

SETTLEMENT AGREEMENT

This Settlement Agreement (or “Settlement”) is reached by and between Plaintiff Francisco Ramirez Gonzalez (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendant Tomarco Contractor Specialties, Inc. (“Tomarco” or “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines and Tuvia Korobkin of Haines Law Group, APC (“Class Counsel”). Tomarco is represented by Alan Freisleben of Freisleben Law Group (“Defense Counsel”).

Plaintiff filed a class action complaint against Tomarco in Los Angeles County Superior Court, titled *Francisco Ramirez Gonzalez, et al. v. Tomarco Contractor Specialties, Inc., et al*, Case No. 19STCV20723, on June 14, 2019 (the “Class Action”). The Class Action alleges claims against Tomarco for: (i) failure to pay all overtime wages; (ii) minimum wage violations; (iii) rest period violations; (iv) meal period violations; and (v) unfair competition. As part of this Settlement, the Parties have agreed to stipulate to the filing of a First Amended Complaint (“Complaint”) adding a claim for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.*, based on the alleged violations described above.

Given the uncertainty of litigation, the Parties wish to settle Plaintiff’s claims on a classwide basis. Accordingly, Plaintiff and Tomarco agree as follows:

1. **Settlement Class.** For purposes of this Settlement Agreement only, Plaintiff and Tomarco stipulate to the certification of a Settlement Class, which shall be defined as:

All current and former non-exempt Production Department employees employed by Tomarco in the State of California at any time from June 14, 2015 through the earlier of: (i) the date of preliminary approval of the Settlement or (ii) February 26, 2021 (the “Class Period”).

Tomarco represents there are approximately 164 Settlement Class members.

The Parties agree that certification for purpose of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure in a non-settlement context. If for any reason this Settlement is not approved or is terminated, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement.

2. **Releases.**

- A. **Release by Settlement Class.** Once this Settlement Agreement receives final approval and the Court enters judgment, and upon the Settlement being fully funded, Plaintiff and every participating Settlement Class member will release and discharge Tomarco, and its current and former officers, directors, and agents, and the successors and assigns of all such entities and individuals (“Released Parties”) from any and all claims, causes of action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, that are

alleged in the Complaint, including claims for: (i) unpaid overtime wages under Cal. Labor Code §§ 204, 510, 558, 1194, 1198; (ii) unpaid minimum wages under Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1198; (iii) failure to authorize and permit rest periods under Cal. Labor Code §§ 226.7, 516, 558; (iv) failure to provide meal periods under Cal. Labor Code §§ 226.7, 512, 558; and all claims for unfair competition (Cal. Bus. & Prof. Code § 17200 *et seq.*) or for civil penalties under the PAGA based on the above violations (collectively, the “Released Claims”). This release shall run for the duration of the Class Period.

- B. **Release by Plaintiff.** In light of Plaintiff’s Class Representative Incentive Award (discussed below), Plaintiff has agreed to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal or state law, against the Released Parties, that could have been alleged based on the factual allegations in the Complaint, to the extent permitted by law, through the date this Settlement is signed by Plaintiff (“Plaintiff’s Released Claims”). Plaintiff understands that this release includes unknown claims and that he is, with respect to Plaintiff’s Released Claims, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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.

Specifically excluded from Plaintiff’s Released Claims are any claims that cannot be released as a matter of law, such as claims for workers’ compensation benefits or unemployment benefits.

3. **Gross Settlement Amount.** As consideration, Tomarco agrees to pay a “Gross Settlement Amount” or “GSA” of Five Hundred Fifty Thousand Dollars (\$550,000.00) in full and complete settlement of this matter, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the “Settlement Administrator” to administer this Settlement.
- B. The Gross Settlement Amount shall be deposited with the Settlement Administrator within twenty-one (21) calendar days after Final Approval (which, for this purpose, shall be defined as the date on which the Court enters an Order granting Final Approval) or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), either (i) twenty-one (21) days after the last date on which any appeal might be filed, with no appeal having been filed; or (ii) if an appeal is filed, twenty-one (21) days after the successful resolution of any appeal(s).
- C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than \$8,000.00;

- (3) Up to \$7,500.00 for Plaintiff's Class Representative Incentive Award, in recognition of his contributions to the Actions and his service to the Settlement Class;
 - (4) Class Counsel attorney fees of one-third of the GSA (currently estimated to be \$183,333.33), plus litigation costs and expenses incurred by Class Counsel in relation to the Actions as supported by declaration, which are currently estimated to be no greater than \$30,000.00. In the event the Court reduces or does not approve the requested Class Counsel attorneys' fees and costs, Class Counsel shall not have the right to revoke this settlement, and it will remain binding (although Class Counsel will retain the right to appeal the Court's award if it is less than amount sought);
 - (5) The Parties have set aside \$50,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$37,500.00, will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining 25%, or \$12,500.00, will be payable to the participating Settlement Class members as part of the Net Settlement Amount (defined below).
- D. Tomarco's share of payroll taxes on any wage portion of the payments to the Settlement Class shall be paid by Tomarco separately from, and in addition to, the Gross Settlement Amount. Tomarco's share of payroll taxes shall be deposited by Tomarco at the same time it deposits the Maximum Settlement Amount, i.e., within 21 days after Final Approval.
- E. **Escalator Clause.** Tomarco represents there are approximately 16,826 workweeks worked by Settlement Class members as non-exempt Production Department employees for Tomarco in California during the Class Period ("Workweeks"). The Parties agree that this is a material term of the Settlement. If the number of Workweeks is actually more than 10% above 16,826 (i.e., if there are 18,509 or more Workweeks), then the GSA shall increase proportionally with the increase in Workweeks. For example, if the number of Workweeks is 12% higher than 16,826, the GSA will increase by 12%.
4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment from the Settlement ("Settlement Share").

Settlement Shares will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative Incentive Award, the Settlement Administrator's administration costs, and the portion of PAGA civil penalties paid to the LWDA. The remaining amount shall be known as the "Net Settlement Amount" or "NSA."
- B. Payments from the Net Settlement Amount: The Settlement Administrator will calculate Settlement Shares based on each participating Settlement Class member's

proportionate Workweeks worked during the Class Period. Specifically, each participating Settlement Class member's Settlement Share will be calculated by multiplying the NSA by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.

- C. Within seven (7) business days following Tomarco's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Shares, as well as calculate the employer's share of payroll taxes, and provide the same to Class Counsel and Defense Counsel for review and approval. Within five (5) business days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Shares, less applicable taxes and withholdings, to participating Settlement Class members, as well as the Plaintiff's Incentive Award to Plaintiff, the LWDA's PAGA payment to the LWDA, and Class Counsel's attorneys' fees and costs to Class Counsel. The Settlement Administrator shall simultaneously pay all applicable withholdings to the applicable authorities with the necessary reports, submitting copies to Defense Counsel. Tomarco shall also remit the employer's share of payroll taxes within this time frame to the Settlement Administrator, who shall promptly transmit such sum to the appropriate taxing authorities.
- D. For purposes of calculating applicable taxes and withholdings for payments to Settlement Class members, each Settlement Share shall be allocated as follows: one-third as wages, one-third as penalties, and one-third as interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated as penalties and interest. As stated above, Tomarco is responsible for its share of the payroll taxes on the wages portion of the Settlement Shares, and these taxes will not be deducted from the Gross Settlement Amount. Notwithstanding the treatment of the payments to each participating Settlement Class member above, none of the payments called for by this Settlement Agreement are to be treated as earnings, wages, pay, or compensation for any purpose of any applicable bonus, benefit, or retirement plan, unless required by such plans.
- E. Each participating Settlement Class member who is mailed a Settlement Share must cash his/her Settlement Share check within 180 days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class members whose checks were not cashed within 180 days after mailing will be deposited by the Settlement Administrator with *cy pres* recipient Bet Tzedek Employment Rights Project.
- F. Neither Plaintiff nor Tomarco, nor their respective counsel, shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Class Counsel will request a total award of attorneys' fees of one-third of the Gross Settlement Amount (currently estimated at \$183,333.33), plus actual costs

and expenses as supported by declaration in an amount not to exceed \$30,000.00. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. As noted above, the Settlement Administrator will mail Class Counsel the attorneys' fees and cost award when it mails the Settlement Shares to Settlement Class members. The Settlement Administrator will issue Class Counsel IRS Forms 1099 when the Settlement Administrator pays the fee and cost award allowed by the Court.

6. **Class Representative Incentive Award.** Plaintiff will request a Class Representative Incentive Award of \$7,500.00 from the Gross Settlement Amount for Plaintiff's release of claims, his time and risks in prosecuting the Action, and his service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Share as a Settlement Class member and shall be reported on an IRS Form 1099 by the Settlement Administrator. The Settlement Administrator will mail Plaintiff the Class Representative Incentive Award and issue Plaintiff an IRS Form 1099 when it mails the Settlement Shares to participating Settlement Class members.

7. **Settlement Administrator.** The parties will request the appointment of Phoenix as Settlement Administrator. Tomarco will not object to Plaintiff's seeking permission to pay up to \$8,000.00 from the Gross Settlement Amount for the Settlement Administrator's services. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Shares and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount only after Settlement Shares have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines and Tuvia Korobkin of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff as Class Representative for the Settlement Class;
- D. Approving Phoenix as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and the Notice of Estimated Settlement Award, attached hereto as Exhibits A and B, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within fifteen (15) business days after entry of an order preliminarily approving this Agreement, Tomarco will provide the Settlement Administrator with the name, last known address, last known phone number, social security number, and dates of employment as a non-exempt Production Department employee in California, for each Settlement Class member (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of the Class Data, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the addresses of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Share for each Settlement Class member, and provide Class Counsel and Defense Counsel with its calculations for their approval; (iv) provide Class Counsel and Defense Counsel with formatted versions of the Notice Packets to be sent to Settlement Class members; and (v) after receiving approval from all counsel, mail a Notice Packet (in English and Spanish) to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the settlement must complete and mail an Exclusion Letter (defined below) to the Settlement Administrator on or before sixty (60) calendar days after the date of the initial mailing of the Notice Packets (the “Response Deadline”). The Exclusion Letter is a document prepared by the Settlement Class member that must: (1) contain the Settlement Class member’s name, address, telephone number, and last four digits of his/her Social Security number; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Exclusion Letter does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from this settlement, except an Exclusion Letter not containing a Settlement Class member’s last four digits of the Social Security number will be deemed valid. The date of the postmark on the Exclusion Letter shall be the exclusive means used to determine whether an Exclusion Letter has been timely submitted. Any Settlement Class member who excludes himself or herself from the Settlement Class will not be entitled to any recovery under this Settlement Agreement, will not be bound by the terms of the Settlement Agreement, and will not have any right to object, appeal, or comment thereon. The Settlement Administrator will provide the Parties with weekly updates regarding the number of Exclusion Letters received. The Parties and their counsel agree not to take any action to encourage any Settlement Class member to opt out of the settlement.
- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement by either submitting a written objection to the Settlement Administrator as explained in the Class Notice, and/or by appearing at the Final Approval Hearing. The Settlement Administrator shall, within two (2)

business days of receipt, serve any written objection(s) as received on Class Counsel and Defense Counsel, and Class Counsel shall then file all such objections with the Court. Defense Counsel and Class Counsel shall file and serve any responses to written objections no later than five (5) calendar days prior to the Final Approval hearing. To be valid, any written objection must: (1) contain the objecting Settlement Class member's full name, current address, and telephone number, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence supporting the objection; and (4) be postmarked no later than the Response Deadline. A Settlement Class member who wishes to submit a written objection but who fails to comply with the procedures set forth herein and/or in the Class Notice shall be deemed not to have submitted a written objection. Any attorney who intends to represent an objecting Settlement Class member at the Final Approval hearing must submit a Notice of Appearance to the Court and serve it on all Parties on or before the Response Deadline. The Parties and their counsel agree not to take any action to encourage any Settlement Class member to object to the settlement.

- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to Settlement Class members shall contain a Notice of Estimated Settlement Award, in which shall be disclosed the amount of the Settlement Class member's estimated Settlement Share as well as all of the information that was used from Tomarco's records in order to calculate the Settlement Share, including their number of Workweeks worked. Settlement Class members will have the opportunity, should they disagree with Tomarco's records regarding the information stated in their Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with counsel for the Parties to determine whether an adjustment to the Settlement Class member's Settlement Share is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Share under the terms of this Settlement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Share shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member within two (2) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within

thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline, whichever is later, to submit an Exclusion Letter, Objection, or dispute, as applicable. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline, if applicable. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet need not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defense Counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for submitting Exclusion Letters, Objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval of the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees, costs, Class Representative Incentive Award, PAGA civil penalties to the LWDA, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** Tomarco denies liability as to the matters alleged in the Complaint. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code § 1152.

12. **Confidentiality.** Plaintiff and Class Counsel agree that, prior to filing a Motion for Preliminary Approval, they will not disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein, and except to Plaintiff's spouse or to his attorneys or tax preparers as necessary for those professionals to provide their professional services to Plaintiff.

13. **Continuing Jurisdiction.** Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to construe, interpret and enforce this Settlement, to supervise all notices, the administration of the Settlement, and to hear and adjudicate any dispute arising from or related to the Settlement. The Parties agree that the Court has jurisdiction over the Settlement pursuant to California Code of Civil Procedure, Section 664.6.

14. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

15. **Enforcement Action.** In the event either Party brings an action to enforce the terms of this Settlement, the prevailing party in such action shall be entitled to recover his/its reasonable attorneys' fees and costs incurred.

16. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Tomarco: Alan Freisleben, Freisleben Law Group, 1881 Von Karman Ave., Suite 1620, Irvine, CA 92612; freisleben@flg-llp.com

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, CA 90245; phaines@haineslawgroup.com

17. **Applicable Law.** All terms and conditions of this Settlement Agreement 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 or choice of law principles.

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

19. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

20. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

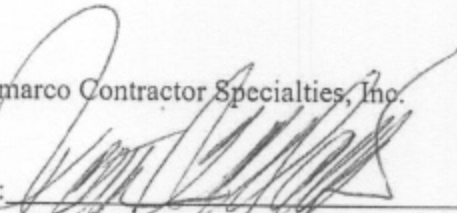
21. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

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DATED: JUNE 21, 2021

Tomarco Contractor Specialties, Inc.

By: 

KEITH L. WATKINS

Its: PRESIDENT

DATED: _____, 2021

Francisco Ramirez Gonzalez

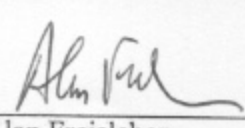
By: _____

Plaintiff and Class Representative

APPROVED AS TO FORM:

DATED: 6/21, 2021

FREISLEBEN LAW GROUP

By: 

Alan Freisleben

Attorneys for Defendant Tomarco Contractor
Specialties, Inc.

DATED: _____, 2021

HAINES LAW GROUP, APC

By: _____

Paul K. Haines

Attorneys for Plaintiff and the Settlement Class

DATED: _____, 2021

Tomarco Contractor Specialties, Inc.

By: _____

Its: _____

DATED: 6/10, 2021

Francisco Ramirez Gonzalez

By:  _____
Francisco Ramirez Gonzalez (Jun 10, 2021 23:13 PDT)
Plaintiff and Class Representative

APPROVED AS TO FORM:

DATED: _____, 2021

FREISLEBEN LAW GROUP

By: _____

Alan Freisleben
Attorneys for Defendant Tomarco Contractor
Specialties, Inc.

DATED: 6/11, 2021

HAINES LAW GROUP, APC

By:  _____
Paul K. Haines
Attorneys for Plaintiff and the Settlement Class

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FRANCISCO RAMIREZ GONZALEZ,

Plaintiff,

vs.

TOMARCO CONTRACTOR SPECIALTIES, INC., *et al.*

Defendants.

Case No. 19STCV20723

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt Production Department employees employed by Tomarco Contractor Specialties, Inc. ("Tomarco") in the State of California at any time from June 14, 2015 through <<END OF CLASS PERIOD>>. These employees are referred to as the "Settlement Class."

**PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT.**

Why should you read this Notice?

The Los Angeles County Superior Court (the "Court") has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Francisco Ramirez Gonzalez v. Tomarco Contractor Specialties, Inc.*, Los Angeles County Superior Court Case No. 19STCV20723 (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from the Settlement. Tomarco's records show that you were employed by Tomarco in California as a non-exempt Production Department employee at some point between June 14, 2015 and <<END OF CLASS PERIOD>> (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Action, to inform you of the terms of the proposed Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Francisco Ramirez Gonzalez ("Plaintiff") has filed a lawsuit alleging that Tomarco violated California law by: (i) failing to pay overtime wages; (ii) failing to pay at least the minimum wage for all hours worked; (iii) failing to provide meal periods; (iv) failing to authorize and permit rest periods; and as a result of these violations, (vii) engaged in unlawful business practices. In addition, Plaintiff seeks recovery of civil penalties under the California Private Attorneys General Act ("PAGA"), interest, and attorneys' fees and costs. Plaintiff is known as the "Class Representative" and his attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

The Court has not ruled on the merits of Plaintiff's claims.

Tomarco has denied, and continues to deny, that it has done anything wrong, and believes it has acted in compliance with all applicable laws and that Plaintiff's claims have no merit. Tomarco also denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. By agreeing to settle, Tomarco is not admitting liability on any of the factual allegations or claims asserted in the Action, or that the Action can or should proceed as a class action in a non-settlement context.

However, to avoid additional expense, inconvenience, and interference with its business operations, Tomarco has concluded that it is in its best interests to settle the Action on the terms summarized in this Notice. After Tomarco provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the parties.

The Class Representative and Class Counsel also support the Settlement. Among the reasons for support are the defenses to liability potentially available to Tomarco, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Tomarco, your decision about whether to participate in the Settlement will not affect your employment. California law and Tomarco's company policies strictly prohibit unlawful retaliation. Tomarco will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / the Settlement Class: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Tuvia Korobkin tkorobkin@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	Attorneys for Tomarco: FREISLEBEN LAW GROUP Alan Freisleben freisleben@flg-llp.com 18881 Von Karman Avenue, Suite 1620 Irvine, California 92612 Tel.: (949) 429-6475 flg-llp.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court granted preliminary approval of the Settlement on behalf of the Settlement Class. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release claims against Tomarco as specifically described below.

Tomarco has agreed to pay \$550,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including claims by eligible Settlement Class members, attorneys' fees, costs, settlement administration costs, PAGA civil penalties, and the Class Representative's Incentive Award.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$8,000.00 from the Gross Settlement Amount to pay the settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, currently estimated to be \$183,333.33, as reasonable compensation for the work Class Counsel performed, and will continue to perform, in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$30,000.00 for verified costs Class Counsel incurred in connection with the Action.

Class Representative Incentive Award. Class Counsel will ask the Court to approve an incentive award of \$7,500.00 to the Class Representative. This award is to compensate the Class Representative for his service and extra work provided on behalf of the Settlement Class members.

PAGA Civil Penalties. The parties have agreed to allocate \$50,000.00 of the Gross Settlement Amount as alleged civil penalties for the settlement of Plaintiff's PAGA claim. Pursuant to the requirements of the PAGA statute, Seventy-five percent (75%) of that amount, or \$37,500.00, will be paid to the California Labor & Workforce Development Agency ("LWDA"). The remaining 25%, or \$12,500.00, will be paid to participating Settlement Class members.

Calculation of Settlement Class Members' Settlement Awards. After deducting the Court-approved amounts for administration costs, attorneys' fees and expenses, class representative incentive award, and the portion of PAGA civil penalties paid to the LWDA, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Exclusion Letter (described below).

The NSA is estimated to be approximately \$283,666.67. Payments from the NSA (known as "Settlement Shares") will be calculated for each participating Settlement Class Member based on the proportionate number of workweeks each participating Settlement Class member worked for Tomarco as a non-exempt Production employee in California during the Class Period.

Allocation and Taxes. For tax purposes, Settlement Awards shall be treated as one-third wages, subject to payroll tax withholdings and for which IRS forms W-2 will be issued; and one-third penalties and one-third interest, for which IRS forms 1099 will be issued. Settlement Class members are responsible for the proper income tax treatment of their Settlement Awards. The Settlement Administrator, Tomarco and its counsel, Plaintiff and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement and the Settlement becomes final, the Class Representative, and every member of the Settlement Class (except those who opt out) shall release and discharge Tomarco, and its current and former officers, directors, and agents, and the successors and assigns of all such entities and individuals ("Released Parties") from any and all claims, causes of action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, that are alleged in the operative Complaint in the Action, including claims for: (i) unpaid overtime wages under Cal. Labor Code §§ 204, 510, 558, 1194, 1198; (ii) unpaid minimum wages under Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1198; (iii) failure to authorize and permit rest periods under Cal. Labor Code §§ 226.7, 516, 558; (iv) failure to provide meal periods under Cal. Labor Code §§ 226.7, 512, 558; and all claims for unfair competition (Cal. Bus. & Prof. Code § 17200 *et seq.*) or for civil penalties under the PAGA based on the above violations (collectively, the "Released Claims"). This release shall run for the duration of the Class Period.

Conditions of Settlement. By granting preliminary approval of the Settlement, the Court has determined that the Settlement falls within the range of possible approval as fair, reasonable, and adequate. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement.

How can I receive money from the Settlement?

Do Nothing. You do not need to do anything if you want to receive payment from and participate in the Settlement. If you do nothing, you will be entitled to your Settlement Share based on the number of workweeks you worked for Tomarco as a non-exempt Production Department employee in California during the Class Period. Your estimated individual Settlement Share is included in the enclosed Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated herein.

Check Cashing Deadline and Uncashed Checks. You must cash or deposit your Settlement Share check within 180 days from the date that the Settlement Administrator mails the check to you. If you do not cash or deposit your check within 180 days, your check will be voided and the funds from the check will be deposited with *cy pres* recipient Bet Tzedek Employment Rights Clinic.

What other options do I have?

Disputing Information in Notice of Estimated Settlement Award. Your estimated Settlement Share has been calculated and is included in the enclosed Notice of Estimated Settlement Award. As stated above, your

estimated Settlement Share is based on the number of workweeks you worked for Tomarco as a non-exempt Production Department employee in California during the Class Period. The information contained in Tomarco's records regarding your number of workweeks worked is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.** The parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Exclusion Letter," which is a letter or postcard, postmarked no later than <<RESPONSE DEADLINE>>, with your full name, current address, telephone number, last 4 digits of your social security number, and your signature. The Exclusion Letter should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE GONZALEZ V. TOMARCO LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

Send the Exclusion Letter directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a valid and timely Exclusion Letter shall, upon receipt, no longer be a Settlement Class member, will be barred from participating in the Settlement, and will receive no benefits from the Settlement. Any person who submits a valid and timely Exclusion Letter will also lack standing to submit any objection to the Settlement.

Objecting to the Settlement. If you do not submit an Exclusion Letter, you have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may either mail a written Objection to the Settlement Administrator and/or appear at the Final Approval Hearing. Any written Objection must include your full name, current address, and telephone number, the name and contact information of any attorney representing you, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection, including any supporting papers, briefs, written evidence, declarations, and/or other evidence. All written objections or other correspondence must state the name and number of the case, which is *Francisco Ramirez Gonzalez v. Tomarco Contractor Specialties, Inc.*, Los Angeles County Superior Court Case No. 19STCV20723. To be valid, any written objection must be postmarked on or before <<RESPONSE DEADLINE>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing. You have the right to appear either in person or through your own attorney at this hearing. You do not need to submit a written objection in order to object orally at the Final Approval Hearing. If you wish to appear at the Final Approval Hearing and/or retain an attorney to represent you at the hearing, you must do so at your own expense. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. As noted above, all correspondence related to this case must state the case name and case number.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object. In other words, by submitting an Objection, you are not excluding yourself from the Settlement.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department SSC-12 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. At the Final Approval Hearing, the Court will also be asked to rule on Class Counsel's request for attorneys' fees and expenses, the incentive award to the Class Representative, and the Settlement administration costs. The Final Approval Hearing may be postponed without further notice to the Settlement Class. **You are not required to attend**

the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing at their own expense. If you plan on attending the hearing, please consult the Court's website, www.lacourt.org, for information regarding court operations and social distancing requirements during COVID-19.

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. You may also download case-related documents via the Court's website for a fee. You may also contact the Settlement Administrator or Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT.

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Exclusion Letters, or Objections is <<**RESPONSE DEADLINE**>>. These deadlines will be strictly enforced.

EXHIBIT B

NOTICE OF ESTIMATED SETTLEMENT AWARD

FRANCISCO RAMIREZ GONZALEZ V. TOMARCO CONTRACTOR SPECIALTIES, INC.
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 19STCV20723

IMPORTANT NOTE: Please complete, sign, and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

Phone number (if you wish to be contacted by phone)

(III) Information Used to Calculate Your Estimated Settlement Share:

According to Tomarco Contractor Specialties, Inc.'s ("Tomarco") records, you worked _____ workweeks for Tomarco as a non-exempt Production Department employee in California between June 14, 2015 and <<END OF CLASS PERIOD>>.

Based on the above, your Settlement Share is estimated at \$ _____.

(IV) If you disagree with the number of workweeks listed in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from Tomarco's records, Tomarco's records will control unless you provide documentation that establishes that Tomarco's records are mistaken. If there is a dispute about whether Tomarco's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. The Settlement Administrator's determination will be final.

Date: _____

Signature: _____

ANY DISPUTES (INCLUDING SUPPORTING DOCUMENTS) MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.