10 support of class certification, and to oppose any appeal by any objector ("Mutual Full Cooperation").

11 20. Subject to Court approval, the Settling Parties agree that Simpluris will be appointed
12 as Settlement Administrator. Simpluris has agreed to cap its fees at Three Thousand One Hundred
13 Fifty Dollars and Zero Cents (\$3,150.00). The Settlement Administrator shall be paid from the GSA.
14 The Settlement Administrator will be responsible for calculating the monies to be made available to
15 each putative member of the Settlement Class and PAGA payments to be made to PAGA Aggrieved
16 Employees; emailing and mailing the class notices; receiving and logging the Requests for Exclusion;
17 researching and updating addresses through skip-traces and similar means; answering questions from
18 Settlement Class Members; reporting on the status of the Settlement to the Settling Parties; providing
19 the Settling Parties with data regarding the filing of Requests for Exclusion, and the calculation of
20 distributions; establishing and maintaining a noninterest-bearing distribution account for purposes of
21 distributing settlement checks, PAGA payments, and distributions of attorneys' fees, costs, and
22 Enhancement Awards; calculating withholding amounts and other tax obligations; handling reporting
23 obligations, including processing 1099s and W-2s; and performing such other tasks as the Settling
24 Parties may direct.

25 21. Not later than ten (10) calendar days after receipt of notice of the Court's entry of an
26 Order of Preliminary Approval, Defendant must provide to the Settlement Administrator, in Excel or
27 other usable electronic format, a spreadsheet that contains the name, last known email and mailing
28 address, phone number, social security number, dates of employment, number of weeks worked for
6.

each Settlement Class Member, and number of PAGA pay periods assigned to each PAGA Aggrieved Employee which shall consist of the seven (7) day pay periods during which PAGA Aggrieved Employees worked during the PAGA Period (the "Settlement Class Member List").

22. Defendant shall meet-and-confer with the Settlement Administrator regarding the format of the spreadsheet referenced in Paragraph 21 of this Agreement and shall cooperate to provide any additional information which the Settlement Administrator may request that is reasonable and necessary for the purpose of giving Class Notice and otherwise administering this Agreement.

23. Within twenty (20) calendar days of entry of the Order of Preliminary Approval, the Settlement Administrator will email and mail the notice and exclusion form to the Class Members. The Notice shall specify the process by which a Class Member may exclude themselves from the Settlement.

24. The Class Notice shall be accompanied by a statement (a "Request for Exclusion"), in the form and content of **Exhibit C** hereto, which a putative member of the Settlement Class may fill out and return to the Settlement Administrator indicating that the individual does not wish to participate in this Agreement in any way and instead wishes to preserve his/her rights and be excluded from the Settlement Class. A Request for Exclusion may be submitted via email or via mail. To be effective, a Request for Exclusion must be emailed or postmarked no later than the forty-five (45) calendar days after the date that Class Notice is first emailed and mailed (the "Exclusion Deadline"). For all Notice materials that are returned to the Settlement Administrator because the address is wrong, the Settlement Administrator shall take additional reasonable steps to try and locate current addresses and resend the Notice materials to any current addresses obtained. To that end, the Settlement Administrator shall re-mail Notice materials to such addresses within five (5) calendar days of the receipt of any Notice materials returned as undelivered and shall indicate on all re-mailed Notices that the response deadline for the affected Settlement Class Member is extended by fifteen (15) additional days. Settlement Class Members who are PAGA Aggrieved Employees shall receive their respective shares of the PAGA payments regardless of whether they submit a valid and timely Request for Exclusion.

25. The Class Notice shall indicate that all members of the Settling Class shall have the

1 right to file written objections to the Settlement and/or to appear at the Final Approval Hearing (the
2 then-current date of which shall be included in the Class Notice). Written objections, if any, must be
3 submitted to the Settlement Administrator, and emailed or mailed with a postmark to the contact
4 persons set out in Paragraph 52, no later than forty-five (45) calendar days after the date that Class
5 Notice is first mailed (the "Objection Deadline").

6 26. The Class Notice shall contain the releases against Defendant contained in Paragraphs
7 47 and 48 of this Agreement, and an easily understood statement alerting putative members of the
8 Settlement Class that by failing to submit a Request for Exclusion the individual is executing a release
9 and waiver of all such claims the employee may have against Defendant, whether or not they receive
10 a portion of the Net Settlement Amount. The Class Notice shall also inform Settlement Class Members
11 who are also PAGA Aggrieved Employees that they will receive their respective shares of the PAGA
12 payments regardless of whether they submit a valid and timely Request for Exclusion.

13 27. The Settlement Administrator shall provide written notice to Class Counsel and
14 Defendant no later than five (5) business days after the Exclusion Deadline – as defined in Paragraph
15 24 of this Agreement – with a complete list of all putative members of the Settlement Class who have
16 timely requested exclusion from the class. If putative members of the Settlement Class representing
17 more than an aggregate total of twenty (20%) percent of the verified work weeks for the Settlement
18 Class timely and properly submit Requests for Exclusions, Defendant may, at its election, rescind the
19 Settlement Agreement and all actions taken in furtherance of it will be thereby null and void.
20 Defendant must exercise this right of rescission, in writing, to Plaintiff's counsel within ten (10)
21 calendar days after the Settlement Administrator notifies the Settling Parties of the final report of the
22 total number of opt outs.

23 VI.

24 THE EFFECTIVE DATE AND TERMINATION

25 28. If the Settling Parties do not void the Settlement pursuant to Paragraph 32, this
26 Agreement shall become final and effective (the "Effective Date") on the occurrence of all of the
27 following events described in Paragraphs 29 through 31:

28 29. The Settlement is approved by the Court;
8.

1 30. Entry by the Court of an Order and Judgment Granting Final Approval. The parties
2 shall jointly prepare a proposed Order and Judgment to this effect, which shall reflect, inter alia, the
3 Court's approval of the settlement pursuant to the terms of this Agreement. Said proposed Order and
4 Judgment shall be filed with the Court no later than 15 calendar days before the Final Approval
5 Hearing.

6 31. The time for appeal from the Court's approval of the Settlement as described in
7 Paragraph 29 hereof and entry of a final judgment as described in Paragraph 30 hereof has expired or,
8 if appealed, either all such appeals have been dismissed prior to resolution by the appellate court or
9 approval of this Settlement Agreement and final judgment has been affirmed in its entirety by the court
10 of the last resort to which such appeal has been taken and such affirmance is no longer subject to
11 further appeal or review, by certiorari or otherwise.

12 32. If any Court declines to enter the Preliminary Approval Order, the Final Approval
13 Order, or final judgment in substantially the form submitted by the Settling Parties, or if the Settlement
14 as agreed does not become final because of appellate court action or any other reason, this Settlement
15 Agreement, and any and all obligations of Defendant to pay any monies hereunder shall become null
16 and void and shall terminate. The terminating Settling Party shall give to the other Settling Party
17 (through its counsel) written notice of its decision to terminate no later than ten (10) calendar days
18 after receiving notice that one of the enumerated events has occurred. Termination hereunder shall
19 have the following effects:

20 (a) The Settlement Agreement shall be terminated and shall have no force or
21 effect, and no Party shall be bound by any of its terms.

22 (b) Defendant shall have no obligation to make any payments to any party, Class
23 Member, or attorney.

24 (c) The Preliminary Approval Order, Final Approval Order, and final judgment,
25 including any order of class certification, shall be vacated.

26 (d) The Settlement Agreement and all negotiations, statements, and proceedings
27 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall
28 be restored to their respective positions prior to the Settlement.

(e) Except as otherwise discoverable and subject to all limitations described herein, neither this Agreement, any ancillary documents, actions, statements, or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever.

VII.

ATTORNEYS' FEES, COSTS AND EXPENSES, AND ENHANCEMENT AWARDS

33. The Action alleges a claim for attorneys' fees and costs. The Settling Parties agree that any and all such claims for attorneys' fees and costs have been settled in this Agreement and are included in the settlement amount set forth in Paragraph 10 of this Agreement.

34. Class Counsel may petition the Court for attorneys' fees not to exceed thirty-five percent (35%) of \$500,000.00, including any interest, plus reasonable costs not to exceed \$7,500.00, subject to approval by the Court. Attorneys' fees paid pursuant to this Settlement Agreement shall be inclusive of all fees in this matter. Defendant agrees not to object to Class Counsel's fees of up to thirty-five percent (35%) of \$500,000.00 and reasonable costs approved by the Court not to exceed \$7,500.00. The Parties agree that the apportionment of attorneys' fees and costs among Class Counsel is an independent and separate agreement among Class Counsel. Any reduction by the Court of Class Counsel's claimed attorneys' fees and/or reasonable costs shall not be sufficient grounds to void the Settlement. Additionally, Class Counsel will petition the Court to pay the Settlement Administrator out of the GSA, which amount Simpluris has agreed to cap at \$3,150, and Defendant agrees not to object to that amount.

35. Class Counsel may apply to the Court for an additional award to Named Plaintiff not to exceed Twelve Thousand Five Hundred U.S. dollars and no cents (\$12,500.00) as reasonable additional compensation for the time and effort expended by him in connection with the initiation and maintenance of the Action and in consideration for the claims released herein (the "Enhancement Award"). Defendant will not oppose Class Counsel's application under this Paragraph. Any Enhancement Award will be in addition to any amount Named Plaintiff may be entitled to receive on account of his own individual claims pursuant to Section IX of this Agreement; however, the releases

1 set out in Paragraphs 47 - 49 of this Agreement shall bind Named Plaintiff, and the Enhancement
2 Award shall be adequate consideration for said release.

3 36. Any awards or amounts pursuant to Paragraphs 34 and/or 35 will be funded solely and
4 completely from the GSA.

5 **VIII.**

6 **PLAN OF ALLOCATION AND DISTRIBUTION OF THE SETTLEMENT FUND**

7 37. The GSA shall be allocated, in order, as follows:

8 (a) First, to attorneys' fees, costs and expenses of Class Counsel, as may be
9 awarded by the Court pursuant to Paragraph 34 of this Agreement;

10 (b) Second, to any Enhancement Award, as may be awarded by the Court pursuant
11 to Paragraph 35 of this Agreement;

12 (c) Third, to costs of settlement administration pursuant to Paragraph 34 of this
13 Agreement; and

14 (d) Fourth, PAGA payments to the State of California Labor & Workforce
15 Development Agency ("LWDA") and PAGA Aggrieved Employees in the total amount of
16 Fifty Thousand Dollars (\$50,000.00), which is intended to be distributed to Settlement Class
17 Members who are also PAGA Aggrieved Employees and the LWDA in the following amounts
18 for settlement of the Labor Code Private Attorneys General Act of 2004 ("PAGA") (Labor
19 Code §§ 2698, *et seq.*) claims (or such other amount, if any, ordered by the Court): (i) Twelve
20 Thousand Five Hundred Dollars (\$12,500) to PAGA Aggrieved Employees (regardless of
21 whether they have submitted a valid Request for Exclusion), divided among PAGA Aggrieved
22 Employees in proportion to the respective number of PAGA pay periods assigned or credited
23 to each individual PAGA Aggrieved Employee, and (ii) Thirty-Seven Thousand Five Hundred
24 Dollars (\$37,500.00) to the LWDA;

25 (e) Fifth, to the "Net Settlement Amount" or "NSA." The Net Settlement Amount
26 shall be defined as the Gross Settlement Amount less attorneys' fees, any and all costs and
27 expenses, costs of settlement administration, Enhancement Award to the Class Representative,
28 and PAGA payments to the LWDA and PAGA Aggrieved Employees. The Parties agree that

1 100% of the Net Settlement Amount will be distributed as described in Paragraph 38.

2 38. The NSA shall be distributed by the Settlement Administrator as follows:

3 (a) First, the Settlement Administrator shall email and mail a Notice and Request
4 for Exclusion form to each Settlement Class Member via First Class U.S. Postage.

5 (b) Any Notice materials that are returned as undeliverable by the Postal Service
6 with a forwarding address will be re-mailed to the new address and the Settlement
7 Administrator will update the Settlement Class Member List accordingly.

8 (c) For any Notice materials that are returned as undeliverable by the Postal Service
9 without a forwarding address, the Settlement Administrator will perform a "skip trace" or
10 equivalent address search to locate the most accurate and updated address information. The
11 Settlement Administrator shall then re-mail the Notice materials to any new addresses found
12 within five (5) calendar days of receipt of any Notice materials returned as undelivered and
13 update the Settlement Class Member List.

14 (d) The Settlement Administrator shall then track all Settlement Class Members
15 that it did not locate with its address search, as well as all whose re-mailed Notice materials
16 were once again returned by the Postal Service and compile a list of these Settlement Class
17 Members (the "Known Bad Address List").

18 (e) The Settlement Administrator shall also track all Requests for Exclusion filed
19 by the Exclusion Deadline and compile a list of all Settlement Class Members requesting
20 exclusion (the "Exclusion List").

21 (f) The Settlement Administrator shall then remove from the Settlement Class
22 Member List all Settlement Class Members who appear on the Known Bad Address List and
23 Exclusion List. This new list shall be called the Member Distribution List.

24 (g) Payments to Settlement Class Members from the NSA shall only be made to
25 Settlement Class Members appearing on the Member Distribution List ("Qualified Members").

26 39. Defendant agrees that the Settlement Administrator shall allocate and distribute 100%
27 of the NSA to individuals appearing on the Member Distribution List. Payment to Settlement Class
28 Members shall be on a pro-rata basis depending on the number of weeks each individual worked. No
12.

monies will revert back to Defendant. In allocating and making the distribution to individuals appearing on the Member Distribution List, for those individuals who have already received payments through the initial settlement process (42 individuals in total), the Settlement Administrator will first subtract any initial settlement amounts already paid to said individuals and pay any remaining balance.

40. The Settlement Administrator shall make payments from the NSA only pursuant to the terms of this Settlement Agreement and only after the Effective Date.

41. For the purposes of calculating applicable taxes:

(a) From the NSA, thirty percent (30%) of each Settlement Payment shall be allocated to unpaid wages and seventy percent (70%) to penalties and interest. The Settlement Administrator shall make appropriate withholdings for the payment of taxes and other required withholdings from the NSA to cover the employer's share of any Payroll Taxes. The Qualified Members shall be individually responsible for the employee's share of taxes attributable to receipt of the Qualified Member's payment. The Settlement Administrator shall be responsible for determining the employer share of any applicable payroll taxes attributable to the Class Member Payouts, which Defendant shall deduct from its deposit to the QSF and remit, along with the appropriate documentation, to the relevant taxing agencies in accordance with applicable laws and regulations. Defendant shall provide the Settlement Administrator with any information reasonably necessary to perform the calculations discussed in this Paragraph.

(b) All PAGA payments to PAGA Aggrieved Employees shall be treated as amounts due to PAGA Aggrieved Employees as part of the state of California's release of PAGA claims arising out of the Action and shall be characterized as penalties (one hundred percent [100%]).

(c) One hundred percent (100%) of the Enhancement Award will be allocated to ordinary income, payable on a Form 1099.

42. The final approval hearing will be set within forty-five (45) calendar days from the date that notice is first emailed and mailed or as soon as the Court is available. Upon final approval, and the expiration of any appeal period or if there is an appeal, the resolution of any appeal upholding the final approval, Defendant shall have forty-five (45) calendar days to deposit Five Hundred Thousand

1 Dollars (\$500,000.00) into an escrow account set up by the Settlement Administrator, less Defendant's
2 employer share of the Payroll Taxes. Defendant shall authorize the payments due to Plaintiff, Class
3 Counsel, the Settlement Administrator, PAGA Aggrieved Employees' shares of the PAGA payments,
4 the LWDA's share of the PAGA payments, and the Qualified Members. All settlement checks which
5 are not cashed within One Hundred and Eighty (180) calendar days of payment to Settlement Class
6 Members shall be donated to Bay Area Legal Aid, a non-profit organization which, among other
7 things, offers legal services to low income members in the Bay Area, and with respect to which the
8 Parties and their counsel have no connection or affiliation.

9 43. The Settlement Administrator shall deposit the GSA, less Defendant's share of the
10 Payroll Taxes attributable to same, in a noninterest-bearing distribution account immediately upon
11 receipt of the fund transfers discussed in Paragraph 42. The Settlement Administrator shall pay Class
12 Member Payouts, less applicable taxes and withholdings, by mailing the payments via first-class mail
13 to the Qualified Members of the Settlement Class within five (5) business days of receipt of the total
14 GSA (*i.e.*, after the settlement deposit by Defendant).

15 44. The Settlement Administrator shall pay Class Counsel any attorneys' fees, costs and
16 expenses approved by the Court within five (5) business days of receipt of the total GSA (*i.e.*, after
17 the settlement deposit by Defendant).

18 45. The Settlement Administrator shall pay Named Plaintiff any Enhancement Award
19 approved by the Court within five (5) business days of receipt of the total GSA (*i.e.*, after the settlement
20 deposit by Defendant).

21 46. The Settlement Administrator shall pay the LWDA and to PAGA Aggrieved
22 Employees any amount allocated to settlement of the PAGA claims approved by the Court within five
23 (5) business days of receipt of the total GSA (*i.e.*, after the settlement deposit by Defendant).

24 **IX.**

25 **RELEASES**

26 47. Settlement Class Members' Released Claims: Upon the Effective Date, the claims
27 released by the Class Members who do not opt out of this Settlement are all claims against Defendant
28 as alleged in the First Amended Complaint, or could have been alleged, based upon the same factual
14.

1 predicate as the claims raised in the First Amended Complaint, including, but not limited to, claims
2 for unpaid wages, overtime pay, minimum wage, regular wages, vacation pay, sick pay, noncompliant
3 and/or missed meal period pay, noncompliant and/or missed rest period pay, unreimbursed expenses,
4 claims for interest, attorneys' fees, costs, penalties, waiting time penalties, wage statement penalties,
5 premium pay, Business & Professions Code Section 17200 *et seq.*, and penalties under PAGA (Private
6 Attorney General's Act), (collectively, the "Released Claims").

7 48. Release of PAGA Claims: Upon the Effective Date, the State of California, by and
8 through Plaintiff, its deputized PAGA representative, shall be deemed to have released its PAGA
9 claims against Defendant and the Released Parties arising during the PAGA Period. Neither the
10 Settlement Administrator's distribution of individual PAGA payment checks to, nor the use or
11 enjoyment of any individual PAGA payment by PAGA Aggrieved Employees shall constitute
12 consideration offered or exchanged for the release of any PAGA Aggrieved Employee's individual,
13 private rights of action against any person. The State of California's release of PAGA claims shall
14 include all claims that arise under PAGA during the PAGA Period as alleged in Plaintiff's October 2,
15 2020, PAGA notice to the LWDA and to Defendant, to the extent such claims were pled, or could
16 arise out of the facts pled in the operative Complaint filed in the Action. PAGA Aggrieved Employees
17 shall receive their respective shares of the PAGA payments whether or not they submit a valid and
18 timely Request for Exclusion, and based on the State of California's release of PAGA claims as
19 provided in this Paragraph, PAGA Aggrieved Employees will not be able to pursue any of the released
20 PAGA claims as representatives of the State of California, private attorneys general, or otherwise –
21 i.e., claims that arise under PAGA during the PAGA Period as alleged in Plaintiff's October 2, 2020
22 PAGA notice to the LWDA and to Defendant, to the extent such claims were pled, or could arise out
23 of the facts pled in the operative Complaint filed in the Action.

24 49. Waiver of California Civil Code Section 1542. As to the claims of Named Plaintiff
25 Jose Soto Rodriguez, shall be deemed to have, and by operation of final judgment shall have, expressly
26 waived and relinquished to the fullest extent permitted by law the provisions, rights and benefits of
27 Section 1542 of the California Civil Code, which provides as follows:
28

X.

50. Settlement Fair and Reasonable

51. Settlement the Result of Arm's-Length Bargaining.

52. Notices.

Except for Settlement Class Member notices which are required herein to be made to or by the Settlement Administrator, all notices, requests, demands, and other communications related to or in connection with this Agreement shall be in writing, and shall be provided by appropriate method depending on the urgency (e.g., personal delivery, facsimile, overnight delivery, or first-class U.S. mail) to:

TO THE SETTLING CLASS:

Jose Macias, Jr.
MACIAS RODRIGUEZ ADAMS LLP
1550 The Alameda, Suite #332
San Jose, California 95126
Tel: 408-455-1243
Email: jose@mra-llp.com

TO DEFENDANT:

Natalie Fujikawa
GORDON REES SCULLY MANSUKHANI, LLP
275 Battery Street, Suite #2000
San Francisco, California 94111
Tel: 415-986-5900
Email: nfujikawa@grsm.com

53. Modification by Writing Only.

This Agreement, and its terms and Exhibits, may be modified only in a writing signed by all counsel of record for the Settling Parties, and will not become effective unless and until approved by the Court or otherwise as ordered by the Court.

54. Representations.

1. The Named Plaintiff, on behalf of himself and the Settlement Class, has expressly authorized Class Counsel to take all appropriate actions required or permitted to be taken pursuant to this Agreement to effectuate its terms.

(a) Each attorney executing this Agreement or any of its Exhibits on behalf of any Settling Party hereto hereby warrants that full authority to do so has been given by his/her client(s).

(b) The Settling Parties represent and agree that neither have received and/or relied upon any advice and/or representations from the other party and/or its attorneys as to the necessity for withholding or the taxability of the consideration paid pursuant to this Agreement, whether pursuant to federal, state or local income tax statutes or otherwise.

55. Mutual Cooperation. The Settling Parties and their counsel shall use their best efforts to cause the Court to give preliminary and final approval to this Settlement Agreement as promptly as practical, to take all steps contemplated by this Settlement Agreement to effectuate its terms and

conditions, to perform all acts and execute and deliver all documents, data and declarations necessary to effectuate all provisions of this Settlement Agreement, including but not limited to declarations from the Settling Parties in support of class certification, and to oppose any appeal by any objector (“Mutual Full Cooperation”).

56. Construction and Integration.

This Agreement, including its exhibits, constitutes the entire agreement and understanding between the parties, and supersedes any previous agreements or understandings between the Settling Parties. No representations, warranties, or inducements have been made to any party concerning the subject matter of this Agreement and/or exhibits other than the representations, warranties and covenants contained in such documents. This Agreement and related exhibits shall be construed each as a whole, and with reference to one another, according to their fair meaning and intent. Each of the Settling Parties represent that its/their counsel has participated and cooperated in the drafting and preparation of this Agreement and related exhibits; hence, in any construction to be made of this Agreement and/or exhibits, the same shall not be construed against any party on the basis that said party was the drafter.

57. Governing Law.

This Agreement and the Exhibits hereto shall be deemed to have been negotiated, executed and delivered, and to be wholly performed, in the State of California. The rights and obligations of the parties under the Agreement shall be construed and enforced in accordance with, and be governed by, the substantive and procedural laws of the State of California without regard to California’s choice of law principles.

58. No Public Comment

Other than necessary disclosure made to or by order of the Court, necessary disclosures to be made to the LWDA, or to the Settlement Class members, Named Plaintiff and Class Counsel shall not directly or indirectly disclose the facts, Gross Settlement Amount, or terms of this class and representative action settlement to the media, the press, or on any website, or otherwise issue any public statements or advertisements in any form or media concerning the settlement. This provision shall not prohibit Class Counsel from responding to specific questions from Settlement Class

1 members, and nothing herein shall be interpreted as preventing any good faith communication by
2 Class Counsel and/or any Parties with the Court, the Settlement Class members, or the Claims
3 Administrator. Nothing in this provision shall be construed as preventing the Parties from disclosing
4 the Settlement to third parties without identifying the case name, case number, or names of any of the
5 Parties or Released Parties. Class Counsel shall also be allowed to refer to the Action and Settlement
6 in other litigations to support their adequacy as attorneys for a putative class or PAGA group or to
7 justify an award of attorneys' fees.

8 59. Counterparts.

9 This Agreement may be executed in one or more faxed counterparts, which may be
10 filed with the Court. All executed counterparts, and each of them, shall be deemed to be one and the
11 same instrument. Once available, a complete set of executed counterparts shall be filed with the Court.
12 Copies of the complete set of executed counterparts may be used for all purposes in lieu of the originals
13 and shall have the same force and effect as the originals.

14 60. Attorneys' Fees, Costs and Expenses.

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

18 61. Continuing Jurisdiction.

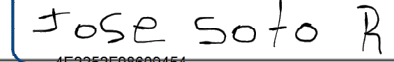
19 Except as otherwise specifically provided for herein, the Superior Court of the State of
20 California, County of San Francisco shall retain jurisdiction to construe, interpret and enforce this
21 Agreement and the settlement, to supervise all notices, the administration of the settlement and this
22 Agreement and distribution of the Settlement Fund, and to hear and adjudicate any dispute arising
23 from or related to the settlement and/or this Agreement.

24 62. The signatories hereto represent and warrant that they have the authority to sign on
25 behalf of their designated parties. This Settlement Agreement is intended to have a binding effect to
26 the maximum extent permitted under state and federal law.

1 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly-authorized
2 representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and
3 with a full understanding of its consequences.

4
5 Dated: 7/1/2022

DocuSigned by:

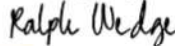


4E2252F98609454...

Jose Soto Rodriguez, individually, and on behalf
of the Settlement Class and as Class Representative

7
8 Dated: July 1, 2022 | 8:20 AM PDT

DocuSigned by:



B1AD4864309741B

Ralph Wedge, on behalf of Wedge Roofing, Inc.

9
10 **APPROVED AS TO CONTENT AND FORM:**

11 Dated: July 1, 2022



12
13 JOSE MACIAS, JR.
14 HECTOR RODRIGUEZ
15 TRAVIS M. ADAMS
16 **MACIAS RODRIGUEZ ADAMS LLP**
Attorneys for Plaintiff and the Putative Class

17 Dated: July 1, 2022



18 LINDA M. MORONEY
19 NATALIE B. FUJIKAWA
20 **GORDON REES SCULLY MANSUKHANI, LLP**
Attorneys for Defendant