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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ANIBAL VEGA, individually, and as a
representative of other aggrieved
employees,

Plaintiff,

vs.

NIBBELINK MASONRY
CONSTRUCTION CORPORATION, a
Corporation; and DOES 1 through 250,
inclusive,

Defendants.

Case No.: 21STCV17980

Honorable Kenneth R. Freeman

CLASS ACTION

**JOINT STIPULATION AND CLASS ACTION
SETTLEMENT AGREEMENT**

Date: November 8, 2022

Time: 11:00 a.m.

Dept.: 14

Action Filed: 05/13/21

JOINT STIPULATION AND CLASS ACTION SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Anibal Vega ("Plaintiff"), and Defendant Nibbelink Masonry Construction Corporation ("Defendant"). Plaintiff and Defendant are collectively referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$5,000.00. All Administration Costs shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- B. **Agreement, Settlement Agreement, Stipulation, or Settlement**: The settlement agreement reflected in this document, titled "Joint Stipulation and Class Action Settlement Agreement."
- C. **Attorney Fee Award**: The amount, not to exceed 33.3% of the Gross Settlement Amount or \$158,175.00, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Gross Settlement Amount and will not be opposed by Defendant. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- D. **Class**: All current and former non-exempt employees employed by Defendant Nibbelink Masonry Construction Corporation in the State of California during the Class Period.
- E. **Class Counsel**: Brent S. Buchsbaum and Laurel N. Haag of Law Offices of Buchsbaum & Haag, LLP.
- F. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- G. **Class Notice or Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- H. **Class Period**: The period beginning May 12, 2017 and ending on the date of the Preliminary Approval Order.
- I. **Class Representative or Plaintiff**: Anibal Vega.

- J. **Class Representative Enhancement Payment:** The amount the Court awards to Plaintiff, which will not exceed \$5,000. This payment shall be paid from the Gross Settlement Amount and will not be opposed by Defendant. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- K. **Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$10,000. The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- L. **Counsel for Defendant:** Irene V. Fitzgerald and Andrew H. Woo of Littler Mendelson, PC.
- M. **Defendant:** Nibbelink Masonry Construction Corporation.
- N. **Effective Final Settlement Date:** The effective date of this Settlement will be the date by which this Agreement is finally approved by the Court by entry of a Final Approval Order and Judgment and that Final Approval Order and Judgment has become final without any recourse for appeal, writ, or other appellate proceeding. The Final Approval Order and Judgment shall become final when the later of the following events occurs: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the Final Approval Order and Judgment with no right by any appellant or objector to pursue further remedies or relief.
- O. **Funding of Settlement:** Nibbelink Masonry Construction Corporation. shall wire to the Settlement Administrator the Gross Settlement Amount within fourteen (14) calendar days of the Effective Final Settlement Date.
- P. **Final Judgment or Final Approval:** The final order entered by the Court finally approving this Agreement.
- Q. **Gross Settlement Amount:** The total value of the Settlement is a non-reversionary Four Hundred Seventy Five Thousand Dollars and Zero Cents (\$475,000.00). This is the total amount Defendant can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney

Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court, and (5) the PAGA Payment to the LWDA and to Participating Class Members. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

- R. **Individual Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
- S. **Lawsuit**: *Anibal Vega v. Nibbelink Masonry Construction Corporation, et al.*, Los Angeles County Superior Court, Case Number 21STCV17980.
- T. **LWDA**: The California Labor and Workforce Development Agency.
- U. **Net Settlement Amount**: The total amount of money available for payout to Participating Class Members after the following deductions from the Gross Settlement Amount: (1) the Attorney Fee Award, (2) Cost Award, (3) Class Representative Enhancement Payment, and (4) Administration Costs. The Individual Settlement Shares shall be reduced by the employee's applicable tax liability for the wages portion of the share.
- V. **PAGA**: The California Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698, et seq.)
- W. **PAGA Class**: All current and former non-exempt employees employed by Defendant Nibbelink Masonry Construction Corporation in the State of California during the PAGA Period.
- X. **PAGA Member**: Each person eligible to participate in this Settlement who is a member of the PAGA Class as defined above.
- Y. **PAGA Payment**: The total amount of money allocated to satisfy the PAGA claims as alleged in the Complaint. The PAGA Payment shall consist of \$47,500 of the Gross Settlement Amount. Seventy-five percent (75%) of the PAGA Payment, or \$35,625.00, shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment, or \$11,875.00, shall be distributed to PAGA Members.
- Z. **PAGA Period**: The period beginning November 25, 2019 and ending on the date of the Preliminary Approval Order.
- AA. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.

- BB. Parties:** Plaintiff Anibal Vega as an individual and as Class Representative, and Defendant Nibbelink Masonry Construction Corporation.
- CC. Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.
- DD. Qualified Settlement Fund or QSF:** The Parties agree that the Gross Settlement Amount is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such.
- EE. Released Claims:** Class Members who do not opt out of the Class will release any and all claims alleged by Plaintiff and Class Members in the Lawsuit or that could have been asserted in the Lawsuit based the same facts, transactions or occurrences, including any and all claims relating to the payment of minimum wages, overtime wages, the timely payment of wages, failure to provide rest periods or pay rest period premiums, failure to provide meal periods or pay meal period premiums, failure to reimburse expenses, failure to provide accurate, itemized wage statements, failure to maintain required records, unfair business practices, PAGA penalties, interest, attorney's fees, and any other alleged wage/hour violations or other claims that were or could have been asserted based on the facts alleged in the Lawsuit.
- FF. Released Parties:** Defendant, and their respective owners, officers, executives, directors, shareholders, partners, managers, members, customers, agents and employees, and all parents, subsidiaries and related or affiliated entities, legal representatives, as well as any predecessors and/or successors.
- GG. Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Notice.
- HH. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Settlement Administrator will mail the Notice by first class U.S. mail to all Class Members at the address Defendant has on file for those Class Members and to all former employee Class Members at the address resulting from the skip trace. The Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive Notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
- II. Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Simpluris Class Action Administration.

JJ. Superior Court: Los Angeles County Superior Court.

II. RECITALS

- A. The Lawsuit was filed by Plaintiff Anibal Vega in the Los Angeles County Superior Court on May 12, 2021. The complaint alleged causes of action on behalf of Plaintiff and all non-exempt employees of Defendant in the State of California for (1) unpaid overtime wages; (2) failure to pay all wages and on a timely basis; (3) unpaid meal period premiums; (4) unpaid rest period premiums; (5) violation of minimum wage; (6) failure to reimburse for business expenses; (7) violation of California Business & Professions Code §§ 17200, et seq.; and (8) violation of the California Private Attorneys General Act of 2004.
- B. Defendant filed a Notice of Appearance on June 14, 2021.
- C. Prior to mediation, Plaintiff reviewed a substantial amount of data and documents relating to the size and scope of the class that permitted an analysis and evaluation of the class-wide claims. In addition, Plaintiff hired Berger Consulting to analyze a 10% sampling of class-wide data.
- D. The Parties attended mediation with Lisa Klerman on April 12, 2022. After a full day of arms-length mediation, the Parties were able to reach a settlement, the terms of which are reflected herein.
- E. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- F. **Defendant's Reasons for Settlement.** Defendant recognize that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant has been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, have agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- G. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, make no concessions or admissions of liability of any sort, and contend that for any purpose other than settlement, the Lawsuit is not

appropriate for class treatment. Defendant asserts a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Lawsuit. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.

- H. **Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents 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 Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Lawsuit. However, in the event that this Settlement is finally approved by the Court, the Plaintiff, Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, including payroll taxes, that Defendant is obligated to pay under this Settlement Agreement is Four Hundred Seventy Five Thousand Dollars and Zero Cents (\$475,000.00).
- B. **Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- C. **Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Lawsuit or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Anibal Vega shall be appointed as representative for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- F. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation of Settlement Shares.

- a. Individual Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the Net Settlement Amount, (ii) divided by the total work weeks worked by all Participating Class Members during the Class Period based on the Class data provided by Defendants, (iii) multiplied by the number of work weeks worked by the individual Participating Class Member within the Class Period, based on the same Class data. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked. Additionally, each PAGA Member will receive a proportionate share of the twenty-five percent (25%) of the PAGA Payment, or \$11,875.00, that is equal to (i) twenty-five percent (25%) of the PAGA Payment, or \$11,875.00, (ii) divided by the total work weeks worked by all PAGA Members during the PAGA Period based on the Class data provided by Defendants, and (iii) multiplied by the number of work weeks worked by the individual PAGA Member within the PAGA Period, based on the same Class data.

2. Tax Treatment.

- a. Participating Class Member Taxes:** Each Class Member's gross settlement award will be apportioned as follows: 20% wages, 40% interest, and 40% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 forms. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax

withholdings customarily made from employees' wages and shall be reported on IRS 1099 forms.

- b. **Employer Taxes:** Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid separate and apart from the Gross Settlement Amount.

G. Preliminary Approval.

1. **Preliminary Approval Motion.** Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice.
2. **Preliminary Approval Hearing.** At the Preliminary Approval hearing, the Parties will appear to support the granting of the motion.
3. **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. The amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Award.

H. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that the Settlement Administrator shall be retained to serve as Settlement Administrator, subject to Court approval and appointment.

1. **Responsibilities of Settlement Administrator.** The Settlement Administrator shall be responsible for preparing, printing, and mailing the Notice to the Putative Class Members; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and remailing Notices and Individual Settlement Shares to Class Members;

calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the State Controller's Unclaimed Property Fund in the Class Members' name; and for such other tasks as the Parties mutually agree.

2. **No Interest in Settlement Administrator.** The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

I. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

1. **Class Data to Settlement Administrator.** Within thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an list, which will provide for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; and (4) hire and termination dates. ("Class Data"). The Class Data shall be based on Defendant's payroll, personnel, and other business records. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will use the National Change of Address Database ("NCOA") on the addresses of all former employee Class Members.
2. **Notice Mailing.** Within twenty one (21) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Class Notice to all identified Class Members in English and Spanish via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the NCOA search results.
3. **Returned Class Notices.** If a Class Notice is returned because of an incorrect address, within five (5) calendar days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more

current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the NCOA and skip traces to attempt to find current addresses. The Settlement Administrator will note for its own records the date and address of each re-mailing.

4. **Undeliverable Class Notices.** The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Class Notice will be deemed undeliverable.
5. **Weekly Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Class Notices mailed, the number of Class Notices returned as undeliverable, the number of Class Notices re-mailed, and the number of requests for exclusion or objections received.
6. **Final Report.** No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Class Notices mailed to Class Members, the number of Class Notices returned as undeliverable, the number of Class Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
7. **Declaration re: Administration.** No later than twenty-one (21) calendar days after the Response Deadline, the Settlement Administrator will circulate to the Parties a declaration of administration setting forth its compliance with its obligations under this Stipulation. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel with the Motion for Final Approval, or as soon as practicable. The Settlement Administrator will supplement its declaration if any material changes occur from the date of its prior declaration or upon request by the Parties.

J. Responses to Class Notice.

1. **Objections to Settlement.** The Class Notice will provide that the Class Members who wish to object to the Settlement may submit a written

objection no later than the Response Deadline or appear at the Final Approval Hearing. The Response Deadline to submit a written objection will be increased by ten (10) calendar days for returned mailings.

- a. Format.** Written objections should be postmarked or fax receipt dated no later than the Response Deadline and should state: (1) the case name (e.g. *Anibal Vega v. Nibbelink Masonry Construction Corporation, et al.*) and case number 21STCV17980; (2) the objecting person's or his/her attorneys' full name, address, and telephone number; (3) the words "Notice of Objection" or "Formal Objection;" (4) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (5) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; (6) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; (7) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; and (8) state whether the objector or his/her attorneys will attend the Final Approval Hearing. Failure to follow this format will not render the objection invalid.
 - b. Appearance at Final Approval Hearing.** Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through his or her own counsel regardless of whether they have submitted a written Objection to Settlement.
 - c. Objections Received.** The Settlement Administrator will provide copies of any objection it receives to Class Counsel and Defendant's Counsel. Class Counsel will file the objections with the Court prior to the Final Approval Hearing. Class Counsel and Defense Counsel will be permitted to file a response to any objections received at any time leading up to the Final Approval Hearing.
- 2. Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail or fax to the Settlement Administrator a written request for exclusion. The Response Deadline to submit an request for exclusion will be increased by ten (10) calendar days for returned mailings.

 - a. Format.** The written request for exclusion must: (a) state the Class Member's name, address, telephone number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; and (c) be postmarked or fax receipt dated no later than the Response Deadline.

- b. Effect of Timely Request for Exclusion.** Any Class Member who returns a timely, valid request for exclusion will not be bound by the Settlement and subsequent Final Judgment and will not receive an Individual Settlement Share.
- c. Effect of Untimely Request for Exclusion.** A Class Member who does not complete and mail or fax a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is finally approved by the Court, and by the subsequent Final Judgment.

K. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

L. Final Approval.

- a. Final Approval Motion.** Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; and (4) the Class Representative Enhancement Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Final Judgment) releasing and barring any Released Claims of the Participating Class Members.
- b. Effect of Denial of Final Approval.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Stipulation. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorney Fee Award, Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.

- c. **Effect of Grant of Final Approval.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Final Judgment in accordance therewith. After entry of Final Judgment, the Court shall have continuing jurisdiction over the Lawsuit for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

M. Appeals.

- 1. **Waiver of Right to Appeal.** Provided that the Final Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Final Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.
- 2. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Final Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Final Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

N. Funding the Settlement. Defendant shall fund the settlement pursuant to the terms of this Stipulation and the Court's Final Approval Order.

- a. **Timing.** Defendant shall wire to the Settlement Administrator the Gross Settlement Amount within thirty (30) calendar days of the Effective Final Settlement Date, but in no circumstances would payment of the Gross Settlement Amount be due before April 1, 2023.
- b. **QSF Treatment.** The Parties and Settlement Administrator shall treat the Gross Settlement Amount as coming into existence as a QSF on the earliest date permitted as set forth in 26 C.F.R. §

1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

O. Disbursement of the Settlement. The Settlement Administrator shall distribute funds pursuant to the terms of this Stipulation and the Court's Final Approval Order. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

1. Timing. Pursuant to the terms of this Settlement Agreement, within ten (10) calendar days after the Defendant funds the settlement pursuant to the terms of this Stipulation, the Settlement Administrator shall disburse the following:

- a. To the Class Representative:** In addition to Plaintiff's Individual Settlement Share, and subject to the Court's approval, Plaintiff will receive up to Five Thousand Dollars and Zero Cents (\$5,000). The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to the Plaintiff for this payment. If the amount awarded is less than the amount requested for the Class Representative Enhancement Payment, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members.
- b. To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed 33.3% percent of the Gross Settlement Amount or One Hundred Fifty Eight Thousand One Hundred Seventy Five Dollars and Zero Cents (\$158,175.00) of the Gross Settlement Amount and a Cost Award not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorney Fee Award. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be

responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members.

- c. **To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of payroll withholding taxes out of each Participating Class Member's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' portion of payroll withholding taxes and forward those amounts to the appropriate taxing authorities.
- d. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$5,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members.
- e. **To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Net Settlement Amount and the twenty-five percent (25%) of the PAGA Payment, or \$11,875.00, to be distributed to PAGA Members.

P. Uncashed Checks.

- 1. **Check Expiration.** Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.
- 2. **Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.
- 3. **Cancelled Checks.** If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the

Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks.

4. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks remaining un-cashed, shall be transmitted by the Settlement Administrator to the California State Controller's Unclaimed Property Fund in the Participating Class Members' name.

Q. Compliance Report by Settlement Administrator. Within ten (10) business days after the Settlement Administrator cancels any checks remaining uncashed, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds, including all information required pursuant to the California Code of Civil Procedure section 384 (i.e. the total amount actually paid to Participating Class Members) and the amount remaining uncashed. Class Counsel will file the declaration with the Court, along with an Amended Judgment.

R. Amended Judgment. Pursuant to California Code of Civil Procedure section 384, the Parties shall amend the Final Judgment to direct the Settlement Administrator to pay the sum of any uncashed checks, plus any interest accrued thereon, to the California State Controller's Unclaimed Property Fund.

S. Release of Claims.

1. **Participating Class Members' Release.** As of the date Defendant funds the Gross Settlement Amount, Class Members who do not submit a timely and valid request for exclusion release the Released Parties from the Released Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims.
2. **Plaintiff's Release.** As of the date Defendant fully fund the Gross Settlement Amount, Plaintiff shall give a general release of claims for Plaintiff and Plaintiff's respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of her signature on this Stipulation, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to her employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's release includes a waiver of California Civil Code section 1542, which 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.

This release excludes any release of any claims not permitted to be released by law.

T. Miscellaneous Terms

- 1. Defendant's Legal Fees.** Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Lawsuit outside of the Gross Settlement Amount.
- 2. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Lawsuit, or that but for the Settlement, a Class should be certified in the Lawsuit. This Stipulation is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Stipulation is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and the Parties' willingness to settle the Lawsuit will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Stipulation).
- 3. No Effect on Employee Benefits.** The Class Representative Enhancement Payment and Individual Settlement Shares paid to Plaintiff or Participating Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or

benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

4. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
5. **Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Stipulation. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Stipulation, or on any supplemental provisions that may become necessary to effectuate the terms of this Stipulation, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Stipulation.
6. **Exhibits and Headings.** The terms of this Stipulation include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Stipulation are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Stipulation.
7. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Lawsuit in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.
8. **Amendment or Modification of Agreement.** This Stipulation, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
9. **Agreement Binding on Successors and Assigns.** This Stipulation will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.

- 10. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that she has 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 rights herein released and discharged.
- 11. Applicable Law.** All terms and conditions of this Stipulation and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 12. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Stipulation reflects a fair, reasonable, and adequate settlement of the Lawsuit and have arrived at this Stipulation through arms-length negotiations, taking into account all relevant factors, current and potential.
- 13. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Stipulation, and that Class Members will assume any such tax obligations or consequences that may arise from this Stipulation, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Participating Class Member, such Participating Class Member assumes all responsibility for the payment of such taxes.
- 14. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Stipulation and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Stipulation and all orders and judgments in connection therewith.
- 15. Invalidity of Any Provision; Severability.** Before declaring any provision of this Stipulation invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Stipulation valid and enforceable. In the event any provision of this Stipulation shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

16. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Stipulation. This Stipulation will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

17. Execution in Counterpart. This Stipulation may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile, PDF, DocuSign (or similar e-signature) signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

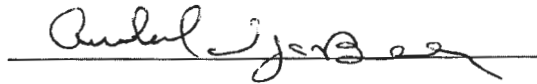
18. In the event that more than 5% of Class Members opt-out of the Settlement, Defendant will have the right to rescind and terminate this settlement without prejudice to its pre-settlement positions and defenses in the litigation.

IV. EXECUTION BY PARTIES

The Parties execute this Agreement.

Dated: 15-june-22

ANIBAL VEGA



Dated: _____

**NIBBELINK MASONRY CONSTRUCTION
CORPORATION**

Name:

Title:

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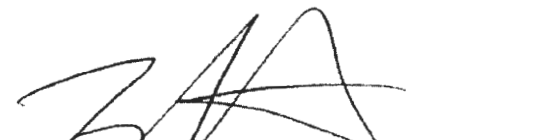
The Parties execute this Agreement.

Dated: _____

ANIBAL VEGA

Dated: 8-22-22

**NIBBELINK MASONRY CONSTRUCTION
CORPORATION**


Name: Tracy Nibbelink
Title: President