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Joanne Butler; Robert Butler; Steve Wooten; Kenneth McPherson

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

NEJDEH VARTANIAN, individually and on
behalf of others similarly situated, and as a
private attorney general,

Plaintiff,

v.

FORREST MACHINING, INC., a California
corporation; JOANNE BUTLER, an individual;
ROBERT BUTLER, an individual; STEVE
WOOTEN, an individual; KENNETH
MCPHERSON, an individual; and DOES 1
through 50, inclusive,

Defendants.

CARLOS AGUILAR, JR., an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

FORREST MACHINING INC, a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Lead Case No. 20STCV28138

CLASS ACTION

Assigned for all Purposes to the Hon.
Elihu M. Berle (Dept. 6)

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT**

Vartanian Complaint Filed: July 27, 2020
Vartanian FAC Filed: October 5, 2020

Aguilar, Jr. Complaint Filed: Nov. 30, 2020
Aguilar, Jr. FAC Filed: Mar. 29, 2021

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JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to its terms and conditions and the approval of the Court, this Joint Stipulation and Settlement Agreement (hereinafter the “Settlement Agreement” or “Agreement”) is made and entered into by and among Plaintiffs Nejdeh Vartanian and Carlos Aguilar, Jr. (hereinafter the “Plaintiffs”), individually and on behalf of the Settlement Class, as defined herein, and Defendants Forrest Machining, Inc., Joanne Butler, Robert Butler, Steve Wooten, and Kenneth McPherson (hereinafter the “Defendants” or “FMI”). Plaintiffs and Defendants are jointly referred to in this Settlement Agreement as the “Parties,” and each of them as a “Party.”

1. **DEFINITIONS**

1.1 The term “**Agreement**” means this Settlement Agreement.

1.2 The term “**Attorneys’ Fees and Costs**” means the amount of attorneys’ fees and costs and expenses to be requested by Class Counsel, subject to Court approval, in accordance with Subsection 4.4 of this Agreement.

1.3 The term “**Claimant**” and “**Settlement Class Member**” means any Class Member who does not opt-out of the Settlement.

1.4 The term “**Claims Administrator**” means Phoenix Settlement Administrators (hereinafter “PSA”), the entity agreed to by the Parties, subject to Court approval, which will perform the duties of, among other things: (i) translating the Notice into Spanish; (ii) mailing the Notice in English and Spanish to Class Members; (iii) performing an NCOA search and skip-tracing; (iv) tracking and addressing Opt-Out Letters, Objections, and workweek disputes/LC 203 subclass eligibility; (v) notifying the Parties regarding submitted Opt-Out Letters, Objections, and workweek count/LC 203 subclass eligibility disputes consistent with this Agreement; (vi) issuing payments consistent with this Agreement; and, (vii) determining any appropriate tax withholdings from the wage portion of payments to Settlement Class Members, making the appropriate payments based on withholdings and the employer’s share of payroll taxes, and issuing any required tax paperwork.

1.5 The term “**Claims Period**” means the sixty (60) day time-period for Settlement Class members to submit an Opt-Out Letter, an Objection to the Settlement, or to dispute the

workweeks/LC 203 subclass eligibility listed on the Class Notice.

1.6 The term “**Claims Deadline**” is the last day of the Claims Period, but as discussed in paragraph 5.3 below, there is an extension available in the event of a re-mailed Notice.

1.7 The term “**Complaints**” or “**Operative Complaints**” means the First Amended Complaint (“FAC”) filed on October 5, 2020, styled as *Nejdeh Vartanian v. Forrest Machining, Inc.; Joanne Butler; Robert Butler; Steve Wooten; Kenneth McPherson* (Case No. 20STCV28138) in the Superior Court of the State of California, County of Los Angeles and the FAC filed on March 29, 2021, styled as *Carlos Aguilar, Jr. v. Forrest Machining, Inc.* (Case No. 20STCV45450) in the Superior Court of the State of California, County of Los Angeles.

1.8 The term “**Class Counsel**” means the following counsel who, subject to Court approval, shall act as counsel for the Settlement Class: Law Offices of Eric A. Boyajian, APC; Dychter Law Offices, APC; and United Employees Law Group, PC.

1.9 The term “**Class**” or “**Class Member**” means all current and former non-exempt employees of FMI in California at any time since July 27, 2016 through the date of Preliminary Approval Order, but no later than September 30, 2021, *excluding* Mr. Vigen Zadourian who has his own pending individual action against FMI and is represented by separate counsel from the instant Class Counsel.

a. “**LC 203 subclass**” means Class Members who separated their employment from FMI anytime between July 27, 2017 through the date of Preliminary Approval Order, but no later than September 30, 2021.

1.9 The term “**Class Settlement Amount**” means the gross sum of Three Million Five Hundred Thousand Dollars (\$3,500,000.00), which shall be the sum paid by Defendants to settle this Litigation. The combined total of any Attorneys’ Fees and Costs approved by the Court, any Service Enhancement approved by the Court to the named Plaintiffs, Settlement Administration Costs approved by the Court, a payment to the State of California Labor and Workforce Development Agency (“LWDA”) pursuant to the California Private Attorneys General Act (“PAGA”), and the amounts paid to Settlement Class Members shall

all come out of the Class Settlement Amount and shall not exceed the Class Settlement Amount. The corporate payroll tax obligation on the “wage” portion of the settlement to Settlement Class Members shall be paid by Defendant *separate and apart* from the Class Settlement Amount and is not included in the Class Settlement Amount.

1.10 The term “**Court**” means the Superior Court of the State of California, County of Los Angeles, and any appellate court which may review any orders entered by the Court related to this Settlement.

1.11 The term “**Execution**” refers to the signing of this Agreement by all signatories hereto.

1.12 The term “**Final Judgment**” refers to the final judgment entered by the Court.

1.13 “**Final Approval Hearing**” means a hearing for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Settlement Agreement, including but not limited to with respect to allocations for attorneys’ fees and costs, pursuant to class action procedures and requirements; (ii) determining the good faith of the Settlement Agreement; and (iii) entering Judgment. This hearing is intended to be the final approval hearing required under California Rule of Court 3.769(a).

1.14 The term “**Litigation**” means *Nejdeh Vartanian v. Forrest Machining, Inc.; Joanne Butler; Robert Butler; Steve Wooten; Kenneth McPherson* (Case No. 20STCV28138) and the “related” action of *Carlos Aguilar, Jr. v. Forrest Machining, Inc.* (Case No. 20STCV45450) which are both pending in the Superior Court of the State of California, County of Los Angeles.

1.15 The term “**Named Plaintiffs**” means the named plaintiffs in the Litigation, Mr. Nejdeh Vartanian and Mr. Carlos Aguilar, Jr. The Named Plaintiffs will seek to be designated as Settlement Class Representatives for the Settlement Class.

1.16 The term “**Net Settlement Amount**” means the Class Settlement Amount minus the combined total of any attorneys’ fees and costs approved by the Court, the amount for settlement administration costs approved by the Court, the Service Enhancements approved by the Court, and the payment to the LWDA, pursuant to the PAGA. The employer’s share of corporate payroll tax obligations on the “wage” portion of the

settlement to the Settlement Class Members shall be paid *separate and apart* by Defendant.

1.17 The term “**Notice**” means a document which has been agreed to by the Parties and subject to the Court’s approval and which the Claims Administrator will mail to each Settlement Class Member, in both English and Spanish, explaining the terms of the Settlement, their respective weeks worked during the Class Period, their eligibility status regarding being an LC 203 subclass Class Member, their estimated share of the Net Settlement Amount, the opt-out procedure, the objection procedure, and the procedure related to disputing the stated number of eligible work weeks/LC 203 Subclass eligibility during the Class Period.

1.18 The term “**Notice and Administration Costs**” or “**Settlement Administration Costs**” means all costs incurred by the Claims Administrator, including but not limited to the cost to: compare the class list against the National Change of Address (“NCOA”) database maintained by the United States Postal Service; typeset, translate into Spanish, print, and mail the Notice to all Class Members in both English and Spanish; perform skip-tracing of returned mailings; calculating, tabulating, and mailing out payments to Class Members; payment of postage required to comply with this Agreement; responding to Class Member inquiries and addressing any challenges to the number of workweeks or LC 203 Subclass status; and all other expenses, including tax reporting and fees to be paid by the Claims Administrator, necessary to administer the Settlement in accordance with this Agreement. Settlement Administration Costs shall not exceed \$9,000.

1.19 The term “**Opt-Out Letter**” refers to a written request to “opt-out” or “exclude” oneself from the Settlement sent by any Class Member who elects to be excluded from the Settlement Class. A Class Member must submit an opt-out letter to the Claims Administrator to exclude himself or herself from the Settlement and from the release of claims pursuant to this Settlement. Those who submit a valid and timely Opt-Out Letter will not be considered part of the Settlement Class after their valid and timely Opt-Out Letter is received by the Claims Administrator and will have no standing to object to the Settlement.

1.20 “**Order Granting Final Approval of Class Action Settlement**” shall mean the order and

judgment to be entered by the Court titled “Order Granting Motion for Final Approval of Class Action Settlement” and “Judgment.” The “Judgment,” shall constitute approval pursuant to California Rule of Court 3.769(a).

1.21 The term “**Parties**” means the Named Plaintiffs and Defendants.

1.22 The term “**PAGA**” means the California Labor Code Private Attorneys General Act (California Labor Code §§ 2698, *et seq.*).

1.23 The term “**Released Claims**” has the definition provided in ¶ 7.1, below.

1.24 The term “**Service Enhancement**” means the amount of money to be requested by Class Counsel on behalf of Named Plaintiffs Nejdeh Vartanian and Carlos Aguilar, Jr., subject to Court approval, to compensate Named Plaintiffs for the efforts and risks they undertook on behalf of the Settlement Class.

1.25 The term “**Settlement**” means the compromise and settlement of the Litigation, as contemplated by this Agreement.

1.26 The term “**Settlement Class**” means all Claimants.

1.27 The term “**Settlement Class Period**” means the period of time from July 27, 2016 through the date of Preliminary Approval Order, but no later than September 30, 2021 which is the period of time applicable to the claims being released pursuant to Section 7 hereafter.

1.28 The term “**Settlement Class Representatives**” means Nejdeh Vartanian and Carlos Aguilar, Jr., who Class Counsel shall request be appointed by the Court as class representatives for purposes of the Settlement Class.

1.29 The term “**Settlement Disbursement Payment**” means the disbursements made by the Claims Administrator to Settlement Class Members, Class Counsel, the Settlement Class Representatives, the Claims Administrator, and the LWDA, pursuant to the Settlement, as specified in Section 6.3, below.

1.30 “**Final Effective Date**” or “**Effective Date**” refers to the date by which the following has occurred: (1) if no objections have been filed, the date of the Final Approval Order and Judgement; or (2) if objections are filed and overruled, and no appeal is taken, the Effective Date will be 65 calendar days after the entry of Judgment; or (3) in the event of an appeal

1 from the Court’s overruling of objections to the settlement, then the Effective Date will be
2 20 calendar days after the appeal is dismissed or after an appellate decision affirming the
3 Judgment become final and non-appealable. For purposes of determining the Final
4 Effective Date, the Parties agree that only California Courts have jurisdiction over any such
5 appeals, except for any appellate procedure over which the United States Supreme Court
6 may exercise jurisdiction.

7 **2. RECITALS**

8 2.1 On November 30, 2020, Plaintiff Carlos Aguilar, Jr. filed suit in the Superior Court of the
9 State of California, County of Los Angeles, against Defendant Forrest Machining, Inc.
10 (*Case No. 20STCV45450*) on behalf of a proposed class of all non-exempt hourly
11 employees working in the State of California at any time since November 30, 2016, for
12 multiple wage and hour claims, including but not limited to, failure to pay all straight-
13 time and overtime wages for all work performed; failure to provide compliant duty-free
14 meal breaks; failure to provide compliant duty-free rest periods; failure to reimburse all
15 incurred business expenses; and, derivative claims for the failure to provide accurate
16 itemized wage statements and failure to pay all wages upon separation of employment;
17 and claims under the Business & Professions Code § 17200, *et seq.* (“UCL”). On
18 November 30, 2020, Plaintiff Aguilar, Jr. submitted a notice of new claim to the Labor
19 and Workforce Development Agency (“LWDA”) in order to pursue a claim under the
20 Private Attorneys General Act (“PAGA”) based on the same claims. On March 29, 2021,
21 Plaintiff Aguilar, Jr. filed a First Amended Complaint (“FAC”) to include his PAGA
22 claim. This case was originally assigned to the Honorable Daniel J. Buckley (Dept. 1).
23 Counsel for Plaintiff Aguilar, Jr. and Counsel for Defendant Forrest Machining, Inc.
24 appeared on March 23, 2021, for the Initial Status Conference before Judge Buckley.
25 Thereafter, and based on the earlier filed *Vartanian* action, this matter was transferred to
26 the Honorable Elihu Berle (Dept. 6) and was designated a “related” action.

27 On July 27, 2020, Plaintiff Nejdeh Vartanian filed suit in the Superior Court of
28 the State of California, County of Los Angeles, against Defendants Forrest Machining,

1 Inc.; Joanne Butler; Robert Butler; Steve Wooten; and Kenneth McPherson (*Case No.*
2 *20STCV28138*) on behalf of a proposed class of all current and former non-exempt
3 employees of Defendants who were employed by Defendants in the State of California
4 during the Class Period, for multiple wage and hour claims, including but not limited to,
5 failure to provide compliant duty-free meal breaks; failure to pay all overtime wages;
6 failure to provide accurate itemized paystubs and failure to pay all wages upon separation
7 of employment; and claims under the Business & Professions Code § 17200, *et*
8 *seq.*(“UCL”). On July 29, 2020, Plaintiff submitted a notice of new claim to the Labor
9 and Workforce Development Agency (“LWDA”) in order to pursue a claim under the
10 Private Attorneys General Act (“PAGA”) based on the same claims. On October 5,
11 2020, Plaintiff Vartanian filed a First Amended Complaint (“FAC”) to include his PAGA
12 claim and to exclude Vigen Zadourian.

13 Plaintiff Vartanian initiated formal discovery in October 2020, following the
14 lifting of the plenary stay on his case. In response to Vartanian’s Counsel’s formal
15 discovery requests, Defendants,’ through prior defense counsel, produced the Class List
16 and some responsive documents. Vartanian’s Counsel then interviewed several Class
17 Members and continued to seek responsive documents from Defendants. In February
18 2020, Defendants and Vartanian then agreed to mediate the case with mediator Steven
19 Rottman, Esq. and Defendants agreed to produce more documents in advance of
20 mediation.

21 On July 15, 2021, after an exchange and analysis of documents and data, the
22 Parties attended a private mediation before a well-respected and experienced wage and
23 hour class action mediator, Steven Rottman, Esq. After a full-day mediation the parties
24 were able to reach an agreement on the principal terms and executed a Memorandum of
25 Understanding which called for an “all-in” non-reversionary settlement amount of Three
26 Million Five Hundred Thousand Dollars (\$3,500,000.00), with the corporate payroll tax
27 obligation on the "wage" portion of the settlement to the Settlement Class Members to be
28 paid separate and apart by Defendants.

2.2 Named Plaintiffs and their counsel believe this Litigation is meritorious based on applicable law or an extension thereof. Class Counsel represents that they have conducted a thorough investigation into the facts of this case and have diligently pursued an investigation of the claims against Defendants. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by Defendant, class certification risk, trial risk, and appellate risk.

2.3 Defendants have also actively investigated the facts surrounding the claims brought by Plaintiffs on behalf of the putative class and have actively and aggressively defended themselves from said claims. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged. Defendants further assert that they have complied with all applicable provisions of California statutory, regulatory, and common law and had a good faith belief based on existing law that its practices were and are in compliance. Defendants also have denied and continue to deny, *inter alia*, the allegations that the Class Members have suffered damage; that Defendants in any way failed to pay Class Members for all hours worked and at the lawful rate of pay; that Defendants violated any laws regarding compensation; that Defendants failed to timely pay Class Members all wages owed upon termination/resignation or otherwise when due; that Defendants failed to comply with the law with respect to itemized wage statements; that Defendants violated the law regarding meal breaks and rest periods; that Defendants failed to reimburse all incurred business expenses; that Defendants engaged in any unlawful, unfair or fraudulent business practices; that Defendants engaged in any wrongful conduct as alleged in the Litigation; or that Class Members were harmed by the conduct alleged in the Litigation. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is, may be construed as, or may be used as an admission, concession or indication by or against Defendants of any fault, wrongdoing or liability whatsoever.

2.4 The entry of Final Judgment in this Litigation shall resolve all claims that were alleged in the operative First Amended Complaints filed in the Litigation, or which could have been alleged based upon the facts set forth in the operative First Amended Complaints, with the exception of any claims which might be retained by Settlement Class Members who exclude themselves from the Settlement. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, and to effectuate its terms.

2.5 Each of the forgoing Recitals is incorporated into this Agreement as if fully set forth in the body of the Agreement.

3. **CERTIFICATION OF SETTLEMENT CLASS**

3.1 The Settlement Class shall consist of *all current and former non-exempt employees of FMI in California at any time since July 27, 2016 through the date of Preliminary Approval Order, but no later than September 30, 2021.*

3.2 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only, and that if, for any reason, the Court does not grant final approval of the Settlement, or if final approval is not given following the appeal of any order by the Court, or if for any reason the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and void without further action by the Court or any of the Parties, each Party shall retain all of their respective rights and shall be returned to their relative legal positions as they existed prior to execution of this Agreement, and neither this Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Agreement shall be admissible or used for any purpose in this Litigation or any other legal proceeding, except for the enforcement of same.

3.3 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class for settlement purposes is in no way an admission by Defendant that class certification is proper in any other wage and hour litigation, or any other litigation, against Defendant.

1 **4. TERMS OF SETTLEMENT**

2 4.1 Subject to the other terms and conditions contained in this Agreement, and in consideration
3 of the contemplated pleadings, releases and dismissals set forth in this Agreement, and
4 subject to Court approval, Defendants agree that the Class Settlement Amount shall be
5 Three Million Five Hundred Thousand Dollars (\$3,500,000.00).

6 4.1.1 Defendants will provide the Claims Administrator with all names, last known home
7 mailing addresses, social security numbers, and hire and separation dates for each
8 Class Member within five (5) business days of the Court granting Preliminary
9 Approval of the settlement, so the Claims Administrator can determine the number
10 of workweeks for each Class Member during the Class Period, as well as their LC
11 203 Subclass eligibility.

12 4.2 Except for those Class Members who opt-out of the Settlement, all Settlement Class
13 Members shall recover a share of the Net Settlement Amount. The Net Settlement Amount
14 shall be allocated as set forth below:

15 4.2.1 Each Settlement Class Member shall be awarded a pro-rata share based
16 upon a percentage equal to the number of each Class Member's weeks
17 worked (rounded up to the next whole number) during the Class Period
18 divided by the total of all Settlement Class Members' weeks worked
19 during the Class Period. Each Settlement Class Member's respective
20 share of the Net Settlement Amount shall be calculated by multiplying the
21 Net Settlement Amount, less all amounts to be paid to the LC 203
22 Subclass, as addressed in Subsection 4.2.2 below, by a fraction, the
23 numerator of which is the individual class member's weeks worked
24 during the Class Period, and the denominator of which is the total of all
25 aggregate weeks worked during the Class Period by all members of the
26 Settlement Class during the Settlement Class Period. The resulting
27 number shall be the amount that each member of the Settlement Class is
28 eligible to receive, notwithstanding any additional amount as a Member

of the LC 203 Subclass.

4.2.2 The Parties agree to allocate the sum of Five Hundred Dollars (\$500.00) to each Settlement Class Member who is also an LC 203 Subclass Member for purposes of California Labor Code Section 203 penalties (the “Section 203 Settlement Amount”), which shall be deducted **before** the Net Settlement Amount is allocated across Settlement Class Members based on the number of weeks worked, in Paragraph 4.2.1. In the event the Court determines that the Section 203 Settlement Amount needs to be modified in some manner, the parties mutually agree to cooperate to make said revision and reallocation within the Net Settlement Amount, without the necessity for a revised Settlement Agreement.

4.2.3 The anticipated share of each Class Member who elects to “opt-out” of the Settlement shall be re-distributed on a *pro rata* basis to all participating, Settlement Class Members. Likewise, the anticipated share of each respective LC 203 Subclass Member who elects to “opt-out” of the Settlement shall be returned for inclusion in the Net Settlement Amount and distributed on a *pro rata* basis to all participating Settlement Class Members.

4.3 Class Counsel may request, subject to Court approval, that the Settlement Class Representatives be paid a maximum Service Enhancement of up to Twelve Thousand Five Hundred Dollars (\$12,500.00) each, which shall be paid from the Class Settlement Amount. This request shall not be opposed by Defendants. In the event the Court does not award the full requested Service Enhancements, the remainder shall be re-distributed on a *pro rata* basis to all participating Settlement Class Members. The Service Enhancements shall be paid to Plaintiff Nejdeh Vartanian and Plaintiff Carlos Aguilar, Jr. in addition to their *pro rata* shares of the Net Settlement.

4.4 Class Counsel shall apply to the Court for an award of Attorneys’ Fees and Costs, which shall be paid from the Class Settlement Amount. Defendants will not oppose Class

1 Counsel's application for an award of Attorneys' Fees in an amount up to thirty-five
2 (35.00%) of the Class Settlement Amount comprising One Million Two Hundred Twenty-
3 Five Thousand Dollars (\$1,225,000), plus Costs not to exceed Thirty Thousand Dollars
4 (\$30,000.00). In the event the Court does not award the full requested Attorneys' Fees or
5 Costs, the remainder(s) shall be re-distributed on a *pro rata* basis to all participating
6 Settlement Class Members.

7 4.4.1 The Parties agree that the Court's approval or denial of any request for
8 Attorneys' Fees and Costs or the Named Plaintiffs' Service Enhancements
9 are not conditions to this Agreement and are to be considered by the Court
10 separately from the fairness, reasonableness, adequacy, and good faith of
11 the settlement. Any order or proceeding relating to the application by Class
12 Counsel of an award for Attorneys' Fees and Costs or for Service
13 Enhancement shall not operate to terminate or cancel this Agreement.

14 4.4.2 Class Counsel agree that they are responsible for allocating the Attorneys'
15 Fees and Costs approved by the Court among themselves and any other
16 counsel that may have any other agreement with them. If a lien is asserted,
17 the Claims Administrator will tender the Attorneys' Fees and Cost award to
18 the Court and shall thereafter be released from any claim related to those
19 payments. Class Counsel warrants and represents that there are no liens on
20 the amounts to be paid pursuant to the terms of this Agreement and that no
21 assignments of the claims to be released or the Attorneys' Fees and Costs
22 to be paid pursuant to this Agreement have been made or attempted. Class
23 Counsel agrees to defend, indemnify and hold harmless Defendants from
24 any liability resulting from a breach of these representations and/or any lien
25 or assignment.

26 4.5 The Parties agree that, subject to Court approval, payment to the Claims Administrator
27 shall not exceed Nine Thousand Dollars (\$9,000.00). The Claims Administration Costs
28 shall be paid from the Class Settlement Amount. In the event the Settlement Effective Date

1 does not occur, any portion of the Settlement Administration Costs already incurred by the
2 Claims Administrator shall be allocated so that Class Counsel and Defendants will each be
3 responsible for one-half of said expenses. Any dispute relating to the Claims
4 Administrator's ability and need to perform its duties shall be referred to the Court if it
5 cannot be resolved by the Parties. The Claims Administrator shall regularly and accurately
6 report to the Parties, in written form when requested, on the substance of the work
7 performed. To the extent that the Claims Administrator Costs ultimately exceed \$9,000.00
8 and are approved by the Court, any additional amount will be deducted from the Class
9 Settlement Amount.

10 4.6 The Parties agree that Claims paid to Claimants shall be correctly and appropriately
11 allocated as follows:

12 4.6.1 The entirety of the Section 203 Settlement Amount shall be allocated to penalties
13 and characterized as 1099 income.

14 4.6.2 Of the Net Settlement Amount remaining and to be distributed *pro rata* based on
15 workweeks, 20% shall be allocated to wages, and 80% shall be allocated to
16 penalties and interest, such that 1/5 shall be characterized as W-2 income and 4/5
17 shall be characterized as 1099 income. Defendants share of any employer-side
18 payroll taxes allocated to the payment of "wages" will be calculated based on the
19 portion allocated to the payment of wages and paid by Defendants separate and
20 apart from the Class Settlement Amount. The Claims Administrator will be
21 responsible for calculating and paying the payroll taxes and withholdings owed,
22 after informing Defendants of the specific amount required to be paid for the
23 corporate payroll tax obligation.

24 4.6.3. Tax Liability. Defendants make no representation as to the tax treatment or legal
25 effect of the payments called for hereunder, and Settlement Class Representatives
26 are not relying on any statement or representation by Defendants in this regard.
27 Settlement Class Representatives understand and agree that Class Members will be
28 solely responsible for the sufficiency of the payment of employee's taxes predicated

on the payments described herein, with the understanding that the Claims Administrator is distributing the payroll tax withholdings and employers' share of the wage portion of the payments, but making any tax payment for the penalties / interest.

4.7 The Parties agree to allocate a total of Two Hundred Thousand Dollars (\$200,000.00) towards PAGA penalties. The Claims Administrator shall issue and mail a check to the State of California LWDA in the amount of One Hundred Fifty Thousand Dollars (\$150,000) (*i.e.* 75% share). The allocated PAGA penalties shall be paid from the Class Settlement Amount. Should the Court at the Preliminary Approval hearing, or the LWDA, deem that additional PAGA penalties need to be allocated, the Parties agree to revise the allocated PAGA penalties amount as deemed necessary without the need for a revised Settlement Agreement, the funds of which shall be paid from the Class Settlement Amount.

4.8 The payments made to Claimants pursuant to this Agreement are not being made for any other purpose and shall not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation, and no benefit, including but not limited to pension and/or 401(k), shall increase or accrue as a result of any payment made as a result of this Settlement or Agreement.

4.9 Checks issued to Claimants pursuant to this Agreement shall remain negotiable for a period of one-hundred eighty (180) days from the date of mailing by the Claims Administrator. Thereafter, the Claims Administrator shall cancel any uncashed checks and the corresponding amount shall be sent in the Claimant's name to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure §§ 1500, *et seq.*, in the name of the Claimant and for the benefit of the Claimant until the Claimant claims his or her property. The Parties agree that this disposition results in no "unpaid residue or unclaimed or abandoned class member funds" as discussed in California Code of Civil Procedure section 384, subd.(b). The Parties agree and acknowledge that such uncashed funds shall be in a non-interest bearing Qualified

1 Settlement Fund Account created pursuant to Internal Revenue Code Section 1.468B-1 up
2 until the time of disbursement to the Controller of the State of California. No interest will
3 have accrued prior to disbursement because the account has to be a checking account (non-
4 interest bearing) in order to disburse. The Parties understand and agree that because no
5 interest will have accrued on the uncashed funds prior to disbursement there will be no
6 obligation on the part of Defendant, the Claims Administrator, or any other person to pay
7 any interest upon disbursement of the uncashed funds to the Controller of the State of
8 California under California Code of Civil Procedure Section 384.

9 **5. NOTICE OF THE SETTLEMENT**

10 5.1 Within five (5) business days after the Court grants preliminary approval of this Settlement,
11 Defendants shall provide to the Claims Administrator a listing of all Class Members,
12 including the following information/data, in a Microsoft Excel spreadsheet: 1) full name;
13 2) last known home mailing address; 3) telephone number (*if available*); 4) Social Security
14 Number; and 5) dates of employment as a Class Member (including all separations and re-
15 hires during the Class Period); in order for the Claims Administrator to be able to calculate
16 the workweeks (rounded-up to the next whole number) and LC 203 Subclass eligibility and
17 each Settlement Class Member's respective settlement share (hereinafter the "*Class List*").
18 The "*Class List*" shall be based on the data kept in the ordinary course of business in
19 Defendants' business records. The Parties agree that the contents of the Class List are
20 confidential and shall not be shared with third parties other than the Claims Administrator,
21 who shall also agree to maintain the confidentiality of the Class List and agree the Class
22 List shall not be used for any purpose other than to administer the Class Settlement.

23 5.2 Subject to Court approval, the "Notice" shall be sent by the Claims Administrator to all
24 Class Members, in both English and Spanish, by first class mail within five (5) business
25 days of receipt of the Class List, except that the Notices relating to Named Plaintiffs shall
26 be emailed to Class Counsel.

27 5.3 Prior to mailing the Notice, the Claims Administrator shall process the Class List against
28 the National Change of Address ("NCOA") Database maintained by the United States

Postal Service (“USPS”). It shall be conclusively presumed that if the Notice is not returned as “undeliverable,” the Settlement Class Member received the Notice Packet. With respect to Notice Packets that are returned as “undeliverable,” if a forwarding address is provided by the USPS, the Claims Administrator shall re-mail the Notice within three (3) business days. If a Notice is “undeliverable” and no forwarding address is provided, the Claims Administrator shall employ a more substantive skip-tracing procedure in order to obtain updated address information and shall re-mail the Notice to those Settlement Class Members for whom a new address is located. All such re-mailing shall occur within (7) days of the Administrator’s receipt of the returned notice and no later than the last day of the Claims Period. In the case of such re-mailing, the Claims Deadline shall be the later of (i) the original deadline, or (ii) fourteen (14) calendar days from the date of re-mailing. If the Notice is returned after skip-tracing and re-mailing occurs, there shall be no further skip-tracing but the Settlement Class Member shall still be bound by the release set forth in Paragraph 7.1 and all other terms of this Settlement.

6. OPT-OUT, OBJECTION, AND DISTRIBUTION PROCESS

6.1 The Notice shall set a date of sixty (60) calendar days from the original mailing date as the deadline by which members of the Settlement Class may submit their Opt-Out Letter, objection to the Settlement, or dispute related to the stated weeks worked during the Class Period and/or LC 203 Subclass eligibility. No opt-out requests or objections will be honored if postmarked after the Claims Deadline. All written Opt-Out Letters shall be sent to the Claims Administrator only. All written Objections shall be sent to the Claims Administrator only. If a claimant mistakenly sends a written Opt-Out Letter or written Objection to Class Counsel, or to Defendants Legal Counsel, the respective party will forward the documents, including the mailing envelope evidencing the postmark date, to the Claims Administrator as soon as possible.

6.2 Each Class Member who does not opt-out of the Settlement shall automatically be entitled to their respective share of the Settlement. The amount that each Settlement Class Member is eligible to receive under this Settlement shall be determined in accordance with the

formula set forth in Subsection 4.2.

6.3 Defendants will provide the Claims Administrator with sufficient funds via wire transfer to pay the Class Settlement Amount within thirty (30) calendar days of the Final Effective Date. No later than seven (7) calendar days after Defendants provide the Claims Administrator with sufficient funds via wire transfer to pay the Class Settlement Amount, the Claims Administrator shall disburse the Settlement Disbursement Payments, as specified in this Agreement and approved by the Court.

6.4 Three (3) calendar days before the Settlement Disbursement Payment, Class Counsel shall deliver to the Claims Administrator written instructions signed by Class Counsel that describe the manner and mode of payment of such attorneys' fees and costs (and, in the absence of such instructions, such attorneys' fees and costs shall be sent by U.S. Mail), and a fully-executed Form W-9 with respect to each entity to whom the attorney's fees and costs shall be paid. The Claims Administrator will issue to Class Counsel an IRS Form 1099 for such amounts paid for attorneys' fees under this Settlement.

6.5 Opt-Out Letters.

6.5.1 A Class Member who wishes to opt-out from this Settlement, and from the release of claims pursuant to this Settlement, shall submit a signed, written "Opt-Out Letter" directly to the Claims Administrator. The Opt-Out Letter must include the Settlement Class Member's full legal name, home address, telephone number, and last four digits of their social security number (*for identity verification purposes*) and must state in substance: "I have read the Notice and I wish to opt out of the Settlement reached in the Vartanian and Aguilar, Jr. cases against FMI (Lead Case No. 20STCV28138). I understand that by opting out of the Settlement I will not be bound by any judgment in the cases and will not be entitled to receive any payment from the Settlement." The Parties to this Agreement and their counsel agree that they will not solicit or encourage Class Members to opt-out or to object to this Settlement Agreement. The Claims Administrator shall promptly send a copy/scan of any Opt-Out Letter (including a copy/scan of the mailing envelope) to Class

Counsel and Defense Counsel. For an Opt-Out Letter to be accepted it must be timely and valid. To be timely it must be postmarked by the Claims Deadline.

6.5.2 A Settlement Class Member who submits an Opt-Out Letter is not eligible to recover a share of the Net Settlement Amount. Further, a Settlement Class Member who submits an Opt-Out Letter shall have no standing to object to the Settlement, or to appear at the Final Approval Hearing.

6.5.3 The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to Class Counsel and Defense Counsel promptly upon request. The Claims Administrator shall retain the originals of all Opt-Out Letters (including the envelopes with the postmarks) received and shall make copies or the originals available to Class Counsel or Defendants Counsel upon request.

6.6 Objection to Settlement. A Settlement Class Member who has not opted-out of the Settlement who wishes to object to the Settlement must notify the Claims Administrator of their objection, in writing, on or before the Claims Deadline. The objection must state the Settlement Class Member's: (i) full legal name, home address, telephone number, last four digits of their social security number (*for identity verification purposes*); (ii) the words "Notice of Objection" or "Formal Objection"; (iii) in clear and concise terms the legal and factual arguments supporting the objection; (iv) a list identifying the witness(es) the objector may call to testify at the Final Approval Hearing; and (v) true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing. Any Settlement Class Member who fails to make a written objection may still appear at the Final Approval Hearing to make a verbal objection. Any Settlement Class Member who fails to make an objection at the Final Approval Hearing shall be deemed to have waived his or her right to object to the Settlement. Any Settlement Class Member whose objection is overruled will be deemed to be subject to the terms of this Settlement and the Court's Order of Final Approval. Any Class Member who "opts-out" of the Settlement shall not have standing to "object" to the Settlement, or to appear at the Final Approval hearing.

1 6.7 All Class Members who do not timely request exclusion from the Settlement will
2 automatically receive payment under this Settlement as described above in Subsection 4.2,
3 which will be in the form of a Settlement Payment check and shall be bound by the release
4 set forth in Paragraph 7.1 and all other pertinent terms of the Settlement.

5 6.8 In the event that Final Approval of this Settlement Agreement is not granted by the Court,
6 neither the Settlement Agreement, nor any documents related to this Settlement or
7 negotiations leading to the Settlement may be used as evidence for any purpose, and
8 Defendants shall retain the right to challenge all claims and allegations in the Litigation,
9 including but not limited to challenging class certification for any purpose other than
10 settlement, and to assert all applicable defenses.

11 6.9 Should the Court decline to approve this Agreement in any material respect (except for
12 approval of the award of Class Counsel's Attorneys' Fees and Costs or the class
13 representative's Service Enhancements, or the amount allocated to PAGA), Defendants
14 shall have no obligation to make any payment under this Agreement, and in the event that
15 Defendants have made any such payment, such monies shall be returned promptly by the
16 Claims Administrator to Defendants (minus Defendants' one-half share of any
17 Administration Costs already reasonably incurred by the Claims Administrator; the other
18 one-half share of any Administration Costs to be paid by Class Counsel).

19 **7. COMPREHENSIVE WAIVER AND RELEASE**

20 7.1 Subject to final approval by the Court of the Settlement and upon the Settlement Effective
21 Date, Named Plaintiffs and Settlement Class Members (collectively, "*Releasing Settlement*
22 *Class Members*"), will be deemed to have, and by operation of the Order of Final Approval
23 will have, expressly and irrevocably released, acquitted, and forever discharged
24 Defendants, its shareholders, officers, directors, agents, current and former employees,
25 partners, attorneys, insurers, ERISA plan administrators, subsidiaries, affiliates, and their
26 respective predecessors, successors, and assigns (collectively referred to as the "Released
27 Parties") from any and all claims, rights, demands, damages, debts, accounts, duties, costs
28 including attorneys' fees (other than those costs and fees required to be paid pursuant to

1 this Settlement Agreement), liens, charges, complaints, causes of action, obligations,
2 liabilities, penalties, interest, or causes of action arising between July 27, 2016 and the date
3 of Preliminary Approval Order, but no later than September 30, 2021, and that were alleged
4 in the operative First Amended Complaints (collectively the “FAC”) in either the *Nejdeh*
5 *Vartanian Action* (Case No. 20STCV28138) or the *Carlos Aguilar, Jr. Action* (Case No.
6 20STCV45450) or that could have been alleged or otherwise raised based on the factual
7 allegations pled in the operative pleading in the Lawsuits, including claims that have been
8 or could have been pled as wage and hour violations under California law based on the
9 factual allegations set forth in the operative pleadings in the Lawsuit, including without
10 limitation: (i) any and all claims involving any alleged failure to pay minimum, straight-
11 time and/or overtime wages for work performed at the lawful rate of pay; (ii) any and all
12 claims involving any alleged failure to authorize and permit legally compliant rest periods,
13 or to pay premiums for non-compliant rest periods, or to pay such premiums at the regular
14 rate of compensation; (iii) any alleged claims involving any alleged failure to provide
15 legally compliant meal breaks, or to pay premiums for non-compliant meal periods, or to
16 pay such premiums at the regular rate of compensation; (iv) any and all claims involving
17 any alleged failure to pay all owed wages each and every pay period; (v) any and all claims
18 involving any allegation that Defendants allowed or required employees to bear any of the
19 costs associated with the operation of Defendants business, including but not limited to any
20 claims arising under California Labor Code §§ 2800 and 2802; (vi) any and all claims
21 involving any alleged failure to timely pay wages, including but not limited to any claim
22 that Defendants violated California Labor Code §§ 201 or 202, and any claim for waiting
23 time penalties under California Labor Code § 203; (vii) any and all claims involving any
24 alleged failure to keep accurate records or to issue proper wage statements to employees,
25 including but not limited to any claim that Defendants wage statements do not comply with
26 California Labor Code § 226; (viii) any and all claims for failure to comply with the Unfair
27 Competition Law (Business and Professions Code § 17200 *et seq.*); (ix) any and all
28 penalties pursuant to the Private Attorneys General Act (“PAGA”), California Labor Code

1 § 2699 *et seq.* arising out of any or all of the aforementioned claims, facts or allegations;
2 and (x) all damages, penalties, interest, costs (including attorneys' fees) and other amounts
3 recoverable under said claims or causes of action as to the facts and/or legal theories alleged
4 or which could have been pled as wage and hour violations under California law based on
5 the factual allegations set forth in the operative Complaint (collectively, the "Released
6 Claims"). This Release also covers all claims for interest, attorneys' fees and costs related
7 to the Class Action and all claims for failure to timely pay final wages to all separated Class
8 Members who are members of the LC 203 Subclass. The Releasing Settlement Class
9 Members will be deemed to have specifically acknowledged that this Release reflects a
10 compromise of disputed claims.

11 7.1.1 With regard to the Released Claims, the Releasing Settlement Class Members also
12 waive and release all claims for attorneys' fees and costs incurred by Releasing
13 Settlement Class Members or by Class Counsel in connection with the Litigation
14 and the Settlement of the Litigation.

15 7.1.1.1. As a material term of this Agreement, Named Plaintiffs Nejdeh Vartanian
16 and Carlos Aguilar, Jr., in their individual capacities and with respect to
17 their individual claims only, hereby agree to release the Released Parties
18 from all claims, demands, rights, liabilities and causes of action of any
19 and every nature and description whatsoever, known or unknown,
20 asserted or that might have been asserted, whether in tort, contract, or for
21 violation of any state or federal statute, rule or regulation arising out of,
22 relating to, or in connection with any act or omission by or on the part of
23 any of the Released Parties committed or omitted prior to the execution
24 hereof, including a waiver of California Civil Code § 1542.

25 This General Release includes any unknown claims that Named
26 Plaintiffs Nejdeh Vartanian and Carlos Aguilar, Jr. do not know or suspect
27 to exist in their favor at the time of the General Release, which, if known
28 by them, might have affected their Settlement with, and release of, the

Released Parties or might have affected their decision not to object to this Settlement or the General Release.

With respect to the General Release, Named Plaintiffs Nejdeh Vartanian and Carlos Aguilar, Jr. stipulate and agree that, upon the execution of this Agreement, they shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under state or federal law as to the generally released claims. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL

8.1 Upon execution of this Agreement, Class Counsel shall apply to the Court for the entry of an order granting Preliminary Approval of the Settlement substantially in the following form:

8.1.1 Scheduling a Final Approval hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the proposed Settlement Class;

8.1.2 Approving as to form and content the proposed Class “Notice;”

8.1.3 Directing the mailing of the Notice by first class mail, in English and Spanish, to the Settlement Class Members;

8.1.4 Preliminarily approving the Settlement; and

8.1.5 Approving Law Offices of Eric A. Boyajian, APC, Dychter Law Offices, APC, and United Employees Law Group, PC as Class Counsel, approving Mr. Nejdeh Vartanian and Mr. Carlos Aguilar, Jr. as Settlement Class Representatives, and approving Phoenix Settlement Administrators as the Claims Administrator.

8.2 Defendants and their counsel shall cooperate with Class Counsel as necessary to obtain Preliminary Approval and Final Approval of this Settlement.

8.3 In addition, concurrent with applying to the Court for the entry of an order granting Preliminary Approval of the Settlement, Class Counsel shall take all necessary steps to inform the LWDA of the Settlement Agreement in accordance with Labor Code section 2699(1)(2).

9. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

9.1 Following Preliminary Approval by the Court of the Settlement, Class Counsel will submit a proposed Final Judgment. The proposed Final Judgment shall:

9.1.1 Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate and directing consummation of its terms and provisions;

9.1.2 Approve an award of attorneys' fees and reimbursement of costs to Class Counsel;

9.1.3 Approve any Service Enhancement to the Settlement Class Representatives;

9.1.4 Certify the Settlement Class for settlement purposes only in accordance with Section 3 of this Agreement; and,

9.1.5 Permanently bar the Settlement Class Representatives and all Releasing Settlement Class Members from further prosecuting any of the Released Claims against Defendants. Named Plaintiffs Nejdeh Vartanian and Carlos Aguilar, Jr. shall have been deemed to have executed a full and final release, pursuant to Civil Code Section 1542, and shall not be permitted to submit an opt-out or objection to the Settlement.

9.1.6 The Judgment will be published on the Administrator's website for one hundred twenty (120) days following the Effective Date

1 9.2 Defendants and their Counsel shall cooperate with Class Counsel as necessary to obtain
2 Final Approval and the Court's final judgment.

3 9.3 Within ten (10) calendar days after either (1) Final Approval, if the Settlement is approved
4 or (2) entry of order denying the Settlement, if the Court does not approve the Settlement,
5 Plaintiff's Counsel will provide a copy of the Court's judgment or order to the LWDA
6 pursuant to Labor Code section 2699(1)(3).

7 **10. MUTUAL FULL COOPERATION**

8 10.1 The Parties agree to cooperate fully with each other to accomplish the terms of this
9 Settlement, including but not limited to, execution of all necessary documents and to take
10 such other action as may reasonably be necessary to implement the terms of this Settlement.
11 The Parties shall use their best efforts, including all efforts contemplated by this Agreement
12 and any other efforts that may become necessary by order of the Court, or otherwise, to
13 effectuate the terms of this Settlement. As soon as practicable after execution of this
14 Agreement Class Counsel shall, with the assistance and cooperation of Defendants and
15 their counsel, take all necessary steps to secure the Court's Final Judgment.

16 10.2 If a Party cannot reasonably comply with an obligation under this Agreement by the
17 deadline set forth herein applicable to that obligation, that Party may apply to the Court for
18 a reasonable extension of time to fulfill that obligation. Consent to such a request for an
19 extension will not be unreasonably withheld by the other Party.

20 **11. STATEMENT OF NO ADMISSION**

21 11.1 Nothing contained in this Agreement shall be construed or deemed an admission of
22 liability, culpability, or wrongdoing on the part of Defendants and Defendants deny
23 liability therefor. Nor shall this Agreement constitute an admission by Defendants as to
24 any interpretation of laws or as to the merits, validity, or accuracy of any claims made
25 against it in the Litigation or the propriety of class certification for any purpose other than
26 settlement. Likewise, nothing in this Agreement shall be construed or deemed an
27 admission with regards to the validity of any of Defendants defenses or affirmative
28

1 defenses. Each of the Parties has entered into this Settlement with the intention to avoid
2 further disputes and litigation with the attendant inconvenience and expenses.

3 11.2 This Agreement, and all related documents, and all other actions taken in implementation
4 of the Settlement, including any statements, discussions, or communications, and any
5 materials prepared, exchanged, issued, or used during the course of the negotiations leading
6 to this Agreement are settlement documents and shall be inadmissible in evidence and shall
7 not be used for any purpose in any judicial, arbitral, administrative, investigative, or other
8 court, tribunal, forum, or proceeding, including any wage and hour or other litigation
9 against Defendants, for any purpose, except in an action or proceeding to approve,
10 interpret, or enforce the terms of this Agreement, and except as required by Court Order.

11 11.3 The Notice, Opt-Out Letters, and any other evidence produced or created by any Settlement
12 Class Member in connection with the claims procedures pursuant to this Settlement, and
13 any actions taken by Defendants in response to such Opt-Out Letters, the calculations by
14 the Claims Administrator, or other evidence, do not constitute, are not intended to
15 constitute, and will not be deemed to constitute an admission by Defendants of any
16 violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive
17 order, or any obligation or duty at law or in equity.

18 11.4 In the event that this Agreement is not approved by the Court, any appellate court, or
19 otherwise fails to become effective and enforceable, or is terminated, Defendants will not
20 be deemed to have waived, limited, or affected in any way any of its objections or defenses
21 in the Litigation.

22 12. VOIDING THE AGREEMENT

23 12.1 In the event that this Settlement is not approved, or if for any reason the Settlement
24 Effective Date does not occur, the Settlement shall be deemed null, void and unenforceable
25 and shall not be used nor shall it be admissible in any subsequent proceedings either in this
26 Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal,
27 forum, or other proceeding, including without limitation any wage and hour, or other
28 litigation against Defendants.

12.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by Class Counsel are reduced, that finding shall not be a basis for rendering the entire Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs.

12.3 If more than ten percent (10%) of the Class Members submit valid and timely Opt-Out Letters, then Defendants, at their sole option, may withdraw from this Settlement by giving notice to Class Counsel and the Claims Administrator within three (3) business days of receipt by Defendants' Counsel of the final report of the number of opt-outs from the Claims Administrator after the Opt-Out Submission Deadline. If Defendants exercise such option, they will be solely responsible for all settlement administration costs.

13. **PARTIES' AUTHORITY**

13.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

14. **NO PRIOR ASSIGNMENTS**

14.1 The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

15. **NOTICES**

15.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of: (i) the date given, if given by hand delivery; (ii) within one business day, if sent by overnight delivery services such as Federal Express or similar courier; or (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested. All notices given under this Agreement shall be addressed as follows:

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///

15.1.1 **To the Class:**

Eric A. Boyajian, Esq.
Law Offices of Eric A. Boyajian, APC
450 N. Brand Blvd., Suite 600
Glendale, CA 91203
Telephone: (818) 839-5969
Facsimile: (818) 296-9230
E-Mail: eric@loeab.com

Alexander I. Dychter, Esq.
Dychter Law Offices, APC
180 Broadway, Suite 1835
San Diego, CA 92101
Telephone: (619) 487-0777
Facsimile: (619) 330-1827
E-Mail: alex@dychterlaw.com

Walter L. Haines, Esq.
United Employees Law Group, PC
5500 Bolsa Ave., Suite 201
Huntington Beach, California 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006
E-Mail: admin@uelglaw.com

15.1.2 **To Defendant:**

Daniel P. Hoffer, Esq.
VENABLE LLP
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Telephone: (310) 229-9900
Facsimile: (310) 229-9901
E-Mail: dphoffer@venable.com

16. **CONFIDENTIALITY**

16.1 Named Plaintiffs and Class Counsel agree that prior to the filing of the Motion for Preliminary Approval, they will keep the terms of this Settlement confidential except for purposes of communicating with Defendants or the Court. Except as set forth in Paragraph 16.2 below, any confidentiality associated with the terms of this Settlement shall expire upon the filing by Class Counsel of the Motion for Preliminary Approval with the Court, except that the negotiations and discussions preceding submission of the Settlement to the Court for preliminary approval shall remain strictly confidential, unless otherwise agreed to by the Parties or unless otherwise ordered by the Court.

16.2 Plaintiffs and Class Counsel agree not to issue a press release, or post on a website or any form of social media, or to advertise the terms of the settlement with Defendants. Plaintiffs and Class Counsel further agree that if contacted by the press regarding this case, they will only state that the lawsuit exists and has been resolved.

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17. **MISCELLANEOUS PROVISIONS**

17.1 Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or her or his counsel participated in the drafting of this Agreement.

17.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision. Each term of this Agreement is contractual and not merely a recital.

17.3 Modification. This Settlement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

17.4 Integration Clause. This Agreement and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

17.5 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

17.6 Class Counsel and Settlement Class Representative Signatories. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement. The Notice will provide all Settlement Class Members with a summary of the Settlement and will advise all

1 Settlement Class Members of the binding nature of the release. The Notice shall have the
2 same force and effect as if this Settlement were executed by each Settlement Class
3 Member.

4 17.7 Counterparts and Electronic Signatures. This Agreement may be executed by facsimile
5 signature, *pdf* signature, or signature in compliance with the Uniform Electronic
6 Transaction Act, and in any number of counterparts, and when each party has signed and
7 delivered at least one such counterpart, each counterpart shall be deemed an original, and,
8 when taken together with other signed counterparts, shall constitute one and the same
9 Agreement, which shall be binding upon and effective as to all Parties.

10 17.8 Applicable Law. This Agreement shall be governed by California law without regard to
11 its choice of law or conflicts of law principles or provisions.

12 17.9 Enforcement of the Settlement Agreement. In the event that one or more of the Parties to
13 this Settlement Agreement institutes any legal action, arbitration, or other proceeding
14 against any other party or Parties to enforce the provisions of this Settlement Agreement
15 or to declare rights and/or obligations under this Settlement Agreement, the successful
16 Party or Parties shall be entitled to recover from the unsuccessful Party or Parties
17 reasonable attorneys' fees and costs, including expert witness fees incurred in connection
18 with any enforcement actions.

19 17.10 Retention of Jurisdiction by the Court. Following approval of the Settlement and the
20 Court's entry of the Order of Final Approval, the Court shall retain jurisdiction for the
21 purpose of addressing any issues which may arise with respect to the administration of the
22 Settlement or the enforcement of the Settlement's terms pursuant to California Code of
23 Civil Procedure section 664.6.

24 ***[Signature Pages Follow]***
25
26
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28

1 **IT IS SO STIPULATED.**

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Dated: 08-13-2021

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Dated: Aug 17, 2021

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Dated: _____

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Dated: _____

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Dated: _____

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Dated: _____

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Dated: _____

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Individually and on behalf of the Class



Nejdesh Vartanian

Individually and on behalf of the Class



Carlos Jr Aguilar (Aug 17, 2021 18:27 PDT)
Carlos Aguilar, Jr.

Defendant Forrest Machining, Inc.

By: _____
Kenneth McPherson
Chief Financial Officer

Defendant Kenneth McPherson

By: _____
Kenneth McPherson

Defendant Robert Butler

By: _____
Robert Butler

Defendant Joanne Butler

By: _____
Joanne Butler

Defendant Steve Wooten

By: _____
Steve Wooten

1 **IT IS SO STIPULATED.**

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Dated: _____

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Dated: _____

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Dated: 8/11/2021

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Dated: 8/11/2021

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Dated: 8/17/2021

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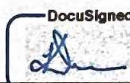
Individually and on behalf of the Class

Nejdeh Vartanian

Individually and on behalf of the Class

Carlos Aguilar, Jr.

Defendant Forrest Machining, Inc.

By: 
Kenneth McPherson
Chief Financial Officer

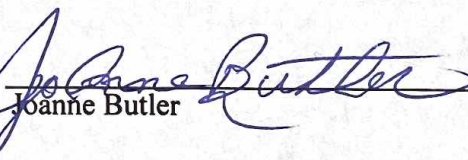
Defendant Kenneth McPherson

By: 
Kenneth McPherson

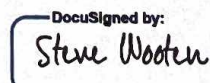
Defendant Robert Butler

By: 
Robert Butler

Defendant Joanne Butler

By: 
Joanne Butler

Defendant Steve Wooten

By: 
Steve Wooten

1 **APPROVED AS TO FORM AND CONTENT:**

2 **On Behalf of Plaintiffs and the Class**

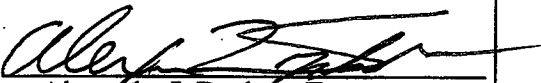
3 Dated: 8/13/21

Law Offices of Eric A. Boyajian, APC

4
5 By: 
Eric A. Boyajian, Esq.

6
7 Dated: 8/13/21

DYCHTER LAW OFFICES, APC

8
9 By: 
Alexander I. Dychter, Esq.

10
11 Dated: 8-17-2021

United Employees Law Group, PC

12
13 By: 
Walter L. Haines, Esq.

14 **On Behalf of Defendants**

15
16 Dated: _____

VENABLE LLP

17
18 By: _____
Daniel P. Hoffer, Esq.
19 Counsel for Defendants
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM AND CONTENT:

On Behalf of Plaintiffs and the Class

Dated: _____

Law Offices of Eric A. Boyajian, APC

By: _____
Eric A. Boyajian, Esq.

Dated: _____

DYCHTER LAW OFFICES, APC

By: _____
Alexander I. Dychter, Esq.

Dated: _____

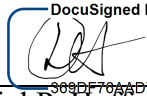
United Employees Law Group, PC

By: _____
Walter L. Haines, Esq.

On Behalf of Defendants

Dated: 8/13/2021 _____

VENABLE LLP

By:  _____
Daniel P. Hoffer, Esq.
Counsel for Defendants