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Attorneys for Plaintiff Manuel Villegas and Ernesto Rivera

COUNSEL CONTINUED ON NEXT PAGE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

ERNESTO RIVERA, individually, and on behalf
of other members of the general public similarly
situated,

Plaintiff,

vs.

FIBER CARE BATHS, INC., a California
corporation; and DOES 1 through 100, inclusive;
Defendant.

CASE NO. CIVSB2114174

Assigned for all Purposes to the Honorable
David Cohn, Dept. S26

**JOINT STIPULATION OF SETTLEMENT
AND SETTLEMENT AGREEMENT**

MANUEL VILLEGAS,

Plaintiff,

vs.

FIBER CARE BATHS, INC.,
Defendant.

CASE NO. CIVSB2114736

1 Chad T. Wishchuk, SBN 214779
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2 Marlene C. Nowlin, SBN 156457
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7 Attorneys for Defendant Fiber Care Baths, Inc.

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1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of the Actions described in
3 this Stipulation of Settlement and Settlement Agreement (“Agreement” or “Settlement”) shall be
4 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
5 shall have the meanings set forth in Article I or as defined elsewhere in this Agreement.

6 This Agreement is made by and between Plaintiffs Manuel Villegas (“Plaintiff Villegas”),
7 Ernest Rivero (“Plaintiff Rivera”) and the Class Members, on the one hand, and Defendant Fiber
8 Care Baths, Inc. (“Defendant”), on the other hand. Plaintiffs and Defendant collectively are referred
9 to in this Agreement as “the Parties.”

10 The Parties agree that the above-captioned Actions shall be, and hereby are, ended, settled,
11 resolved, and concluded by agreement of Defendant to pay the settlement amount of Three Million
12 Seven Hundred Forty Thousand Dollars (\$3,740,000.00) as provided in Section 3.06(a) below
13 (“Gross Settlement Amount”) pursuant to the terms and conditions of this Agreement and for the
14 consideration set forth herein, including but not limited to, a release of all claims by Plaintiffs and
15 the Class Members as set forth in this Agreement.

16 In consideration of the mutual promises and obligations contained in this Agreement, and
17 intending to be legally bound, the Parties agree as follows:

18 ARTICLE I

19 DEFINITIONS

20 Unless otherwise defined herein, the following terms used in this Agreement shall have the
21 meanings ascribed to them as set forth below:

22 a. “Actions” means and includes the actions described as follows: *Manuel Villegas v.*
23 *Fiber Care Baths, Inc.*, a California Corporation; and DOES 1 through 50, inclusive, Case No.
24 CIVSB2114736, commenced on May 20, 2021 in the Superior Court of the State of California,
25 County of San Bernardino (“Villegas Action”) and *Ernesto Rivera v. Fiber Care Baths, Inc.*, a
26 California Corporation; and DOES 1 through 50, inclusive, Case No. CIVSB2114174, commenced
27 on May 18, 2021 in the Superior Court of the State of California, County of San Bernardino (“Rivera
28 Action”). The Parties hereby stipulate to consolidate the Rivera and Villegas Actions.

b. "Agreement" means this Joint Stipulation of Settlement and Settlement Agreement, including the attached Exhibits.

c. "Class" means all current and former hourly-paid or non-exempt employees who are or were employed by Defendant in California at any time during the Class Period.

d. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

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Armond M. Jackson, State Bar No. 281547

Andrea M. Fernandez-Jackson, State Bar No. 295924

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e. "Class List" means a list based on Defendant's business records that identifies each Class Member's name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, dates of employment, and the number of Qualifying Workweeks worked during the Class Period.

f. "Class Member(s)" means all members of the Class.

g. "Class Period" means November 19, 2016, through October 21, 2022, or the Preliminary Approval Date whichever is sooner.

h. "Court" means the California Superior Court for the County of San Bernardino, where the Actions are currently pending.

i. "Date of Finality" means the later of the following: (1) the date the Final Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or other judicial review is taken from the Court's overruling of objections to the settlement, ten (10)

1 days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes
2 final.

3 j. “Defendant” and “Fiber Care” mean Defendant Fiber Care Baths, Inc.

4 k. “Defense Counsel” means counsel for Defendant:

5 **FINCH, THORNTON & BAIRD, LLP**

6 Chad T. Wishchuk, SBN 214779

7 Marlene C. Nowlin, SBN 156457

8 4747 Executive Drive, Suite 700

9 San Diego, CA 92121

10 Telephone: (858) 737-3100

11 Facsimile: (858) 737-3101

12 l. “Disposition” means the method by which the Court approves the terms of the
13 Settlement and retains jurisdiction over its enforcement, implementation, construction,
14 administration, and interpretation.

15 m. “Final Order Approving Settlement of Class Action” or “Final Order” means the final
16 formal court order signed by the Court following the Final Fairness and Approval Hearing in
17 accordance with the terms herein, approving this Agreement and retaining jurisdiction to ensure
18 compliance with the Final Order.

19 n. “Gross Settlement Amount” means Three Million Seven Hundred Forty Thousand
20 Dollars (\$3,740,000.00) to be paid by Defendant as provided by this Agreement to settle these
21 Actions. All payments to the Class, PAGA payments, expenses and administration costs, attorney’s
22 fees and costs, and Enhancement Awards, pursuant to Section 3.07(a) below, shall be paid out of the
23 Gross Settlement Amount. The employer’s share of payroll taxes arising from the payments made
24 under this settlement shall be paid by Defendant separate from and in addition to the Gross
25 Settlement Amount. The Gross Settlement Amount shall be allocated as 20% as wages and 80% as
26 interest, penalties, and reimbursement.. No part of the Gross Settlement Amount shall revert to
27 Defendant.

28 o. “Enhancement Awards” means a monetary amount of up to Ten Thousand Dollars
(\$10,000.00) for Plaintiff Manuel Villegas and a monetary amount of up to Ten Thousand Dollars

1 (\$10,000.00) for Plaintiff Ernesto Rivera subject to Court approval, in recognition of their efforts
2 and work in prosecuting the Actions on behalf of Class Members, pursuant to section 3.06(a) below.

3 p. "Individual Settlement Payment(s)" means each Participating Class Member's
4 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
5 by the calculations provided in this Agreement.

6 q. "LWDA" means The State of California Labor and Workforce Development Agency.

7 r. "LWDA Payment" means 75% of the \$300,000.00 allocated to the settlement of
8 PAGA claims which, subject to Court approval, will be paid to the LWDA pursuant to Section
9 3.07(e) of this Agreement, as provided for below.

10 s. "Motion for Final Approval" means Plaintiffs' submission of a written motion,
11 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
12 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
13 to enter a Final Order in this Action.

14 t. "Motion for Preliminary Approval" means Plaintiffs' submission of a written motion,
15 including any evidence as may be required for the Court to grant preliminary approval of the
16 Settlement as required by Rule 3.769 of the California Rules of Court.

17 u. "Plaintiffs" means Manuel Villegas and Ernesto Rivera.

18 v. "Net Settlement Amount" means the Gross Settlement Amount less Class Counsel's
19 attorneys' fees and costs, Enhancement Awards, Settlement Administration Costs (including all costs
20 related to the class notice and other costs listed at 3.02), and LWDA Payment, pursuant to Section
21 3.06(a)-(f) below.

22 w. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the
23 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
24 to Section 3.04(b) below.

25 x. "Notice Packet" means the Court Approved Notice Of Proposed Class Action
26 Settlement And Hearing Date For Final Approval to be mailed to Class Members in English and
27 Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference
28 into this Agreement.

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2 y. "PAGA" means the California Private Attorneys General Act of 2004, which is
3 codified in California Labor Code §§ 2698 *et seq.*

4 z. "PAGA Notice" means Plaintiff Villegas's letter to the LWDA dated March 12, 2021
5 providing notice pursuant to Labor Code section 2699.3, subd.(a).

6 aa. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
7 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have
8 agreed that the PAGA Settlement Amount is Three Hundred Thousand Dollars (\$300,000.00),
9 subject to Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA
10 Payment, and the remaining 25% will be included with the Net Settlement Amount and distributed
11 to PAGA Group Members.

12 bb. "PAGA Group Members" means all Class Members employed by Defendant at any
13 time between March 12, 2020 through October 21, 2022, or preliminary approval whichever is
14 sooner. ("PAGA Period").

15 cc. "Participating Class Member(s)" is defined as a Class Member who does not timely
16 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
17 Settlement Amount automatically without the need to return a claim form. Each Participating Class
18 Member will be paid his/her Individual Settlement Payment.

19 dd. "Preliminary Approval Date" means the date the Court enters an order preliminarily
20 approving the Settlement embodied in this Agreement.

21 ee. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
22 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
23 Administrator for the benefit of Participating Class Members.

24 ff. "Qualifying Workweeks" means the number of weeks that Class Members worked
25 for Defendant as non-exempt employees during the Class Period.

26 gg. "Qualifying Pay Periods" means the number of weeks that PAGA Group Members
27 worked for Defendant as non-exempt employees during the PAGA Period.
28

11 jj. “Settlement Administration Costs” means all costs incurred by the Settlement
12 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
13 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
14 Payment checks and related tax reporting forms, payment and administration of unclaimed checks,
15 and generation of checks to Class Counsel for attorneys’ fees and costs, to Plaintiffs for their
16 Enhancement Awards, and to the LWDA. The Settlement Administration Costs shall be paid from
17 the Gross Settlement Amount. Defendant shall not be required to pay additional funds toward
18 settlement administration costs.

19 kk. “Settlement Administrator” means xxxx., which the Parties have agreed will be
20 responsible for the administration of the Individual Settlement Payments to be made by Defendant
21 from the Gross Settlement Amount and related matters under this Agreement.

RECITALS

2.1 On May 18, 2021, Plaintiff Rivera commenced his Action by filing a complaint
alleging causes of action against Defendant for: (1) Violation of California Labor Code §§ 510 and
1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid
Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period

Premiums); (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 226(a) (Non—Compliant Wage Statements); (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (8) Violation of California Business & Professions Code §§ 17200, et seq. (the “Rivera Complaint”). Defendant denies the allegations in the Rivera Complaint, denies any failure to comply with the laws identified in the Rivera Complaint, and denies any and all liability for the causes of action alleged in the Rivera Complaint.

2.2 On May 2021, Plaintiff Villegas commenced his Action by filing a complaint (the “Villegas Initial Complaint”) alleging causes of action against Fiber Care for: (1) Failure To Pay Minimum Wages under Cal. Lab. Code Section 1194 and Industrial Wage Orders (“IWC”) 1, 4, 7, 9 and 16; (2) Failure To Pay Overtime Wages under Cal. Lab. Code Section 1194 and IWC 1, 4, 7, 9 and 16; (3) Failure To Pay Timely Wages under Lab. Code § 210; (4) Failure To Unlawfully Receive Wages (Lab. Code § 221); (5) Failure To Provide Meal Breaks under IWC 1, 4, 7, 9 and 16; (6) Failure To Provide Rest Periods under IWC 1, 4, 7, 9 and 16; (7) Failure To Provide And Maintain Accurate Itemized Wage Statements and Maintain Records under Lab. Code § 226(a); (8) Failure To Pay Timely Wages Upon Termination under Lab. Code § 203; (9) Unlawful Business Practices under Bus. and Prof. Code, § 17200, et seq.; and (10) Violation of the California Labor Code Private Attorneys General Act Of 2004 under Cal Lab. Code §§ 2698, et seq. Fiber Care denies the allegations in the Villegas Initial Complaint, denies any failure to comply with the laws identified in the Villegas Initial Complaint and denies any and all liability for the causes of action alleged in the Villegas Initial Complaint.

2.3 On July 6, 2022, Plaintiff Villegas filed a First Amended Complaint in his Action (the “Villegas FAC”) alleging causes of action against Fiber Care for: (1) Failure To Pay Minimum Wages under Cal. Lab. Code Section 1194 and Industrial Wage Orders (“IWC”) 1, 4, 7, 9 and 16; (2) Failure To Pay Overtime Wages under Cal. Lab. Code Section 1194 and IWC 1, 4, 7, 9 and 16; (3) Failure To Pay Timely Wages under Lab. Code § 210; (4) Failure To Unlawfully Receive

1 Wages (Lab. Code § 221); (5) Failure To Provide Meal Breaks under IWC 1, 4, 7, 9 and 16 (6)
2 Failure To Provide Rest Periods under IWC 1, 4, 7, 9 and 16; (7) Failure To Provide And Maintain
3 Accurate Itemized Wage Statements and Maintain Records under Lab. Code § 226(a); (8) Failure
4 To Pay Timely Wages Upon Termination (Lab. Code § 203); (9) Unlawful Business Practices
5 under Bus. And Prof. Code, § 17200, et seq.; (10) Failure To Pay For Necessary Expenses under
6 Cal. Lab. Code § 2802; and (11) Violation Of The California Labor Code Private Attorneys
7 General Act Of 2004 under Cal Lab. Code §§ 2698, et seq. The Villegas FAC is the operative
8 complaint in the Villegas Action. Fiber Care denies the allegations in the Villegas FAC, denies any
9 failure to comply with the laws identified in the Villegas FAC and denies any and all liability for
10 the causes of action alleged in the Villegas FAC.

11 2.4. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Villegas gave written notice
12 to Defendant and the LWDA by sending the PAGA Notice.

13 2.5. On June 2, 2022, Defendant and Plaintiff Rivera participated in a mediation presided
14 over by mediator Lynne Frank of Frank and Feder. That mediation was not successful and did not
15 result in a settlement, however, the parties agreed to engage in further settlement negotiations to
16 resolve the case.

17 2.6 Thereafter, the Parties, by and through their counsel, continued to engage in
18 settlement negotiations and discussions along with extensive data and document exchanges and at
19 least three separate mediation/settlement conferences between counsel in an attempt to narrow the
20 disputed issues and facilitate further dialogue. As a result of this informal exchange and dialogue,
21 the Parties agreed to pursue a joint mediation with mediators Lynn Frank and Marc Feder of Feder
22 and Frank regarding Rivera's and Villegas's claims.

23 2.7 On July 21, 2022, the Parties participated in a second, all-day, mediation presided
24 over by mediators Lynn Frank and Marc Feder.

25 2.8 The mediations before Lynn Frank and Marc Feder led to a Memorandum of
26 Understanding Re Class and PAGA Settlement ("MOU"). A copy of the MOU is attached as
27 Exhibit B and incorporated in this Agreement as though set forth in full in this Agreement.
28

2.9 The Parties engaged in a substantial exchange of documents and information during informal discovery prior to and during settlement discussions and mediation. The Parties reached this Agreement only after extensive informal discovery and investigation were performed.

2.10 The Courts have not granted class certification in the Actions.

2.11 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

ARTICLE III

CONTINGENT NATURE OF THE AGREEMENT

Section 3.01: Stipulation of Class for Settlement Purposes

This Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon all events required for the Date of Finality and each of the following: (a) Entry of the Final Order; (b) Discharge of Defendant and the Released Parties from liability for the PAGA Claims released by this Agreement; (c) Release of the PAGA Claims against the Released Parties by Plaintiffs, the State of California and all PAGA Group Members; (d) Submission of the Final Order by Plaintiffs' Counsel to the LWDA within ten (10) business days of entry of the order pursuant to California Labor Code section 2699(1)(3); (e) dismissal of both Actions with prejudice in their entirety; and (f) release of Defendant and all Released Parties as set forth in Article V. If any of these events do not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class with respect to any cause of action alleged in the Actions. Defendant does not consent to certification of the Class for any purpose other than to effectuate settlement of the Actions. If the Date of Finality or any of the above events do not occur, or if Disposition of the Actions is not effectuated, Defendant, and the Class will be returned to their positions with respect to the Actions as if the Agreement had not been entered into. In the event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving any class contemplated by this Agreement shall be null and void *ab initio*, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the

1 settlement reflected in this Agreement, the fact that Defendant did not oppose the a Class under this
2 Agreement, or that the Court preliminarily approved the certification of the Class for settlement
3 purposes, shall not be used or cited thereafter by any person or entity, including in any manner
4 whatsoever, including without limitation any contested proceeding relating to any class. If the Date
5 of Finality or any of the above events do not occur, this Agreement shall be deemed null and void *ab*
6 *initio*, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose
7 whatsoever. Defendant expressly reserves the right to challenge class certification in the Actions for
8 any purpose, if the Date of Finality or any of the above events do not occur.

9 The Parties and their respective counsel shall take all steps that may be requested by the Court
10 relating to the approval and implementation of this Agreement and shall otherwise use their
11 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
12 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
13 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
14 resolution, the Parties agree to seek the assistance of mediator Lynn Frank and Marc Feder to resolve
15 the dispute.

16 ARTICLE IV

17 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

18 The procedure for obtaining Court approval of and implementing this Agreement shall be as
19 follows:

20 **Section 3.01: Motion for Preliminary Approval**

21 Plaintiffs will bring a motion before the Court for an order conditionally certifying the Class
22 for settlement purposes only to include all claims pled in the Actions and the "Released Claims" as
23 defined below, based on the preliminary approval of this Agreement. The date that the Court grants
24 preliminary approval of this Agreement will be the "Preliminary Approval Date." Class Counsel is
25 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than
26 fourteen (14) days after full execution of this Agreement; obtaining the next available hearing date
27 for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the
28

1 Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
2 Approval to the Administrator.

3 **Section 3.02: The Settlement Administrator**

4 The Parties have chosen xxxx to administer this Settlement and to act as the Settlement
5 Administrator, including but not limited to distributing and responding to inquiries about the Notice
6 Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement Amount and
7 the Individual Settlement Payments, issuing the Individual Settlement Payment checks and
8 distributing them to Participating Class Members, establishing and maintaining the QSF, and issuing
9 the payment to Class Counsel for attorneys' fees and costs, the Enhancement Award checks to
10 Plaintiffs, and the employer payroll taxes to the appropriate taxing authorities. The Settlement
11 Administrator shall expressly agree to all of the terms and conditions of this Agreement.

12 All costs of administering the Settlement, including but not limited to all costs and fees
13 associated with preparing, issuing and mailing any and all notices to Class Members and/or
14 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
15 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax
16 returns and any other filings required by any governmental taxing authority or agency, all costs and
17 fees associated with preparing any other checks, notices, reports, or filings to be prepared in the
18 course of administering disbursements from the Net Settlement Amount, and any other costs and fees
19 incurred and/or charged by the Settlement Administrator in connection with the execution of its
20 duties under this Agreement ("Settlement Administration Costs"), shall be paid to the Settlement
21 Administrator from the Gross Settlement Amount.

22 **Section 3.03: Notice to Class Members**

23 No later than fifteen (15) business days after the Preliminary Approval Date, Defendant will
24 provide the Settlement Administrator with a "Class List" in electronic format based on its business
25 records, identifying the names of the Class Members, their last known home addresses, Social
26 Security numbers or, as applicable, other taxpayer identification number, their dates of employment
27 and weeks worked during the Class Period.
28

1 Within ten (10) business days of receiving a Class List from Defendant, the Settlement
2 Administrator will send Class Members, by first-class mail, at their last known address, the Court
3 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
4 Settlement Class. The Notice Packet will include a calculation of the Class Member's approximate
5 share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of
6 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
7 Settlement Administrator will check all Class Member addresses against the National Change of
8 Address database and shall update any addresses before mailing. The Settlement Administrator will
9 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
10 Notice Packet was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall
11 have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the
12 initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class
13 Members shall not be required to submit claim forms in order to receive a proportional share of the
14 Net Settlement Amount.

15 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
16 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
17 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
18 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
19 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
20 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
21 that reasonable means be used to locate Class Members and that the Settlement Administrator be
22 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
23 Individual Settlement Payments to all Participating Class Members.

24 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
25 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
26 status report provided to the Parties.

27 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
28 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class

Member's Individual Settlement Payment. The Settlement Administrator will hold the Class Member's Individual Settlement Payment during the check cashing period on behalf of the Class Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the procedures set forth in Section 3.07(g) below.

No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration attesting to completion of the notice process, including any attempts to obtain valid mailing addresses for and re-sending of any returned Notice Packets, as well as the number of valid requests for exclusion and objections that the Settlement Administrator received.

Section 3.04: Responses to Notice

a. Requests for Exclusion from Class

In order for any Class Member to validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class Member or his or her authorized representative, and must be sent to the Settlement Administrator, postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall contain instructions on how to validly exclude himself or herself from the Class and this Settlement (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Class Member who timely and validly requests exclusion from the Class and this Settlement will not be entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this Agreement, and will not have any right to object, appeal, or comment thereon.

Any Class Member who fails to timely submit a request for exclusion shall automatically be deemed a Class Member whose rights and claims with respect to the issues raised in the Actions are determined by the Court's Final Order Approving Settlement of Class Action, and by the other

1 rulings in the Actions. Thus, said Class Member's rights to pursue any claims covered by the Actions
2 and/or released in this Agreement will be extinguished.

3 Class Members shall not have the right to request exclusion from the PAGA portion of the
4 settlement, to the extent that Class Members are also members of the PAGA group, and shall receive
5 their pro rata share of the PAGA Settlement Amount regardless of whether they opt-out or not from
6 the class action portion of this case.

7 **b. Objections to Settlement**

8 For any Class Member to object to this Agreement, or any term of it, the person making the
9 objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the
10 Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)
11 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
12 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
13 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and
14 the date the signed objection was postmarked, shall be conclusively determined according to the
15 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
16 receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class
17 Members may also appear at the final approval hearing to object. The Court retains final authority
18 with respect to the consideration and admissibility of any Class Member objections.

19 **c. Encouragement of Class Members**

20 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
21 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
22 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
23 Class Members.

24 **d. Right of Defendant to Adjust Gross Settlement Amount**

25 If the number of workweeks as of June 9, 2022, exceeds 77,069, Defendant will have the
26 option to increase the Gross Settlement Amount pro rata per additional workweek beyond 77,069 by
27 \$53.38 per workweek. Alternatively, Defendant may elect to cap the Class Period so that the
28 workweeks do not exceed 77,069.

1 **e. Termination for Lack of Sufficient Participation**

2 If ten percent (10%) or more of the Class Members makes a valid request to be excluded from
3 the Class, Defendant will have the right, but not the obligation, to void the Agreement within thirty
4 (30) days of the Response Deadline. If Defendant exercises that right to void the Agreement, then
5 the Parties will have no further obligations under the Agreement, including any obligation by
6 Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been
7 owed under this Agreement.

8 **Section 3.05: Final Fairness and Approval Hearing**

9 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
10 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement
11 and determine whether the Court should give it final approval, and (2) consider any objections made
12 and all responses by the Parties to such objections.

13 Not later than sixteen (16) court days before the calendared Final Fairness and Approval
14 Hearing, Plaintiffs and/or Class Counsel will file in Court, the Motion for Final Approval of the
15 Settlement which shall include a request for approval of the PAGA settlement under Labor Code
16 section 2699, subd. (l), and a Proposed Final Order Approving Settlement of Class Action. Plaintiffs
17 shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to
18 filing the Motion for Final Approval and Proposed Final Order Approving Settlement of Class
19 Action. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by
20 telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval
21 and/or the Proposed Final Order Approving Settlement of Class Action.

22 At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final
23 approval of this Agreement by signing the Final Order Approving Settlement of Class Action.

24 **Section 3.06: Settlement Payment Procedures**

25 **a. Settlement Amount**

26 In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the
27 Gross Settlement Amount in the amount of Three Million Seven Hundred Forty Thousand Dollars
28 (\$3,740,000.00), subject to a pro rata increase under the condition set forth in Section 3.04(d). The

Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class Members, all administration costs, Class Counsel's attorney's fees and costs, the PAGA Settlement Amount, and the Enhancement Payments. Fiber Care has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in the following paragraph.

Within thirty (30) days after the Court signs the Final Order or within thirty (30) days of July 22, 2023 whichever is later, Defendant shall transfer the Gross Settlement Amount plus Defendant's share of employer-side payroll taxes, as set forth herein, into a QSF established by the Settlement Administrator either directly or by sending the funds to the Settlement Administrator to be deposited and distributed. If, however, an objection is made but no appeal filed, Defendant will transfer the Gross Settlement Amount no later than 21 days after the running of the appeal period. If an appeal is filed, Defendant will transfer the Gross Settlement Amount no later than 21 days after the Final Order is no longer subject to appeal.

The Settlement Administrator will use these funds to fund payment of the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, the Enhancement Awards, the LWDA Payment, and the Settlement Administration Costs.

Within ten (10) court days after receiving Defendant's final payment, funding the Gross Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the Enhancement Awards, and employer and employee tax withholdings applicable to the Net Settlement Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes.

b. Payment of Attorneys' Fees and Costs

Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One Million Two Hundred Forty-Six Thousand Five Hundred and Forty Two Dollars (\$1,246,542). Class Counsel shall submit an application for an award of costs not to exceed Forty Thousand Dollars (\$40,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final

1 Fairness and Approval Hearing. Defendant shall not object to or oppose any such application in these
2 amounts. Class Counsel shall serve Defendant with copies of all documents submitted in support of
3 their application for an award of attorneys' fees and costs.

4 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
5 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
6 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
7 and expenses related to the investigation, prosecution, and settlement of the Actions incurred through
8 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees
9 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
10 will be reallocated to the Net Settlement Amount.

11 The Administrator will pay attorneys' fees and costs awarded to Class Counsel using one or
12 more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
13 attorneys' fees and costs awarded to Class Counsel and paid by the administrator and holds Fiber
14 Care harmless and indemnifies Fiber Care from any dispute or controversy regarding tax issues and
15 any division or sharing of any of these Payments.

16 **c. Payment of Settlement Administration Costs**

17 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
18 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
19 Twenty-Five Thousand Dollars (\$25,000.00).

20 **d. Payment of Enhancement Award to Plaintiffs**

21 Subject to Court approval, the Plaintiff Manuel Villegas shall receive an Enhancement Award
22 of up to Ten Thousand Dollars (\$10,000.00) and the Plaintiff Ernesto Rivera shall receive an
23 Enhancement Award of up to Ten Thousand Dollars (\$10,000.00), the request for which Defendant
24 will not object to or oppose. The Enhancement Award shall be paid out of the Gross Settlement
25 Amount and shall not constitute payment to any Participating Class Member(s) other than Plaintiff.
26 To the extent that the Court approves less than the amount of Enhancement award that Class Counsel
27 request, the difference between the requested and awarded amounts will be reallocated to the Net
28 Settlement Amount.

1 Because it is the intent of the Parties that the Enhancement Award represents payment to
2 Plaintiffs for their service to the Class Members, and not wages, the Settlement Administrator will
3 not withhold any taxes from the Enhancement Awards. The Enhancement Awards will be reported
4 on a Forms 1099, which the Settlement Administrator will provide to Plaintiffs and to the pertinent
5 taxing authorities as required by law. Plaintiffs assume full responsibility and liability for employee
6 taxes owed on the Enhancement Award and hold Fiber Care harmless and indemnify Fiber Care from
7 any dispute or controversy regarding any tax issues arising from the Enhancement Payment.

8 **e. Payment to the Labor and Workforce Development Agency**

9 In consideration of claims made under PAGA, Class Counsel will request that the Court
10 approve allocation of Three Hundred Thousand Dollars (\$300,000.00) of the Gross Settlement
11 Amount to these claims. Seventy-five percent (75%) of this payment will be paid to the California
12 Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%)
13 will be paid from the Net Settlement Amount for distribution to PAGA Group Members. Defendant
14 will not oppose this request. The entire PAGA Settlement Amount will be paid out of the Gross
15 Settlement Amount. The Court's adjustment, if any, of the amount allocated to Plaintiffs' PAGA
16 claim in the Actions, will not invalidate this Agreement.

17 **f. Payment of Individual Settlement Payments to Participating Class Members**

18 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
19 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
20 Participating Class Members in proportion to the number of individual Qualifying Workweeks for
21 each Class Member. To calculate the minimum amount each Class Member will receive based on
22 their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total
23 number of Qualifying Workweeks by all Class Members during the Class Period and then allocated
24 on a pro rata basis. Each Class Member's approximate Individual Settlement Payment amount will
25 be included in his or her Notice Packet. After final approval by the Court, the Net Settlement Amount
26 will be dispersed to Participating Class Members (those who did not exclude themselves) on a pro
27 rata basis based on the individual Qualifying Workweeks worked during the Class Period by each
28 Participating Class Member.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 20% allocated to wages and 80% allocated to penalties and interest. 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 by W-2 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. 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 by IRS 1099 forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Settlement Payments and hold Fiber Care harmless and indemnify Fiber Care from any dispute or controversy regarding any tax issues arising from the Individual Settlement Payments.

No later than ten (10) business days after receiving the Gross Settlement Amount from Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for the interest and penalty portions of the Individual Settlement Payments. Participating Class Members shall have 180 days from the date their Individual Settlement Payment checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or a mass search on LexisNexis or comparable databases based on set criteria and, if another address is identified, the Settlement Administrator shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the

1 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
2 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

3 **g. Payment of Individual Settlement Payments to PAGA Group Members**

4 The Parties agree that the PAGA Settlement Amount, less the LWDA Payment, shall be used
5 to fund Individual Settlement Payments to PAGA Group Members. The Parties agree that the PAGA
6 Settlement Amount, less the LWDA Payment, shall be divided between all PAGA Group Members
7 in proportion to the number of individual Qualifying Pay Periods for each PAGA Group Member.
8 To calculate the minimum amount each PAGA Group Member will receive based on their individual
9 Qualifying Pay Periods, the PAGA Settlement Amount, less the LWDA Payment, will be divided by
10 the total number of Qualifying Pay Periods worked by all PAGA Group Members during the PAGA
11 Period and then allocated on a pro rata basis. Qualifying Pay Periods will be rounded up to the next
12 whole integer. Each PAGA Group Member's approximate Individual Settlement Payment amount
13 from the PAGA Settlement Amount will be included in his or her Notice Packet. After final approval
14 by the Court, the PAGA Settlement Amount, less the LWDA Payment, will be dispersed to PAGA
15 Group Members on a pro rata basis based on the individual Qualifying Pay Periods worked during
16 the PAGA Period by each Participating PAGA Group Member. PAGA Group Members shall not
17 have the right to opt-out or exclude themselves from the PAGA Settlement.

18 Each Individual PAGA Payment will represent penalties and shall be subject to all authorized
19 and required withholdings other than the tax withholdings customarily made from employees' wages
20 and shall be reported by IRS 1099 forms. PAGA Group Members assume full responsibility and
21 liability for any taxes owed on their Individual PAGA Payments and hold Fiber Care harmless and
22 indemnify Fiber Care from any dispute or controversy regarding any tax issues arising from the
23 Individual PAGA Payments.

24 No later than ten (10) business days after receiving the Gross Settlement Amount from
25 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual PAGA
26 Payments to PAGA Group Members. The Settlement Administrator will issue a Form 1099 to the
27 extent required by law for the Individual PAGA Payments. PAGA Group Members shall have 180
28 days from the date their Individual PAGA Payment checks are dated to cash their Settlement checks.

1 Any checks that are not cashed upon the expiration of that 180-day time period will be void, and the
2 PAGA Group Member for whom the funds are designated.

3 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
4 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
5 a mass search on LexisNexis or comparable databases based on set criteria and, if another address is
6 identified, the Settlement Administrator shall mail the check to the newly identified address. If the
7 Settlement Administrator is unable to obtain a valid mailing address through this process, the
8 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
9 Unclaimed Property Fund in the name of the PAGA Group Member for whom the funds are
10 designated.

11 **h. Default on Payment.**

12 Defendant will pay the Gross Settlement Amount to the Settlement Administrator upon entry
13 of the Final Order or 12 months from July 22, 2022, whichever is later. If an objection is made but
14 no appeal filed, Defendant will pay the Gross Settlement Amount no later than 21 days after the
15 running of the appeal period. If an appeal is filed, Defendant will pay the Gross Settlement Amount
16 no later than 21 days. In the event Defendant fails to timely fund the Gross Settlement Amount, the
17 Settlement Administrator will provide notice to Class Counsel and Defendant's counsel within three
18 (3) business days of the missed payment. Thereafter, Defendant will have thirty (30) days to cure the
19 default and tender payment to the Settlement Administrator. In the event Defendant fails to cure the
20 default within the time set forth herein, Plaintiffs may elect to enter judgment against Defendant,
21 pursuant to a noticed motion, for the balance of the unpaid Gross Settlement Amount to date.

22 **i. No Credit Toward Benefit Plans.**

23 The Individual Settlement Payments made to Participating Class Members under this
24 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
25 calculate any additional benefits under any benefit plans to which any Class Members may be
26 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
27 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
28

intention that this Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

ARTICLE V

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 4.01: No Admission of Liability, Class Certification or Representative Manageability for Other Purposes.

This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Actions or PAGA Notice or discussed during mediation have merit or that Fiber Care has any liability for any claims asserted. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval or Final Approval, Fiber Care reserves the right to contest certification of any class for any reason and all available defenses to the claims in the Actions. The Settlement, this Agreement and Parties' willingness to settle the Actions will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

Section 4.02: Non-Evidentiary Use

Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Actions, except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims released through this Agreement.

1 **Section 4.03: Nullification**

2 The Parties have agreed to the certification of the Class encompassing all claims alleged in
3 the Actions for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
4 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
5 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
6 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
7 Actions in their entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
8 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
9 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
10 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
11 stipulate to class certification of all causes of action pled in the Actions as part of the Settlement will
12 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
13 should be certified by the Court in a non-settlement context in the Actions or any other action, and
14 in any of those events, Defendant expressly reserves the right to oppose certification of the Class.

15 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
16 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

17 **ARTICLE VI**

18 **RELEASES**

19 **Section 5.01: Released Claims by Class Members**

20 Upon the Date of Finality, and to the fullest extent permitted by law, Plaintiffs and
21 Participating Class Members who do not opt out of the Settlement and each of their respective former
22 and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns
23 shall be deemed to have generally, fully, finally, and forever waived, released, relinquished, and
24 discharged Defendant and each and all of the Released Parties from any and all claims, transactions,
25 occurrences, demands, rights, liabilities, attorneys' fees and costs, and causes of action alleged or
26 which could have been alleged in the Actions or PAGA Notice that arose during the Class Period,
27 including but not limited to all claims or causes of action for: (a) Failure to provide minimum wages,
28 overtime wages, meal periods, and/or rest breaks, and any claims relating to or that could have been

1 brought under any California Department of Industrial Relations, Industrial Welfare Commission
2 Order, California Labor Code section, or federal, local, or other wage and hour-related law or
3 regulation; (b) Failure to provide accurate itemized wage statements, pay all wages due upon
4 separation of employment, pay for unreimbursed business expenses, and any claims relating to or
5 that could have been brought under any Industrial Wage Order or Labor Code section applicable to
6 such claims and causes of action including for waiting time penalties under Labor Code section 203;
7 (c) Violation of California Business and Professions Code §§17200, *et seq.*; and (d) all claims for
8 attorneys' fees and costs relating to any of the foregoing claims. The foregoing released claims will
9 be collectively referred to as the "Released Claims". It is further acknowledged and agreed that
10 Plaintiffs and Participating Class Members who do not exclude themselves or opt out of the
11 Settlement may discover facts or law different from, or in addition to, the facts or law now known or
12 believed to be true but, nonetheless, this Release shall be and remain effective in all respects,
13 notwithstanding such different or additional facts or discovery of them.

Upon the Date of Finality, and to the fullest extent permitted by law, Plaintiffs, the State of California, the PAGA Group Members, and each of Plaintiffs' and the PAGA Group Members' former and present spouses, representatives, agents, attorneys, heirs, administrators, executors, and assigns, shall be deemed to have generally, fully, finally, and forever waived, released, relinquished, and discharged Defendant and each and all of the Released Parties from any claims and causes of action for PAGA penalties and attorneys' fees and costs that arose during the PAGA Period that were alleged or could have been alleged in the Actions or PAGA Notice, without limitation: (a) Any and all claims involving Labor Code 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1198, 2800, 2802, 2698; (b) Any claims relating to or could have been brought under any Industrial Wage Order or Labor Code section applicable to claims and causes of action, including but not limited to Industrial Welfare Commission Wage Orders Nos. 1-2001, 4-2001; and (c) any and all claims for attorneys' fees and costs.

MISCELLANEOUS PROVISIONS

The terms and provisions of this Agreement may be amended or modified only by an express agreement that is signed by all the Parties (or their successors-in-interest) and their counsel, approved by the Court.

None of the rights, commitments, or obligations recognized under this Agreement may be asserted by any Party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

1 **Section 6.03: Governing Law**

2 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
3 shall be determined, in accordance with the internal laws of the State of California, without regard
4 to conflicts of laws principles.

5 **Section 6.04: Confidentiality**

6 This Agreement shall remain confidential in every respect until this Agreement is filed with
7 the Court.

8 Plaintiffs and Class Counsel will not (a) issue any press or other media release, (b)
9 initiate any contact with the press, other media (including social media), or any third party, (c)
10 respond to any inquiry from the press, or media, or (d) have any communication with the press or
11 other media about the Actions, including, but not limited to the fact, amount, and terms of this
12 Agreement, either before or after the Court approves this Agreement.

13 After the filing of this Agreement, Plaintiffs and Class Counsel agree to keep the
14 existence of this Agreement as well as the Gross Settlement Amount, strictly confidential.
15 Accordingly, they shall not disclose any of the terms of this Agreement to any third party, except for
16 their attorneys, tax advisors, and spouse, and except as compelled by law. If inquiries arise regarding
17 Plaintiffs' dispute with Fiber Care or this Agreement by anyone other than those listed above,
18 Plaintiffs' and Class Counsel will simply state "the matter has been resolved" and will make no
19 further comment.

20 This Section does not apply to any efforts taken to obtain approval of this Agreement
21 from the Court and its submission to the LWDA.

22
23 **Section 6.05: Entire Agreement**

24 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
25 contains the entire understanding of the Parties with respect to the subject matter contained herein.
26 In case of any conflict between text contained in Articles I through VI of this Agreement and text
27 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
28 controlling, unless the Exhibits are changed by or in response to a Court order. There are no

1 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
2 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
3 supersedes all prior agreements and understandings among the Parties with respect to the settlement
4 of the Actions, including correspondence between Class Counsel and Defense Counsel and drafts of
5 prior agreements or proposals.

6 **Section 6.06: Waiver of Compliance**

7 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
8 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
9 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
10 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
11 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
12 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

13 **Section 6.07: Counterparts and Fax/PDF Signatures**

14 This Agreement, and any amendments hereto, may be executed in any number of counterparts
15 and any Party and/or their respective counsel may execute any such counterpart, each of which when
16 executed and delivered shall be deemed to be an original. All counterparts taken together shall
17 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
18 signature.

19 **Section 6.08: Meet and Confer Regarding Disputes**

20 Should any dispute arise among the Parties or their respective counsel regarding the
21 implementation or interpretation of this Agreement, a representative of Class Counsel and a
22 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
23 to submitting such disputes to the Court.

24 **Section 6.09: Agreement Binding on Successors**

25 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
26 of each of the Parties.
27
28

1 **Section 6.10: Cooperation in Drafting**

2 The Parties have cooperated in the negotiation and preparation of this Agreement. This
3 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
4 was the drafter or participated in the drafting of this Agreement.

5 **Section 6.11: Fair and Reasonable Settlement**

6 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
7 the Actions and have arrived at this Agreement through arm's-length negotiation and in the context
8 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
9 further believe that the Settlement is and is consistent with public policy, and fully complies with
10 applicable law.

11 **Section 6.12: Headings**

12 The descriptive heading of any section or paragraph of this Agreement is inserted for
13 convenience of reference only and does not constitute a part of this Agreement and shall not be
14 considered in interpreting this Agreement.

15 **Section 6.13: Notice**

16 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
17 communications under this Agreement must be in writing and addressed as follows:

18 *To Plaintiffs and the Class:*

19 Armond M. Jackson
20 Andrea Fernandez-Jackson
21 Anthony S. Filer Jr.
22 JACKSON LAW, APC
23 2 Venture Plaza, Ste. 240
24 Irvine, CA 92618
25 Phone: (949) 281-6857
26 Fax: (949) 777-6218

27 Douglas Han, SBN 232858
28 Shunt Tatavos-Gharajeh SBN 272164
29 JUSTICE LAW CORPORATION
30 751 N. Fair Oaks Avenue, Suite 101
31 Pasadena, California 91103
32 Phone (818) 230-7502
33 Fax (818) 230-7259

1 And

2 *To Defendant:*

3 Chad T. Wishchuk
4 Marlene C. Nowlin
5 FINCH, THORNTON & BAIRD, LLP
6 64747 Executive Drive, Suite 700
7 San Diego, CA 92121
Telephone: (213) 250-1800
Facsimile: (213) 250-7900

8 **Section 6.14: Enforcement of Settlement and Continuing Court Jurisdiction**

9 To the extent consistent with class action procedure, this Agreement shall be enforceable by
10 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
11 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Actions or the
12 liability of the Parties resulting from the allegations in the Actions. Its sole purpose is to adopt the
13 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
14 retain continuing jurisdiction over the Actions and over all Parties and Class Members, to the fullest
15 extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more
16 of the Parties institutes any legal action or other proceeding against any other Party or Parties to
17 enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover
18 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness
19 fees incurred in connection with any enforcement actions.

20 **Section 6.15: Mutual Full Cooperation**

21 The Parties and their counsel agree fully to cooperate with each other to accomplish the terms
22 of this Agreement, including but not limited to the execution of such documents, and the taking of
23 such other action, as may reasonably be necessary to implement the terms of this Agreement. The
24 Parties and their counsel shall use their best efforts, to effectuate and implement this Agreement and
25 its terms. In the event the Parties are unable to reach agreement on the form or content of any
26 document needed to implement the Settlement, or on any supplemental provisions that may become
27 necessary to effectuate the terms of the Settlement, the Parties and their counsel agree to seek the
28 assistance first of mediator Lynne Frank or Marc Feder and then of the Court, if necessary.

1 **Section 6.16: Authorization to Act**

2 Class Counsel warrants and represents that they are authorized by Plaintiffs, and Defense
3 Counsel warrants that they are authorized by Defendant, to take all appropriate actions required to
4 effectuate the terms of this Agreement, except for signing documents, including but not limited to
5 this Agreement, that are required to be signed by the Parties themselves. Defendant represent and
6 warrant that the individual executing this Agreement on its behalf has the full right, power, and
7 authority to enter into this Agreement and to carry out the transactions contemplated herein.

8 **Section 6.17: No Reliance on Representations**

9 The Parties have made such investigation of the facts and the law pertaining to the matters
10 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
11 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
12 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
13 rights, or with regard to the advisability of entering into and executing this Agreement, or with respect
14 to any other matters. No representations, warranties, or inducements, except as expressly set forth
15 herein, have been made to any party concerning this Agreement. The recitals, terms and conditions
16 contained in this Agreement are contractual and not mere recitals.

17 **Section 6.18: Use and Return of Class Data.** Information provided to Class Counsel
18 pursuant to Cal. Evid. Code §1152, and all copies and summaries of any information or documents
19 provided to Class Counsel by Fiber Care or Defense Counsel in connection with the Actions,
20 mediation, other settlement negotiations, the MOU, or in connection with the Settlement, may be
21 used only with respect to the Settlement, and no other purpose, and may not be used in any way that
22 violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the
23 date when the Court discharges the Settlement Administrator's obligation to provide a declaration
24 confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic
25 versions of copies and summaries of the information or documents provided to Class Counsel by
26 Fiber Care or Defense Counsel unless, prior to the Court's discharge of the Settlement
27 Administrator's obligations, Fiber Care or Defense Counsel makes a written request to Class Counsel
28 for the return, rather than the destruction, of Class Data.

1 **6.19 Survival of Confidentiality:** To the extent permitted by law, all agreements made, and
2 orders entered during the Actions and in this Agreement relating to the confidentiality of information
3 shall survive the execution of this Agreement.

4 **6.20: Waiver of Right to Appeal:** Provided the Final Order is consistent with the terms and
5 conditions of this Agreement, all Participating Class Members and PAGA Group Members who did
6 not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Final
7 Order, including all rights to post-judgment and appellate proceedings, the right to file motions to
8 vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does
9 not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals
10 the Final Order or any judgment, the Parties' obligations to perform under this Agreement will be
11 suspended until such time as the appeal is finally resolved and any judgment becomes final, except
12 as to matters that do not affect the amount of the Net Settlement Amount.

13 **6.21: No Tax Advice:** Neither Plaintiffs, Class Counsel, Fiber Care, nor Defense Counsel are
14 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
15 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part
16 10, as amended) or otherwise.

17 **6.22: Tax Indemnity:** Plaintiffs, Class Counsel, PAGA Group Members, and Participating
18 Class Members will be responsible for paying all applicable state, local and federal income taxes on
19 their respective amounts received pursuant to this, and they shall not seek any indemnification from
20 Defendant or the Released Parties in this regard. Plaintiffs and Class Counsel shall cooperate with
21 Defendant and provide documentation to the extent possible and as reasonably requested to
22 demonstrate any payment of taxes made by Plaintiffs, PAGA Group Members, and/or any
23 Participating Class Members should any taxing authority challenge the allocation of any payments
24 under this Agreement.

25 In the event any taxing authority asserts that the characterization of payments under this
26 Agreement are inappropriate and/or any tax liability resulting from the payments made under this
27 Agreement is not paid, and Defendant is made to pay any taxes, settlements, interest, penalties, and/or
28 other sums (hereinafter collectively referred to as "Tax Payments") to a taxing authority as a result

1 of the payments made under this Agreement, Plaintiffs, Class Counsel, PAGA Group Members, and
2 Participating Class Members shall fully indemnify and reimburse Defendant for any and all Tax
3 Payments limited to the amount directly received by them under this Agreement upon demand and
4 reasonable verification of Tax Payments paid.

5 **EXECUTION BY PARTIES AND COUNSEL**

6 The Parties and their counsel hereby execute this Agreement.

7 Dated: _____ MANUEL VILLEGAS

8
9 By: _____
Named Plaintiff

10
11 Dated: _____ ERNESTO RIVERA

12
13 By: _____
Named Plaintiff

14
15 Dated: _____ FIBER CARE BATHS, INC.

16
17 By:  _____
(Signature)

18 Tom Kirkmeyer

19 (Printed Name)

20 President / CEO

21 (Title)

1 **APPROVED AS TO FORM ONLY:**

2

3

4 Dated:

JACKSON LAW, APC

5

6

By:

Armond M. Jackson
Andrea M. Fernandez-Jackson
Anthony S. Filer Jr.

7

8

Attorneys for Plaintiff Manuel Villegas

9

10

11 Dated:

JUSTICE LAW CORPORATION

12

13

By:

Douglas Han
Shunt Tatavos-Gharajeh Anthony S. Filer
Jr.

14

15

Attorneys for Plaintiff Manuel Villegas

16

17

18 Dated:

FINCH, THORNTON & BAIRD, LLP

19

9/13/2022

20

By:

Chad T. Wishchuk

Chad T. Wishchuk
Marlene C. Nowlin

21

22

Attorneys for Defendant Fiber Care Baths, Inc.

23

24

25

26

27

28

of the payments made under this Agreement, Plaintiffs, Class Counsel, PAGA Group Members, and Participating Class Members shall fully indemnify and reimburse Defendant for any and all Tax Payments limited to the amount directly received by them under this Agreement upon demand and reasonable verification of Tax Payments paid.

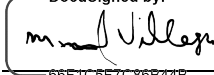
EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 9/16/2022

MANUEL VILLEGAS

By:

DocuSigned by:

 66F1C5F7C86B24B
 Named Plaintiff

Dated:

ERNESTO RIVERA

By:

Named Plaintiff

Dated:

FIBER CARE BATHS, INC.

By:

(Signature)

(Printed Name)

(Title)

1 **APPROVED AS TO FORM ONLY:**

2
3
4 Dated:

5 September 16, 2022

JACKSON LAW, APC

6 By:

Armond M Jackson
Armond M. Jackson

7 Andrea M. Fernandez-Jackson

8 Anthony S. Filer Jr.

9 Attorneys for Plaintiff Manuel Villegas

10
11 Dated:

JUSTICE LAW CORPORATION

12
13 By:

Douglas Han

14 Shunt Tatavos-Gharajeh Anthony S. Filer
15 Jr.

16 Attorneys for Plaintiff Manuel Villegas

17
18 Dated:

FINCH, THORNTON & BAIRD, LLP

19
20 By:

Chad T. Wishchuk

21 Marlene C. Nowlin

22 Attorneys for Defendant Fiber Care Baths, Inc.
23
24
25
26
27
28

1 of the payments made under this Agreement, Plaintiffs, Class Counsel, PAGA Group Members, and
2 Participating Class Members shall fully indemnify and reimburse Defendant for any and all Tax
3 Payments limited to the amount directly received by them under this Agreement upon demand and
4 reasonable verification of Tax Payments paid.

5 **EXECUTION BY PARTIES AND COUNSEL**

6 The Parties and their counsel hereby execute this Agreement.

7 Dated: _____ MANUEL VILLEGAS

8
9 By: _____
Named Plaintiff

10
11 Dated: 09/08/2022 ERNESTO RIVERA

12
13 By: Ernesto Rivera
Named Plaintiff

14
15 Dated: _____ FIBER CARE BATHS, INC.

16
17 By: _____
(Signature)

18
19 _____
(Printed Name)

20
21 _____
(Title)

1 **APPROVED AS TO FORM ONLY:**

2
3
4 Dated:

JACKSON LAW, APC

5 _____
6 By:

Armond M. Jackson
Andrea M. Fernandez-Jackson
Anthony S. Filer Jr.

8 Attorneys for Plaintiff Manuel Villegas
9

10
11 Dated:

9/9/22

JUSTICE LAW CORPORATION

12
13 By:


Douglas Han
Shunt Tatavos-Gharajeh

14 Attorneys for Plaintiff Ernesto Rivera
15

16
17
18 Dated:

FINCH, THORNTON & BAIRD, LLP

19 _____
20 By:

Chad T. Wishchuk
Marlene C. Nowlin

21 Attorneys for Defendant Fiber Care Baths, Inc.
22
23
24
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EXHIBIT A

**COURT APPROVED NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
HEARING DATE FOR FINAL APPROVAL**

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO

***VILLEGAS V. FIBER CARE BATHS, INC.
SAN BERNARDINO COUNTY COURT CASE NO. CIVSB2114736 AND RIVERA V.
FIBER CARE BATHS, INC. SAN BERNARDINO COUNTY CASE NO. CIVSB2114174***

This is a court authorized notice. This is not a solicitation from a lawyer.

You may be eligible to receive money from employee class action lawsuits (“Actions”) against Fiber Care Baths, Inc. (“Defendant”) for alleged wage and hour violations. The Actions were filed by Defendant’s former employees Manuel Villegas (“Plaintiff Villegas”) and Ernesto Rivera (“Plaintiff Rivera”) and seek payment of: (1) back wages and other relief for a class of exempt or hourly employees (“Class Members”) who worked for Defendant during the Class Period (November 19, 2016 to October 21, 2022) (“Class Period”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all exempt or hourly employees who worked for Defendant during the PAGA Period (March 12, 2020 to October 21, 2022) (“PAGA Period”). If you worked during the Class Period, you are a Class Member. If you worked during the PAGA Period, you are a PAGA Group Member.

Defendant denies all of Plaintiffs’ claims and maintains that Defendant has complied with all applicable laws and regulations. Defendant has entered into the Settlement solely for purposes of resolving this dispute.

The proposed Settlement provides for Individual Settlement Payments based on the number of workweeks you performed work for Defendant in California as an hourly or non-exempt employee during the Class Period as well as PAGA Payments based on the pay periods you performed work for Defendant during the PAGA Period.

The Court has preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a Final Order that requires Defendant to make payments under the Settlement and requires Class Members and PAGA Group Members to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have the following options under the Settlement:

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
YOU DO NOT HAVE TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT	If you do nothing, you will participate in the class and be eligible for an Individual Settlement Payment. In exchange, you will be bound by all terms of the Settlement if the Settlement receives final approval by the Court, and you will give up your rights to be part of any other lawsuit against Defendant and/or the Released Parties. If you are a PAGA Group Member, you will also receive a PAGA Payment. You will be mailed a settlement check at the address where this Notice was mailed (unless you timely provide a forwarding address to the Settlement Administrator as further explained below).
YOU CAN EXCLUDE YOURSELF FROM THE CLASS	If you don't want to fully participate in the proposed Settlement, you can exclude yourself by sending a written signed letter and a simple statement that you do not want to participate in the Settlement. Further details regarding how to exclude yourself are provided below at item 9. If you submit a valid written request to be excluded, you will <u>not</u> receive an Individual Settlement Payment, but you will receive a PAGA Payment if you are a PAGA Group Member.
PARTICIPATING CLASS MEMBERS CAN OBJECT	All Class Members who do exclude themselves are Participating Class Members. Participating Class Members can choose to object to any aspect of the Settlement, including the proposed payments to Class Counsel, by submitting a written Objection, and supporting papers, to the Settlement Administrator that is postmarked or fax stamped no later than [+60 days from date of mailing] . This option is available only if you do <u>not</u> exclude yourself. Class members may also appear at the approval hearing to object, this hearing will take place on [Final Approval Hearing Date and location].

These rights and options, and how to exercise them, are explained in more detail in this notice.

Additional information regarding the Settlement is available through the Settlement Administrator or Class Counsel, whose contact information is provided in this notice.

BASIC INFORMATION

1. Why did I get this notice?

On [insert preliminary approval date], the Superior Court of California, County of San Bernardino (“the Court”) preliminarily approved a class action settlement of the Actions. This notice explains the Actions, the Settlement, and your legal rights.

2. What are the Actions about?

The Actions accuse Defendant of failing to pay all wages, not providing proper meal or rest breaks, failing to timely pay wages, failing to pay all wages at termination, and failing to provide accurate wage statements. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Defendant denies that it engaged in any wrongful conduct or violated the law in any respect, and believes Plaintiffs and the Class Members were properly and timely compensated and provided all wages, proper meal and rest breaks, and wages upon termination. However, both Plaintiffs and Defendant believe the Settlement is fair, adequate, and reasonable, and that it is in the best interest of the Class Members and PAGA Group Members.

3. What does it mean that the Actions have settled?

The Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator in an effort to resolve the Actions by negotiating an end of the Actions by agreement (settle the case) rather than continue the expensive and time-consuming process of litigation. The negotiations were successful. Plaintiffs and Defendant have negotiated a proposed Settlement and have signed a lengthy written settlement agreement (“Agreement”) that is subject to the Court’s Final Approval. The Parties have agreed to jointly ask the Court to end the Actions and enforce the Agreement. Both sides agree the proposed Agreement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims. The Settlement does not mean that any laws were broken. Defendant denies all claims asserted in the Actions and denies that it has violated any laws.

THE SETTLEMENT BENEFITS—WHAT YOU GET

4. What does the settlement provide?

Under the terms of the Settlement, Defendant agrees to pay a Maximum Settlement Amount of Three Million Seven Hundred Forty Thousand Dollars (\$3,740,000.00). Deducted from this Maximum Settlement Amount will be sums approved by the Court for attorneys’ fees (not to exceed \$1,246,542), or 33.33% of the Maximum Settlement Amount, attorneys’ litigation costs (not to exceed \$40,000.00), a Class Representative Service Award to Plaintiff Villegas in the amount of (\$10,000) and Plaintiff Rivera in the amount of (\$10,000) for their services, the

PAGA Settlement Amount (i.e., a payment of Two-Hundred and Twenty-Five Thousand Dollars (\$225,000.00) to the State of California Labor and Workforce Development Agency for alleged penalties and Seventy-Five Thousand Dollars (\$75,000.00) *pro rata* distribution to PAGA Group Members as their PAGA Payment), and the fees and expenses of the Settlement Administrator, xxxx. (estimated not to exceed \$25,000.00), which will result in a maximum amount payable by Defendant for distribution to Class Members who do not opt out (the “Net Settlement Amount”). Defendant’s share of payroll taxes will be paid separately from and in addition to the Maximum Settlement Amount. No portion of the Maximum Settlement Amount shall revert to Defendant.

The Net Settlement Amount will be distributed to Class Members who do not opt out of the Settlement (“Participating Class Members”) on a *pro rata* basis, based on the number of workweeks that each Participating Class Member performed work for Defendant as a non-exempt employee in California during the Class Period (“Qualified Workweeks”). To determine a Participating Class Member’s estimated settlement payment (“Individual Settlement Payment”), the Net Settlement Amount will be divided by the total number of Qualified Workweeks worked by all Participating Class Members during the Class Period, multiplied by the number of Qualified Workweeks worked by that Participating Class Member, according to the following formula:

$$\text{[Net Settlement Amount} \div \text{Total Qualified Workweeks for all Participating Class Members]} \times \text{Participating Class Member's Individual Qualified Workweeks} = \text{estimated Individual Settlement Payment}$$

Class Members’ Individual Settlement Payments will be reduced by any required legal deductions. No benefit, including but not limited to pension benefits and/or 401(k), shall increase or accrue as a result of any payment made as a result of this Settlement.

The Parties recognize that the Class Members’ Individual Settlement Payments are for wages, interest, and penalties. The Parties agree that 20% of the Individual Settlement Payments shall be reported as wages subject to all applicable tax withholdings on IRS Form W-2 and its state and local equivalents, 80% shall be reported as non-wage interest not subject to payroll tax withholdings on IRS Form 1099 and penalties not subject to payroll tax withholdings on IRS Form 1099 and its state and local equivalents.

The Parties are not providing tax or legal advice and are not making representations regarding tax obligations or consequences, if any, related to any settlement amounts to be paid to the Participating Class Members. Each Participating Class Member will assume any tax obligations or consequences that may arise from any settlement amount paid to him or her and should consult with a tax expert if he or she has any questions. Each Participating Class Member’s *pro rata* distribution amount prior to legal deductions will be reduced by the amount of any required payroll-related deductions.

Class Members who were employed by Defendant in the State of California at any time during the PAGA Period as a non-exempt employee (“PAGA Group Members”) will also receive a PAGA Payment. “PAGA Payment” means the amount payable from the PAGA Settlement Amount to each PAGA Group Member. “PAGA Settlement Amount” means the portion of the

Maximum Settlement Amount allocated to the resolution of PAGA claims in the Actions. The PAGA Settlement Amount is Three Hundred Thousand Dollars (\$300,000.00). Two-Hundred and Twenty-Five Thousand Dollars (\$225,000.00) shall be paid by the Settlement Administrator directly to the LWDA. The remaining Seventy-Five Thousand Dollars (\$75,000.00) shall be distributed to PAGA Group Members as their PAGA Payment. The “PAGA Period” is the period of time from March 12, 2020 through October 21, 2022. PAGA Payments shall be paid by the Settlement Administrator from the Maximum Settlement Amount. PAGA Payments shall be allocated as non-wage penalties not subject to payroll tax withholdings. The Settlement Administrator shall issue an IRS Form 1099 to each PAGA Group Member for their PAGA Payment. Each PAGA Group Member’s PAGA Payment shall be calculated solely by the Settlement Administrator according to the following formula: Defendant shall provide the Settlement Administrator with the Total Qualified PAGA Pay Periods; the Settlement Administrator shall then (1) divide Seventy-Five Thousand Dollars (\$75,000.00) by the Total Qualified PAGA Pay Periods and then (2) multiply each PAGA Group Member’s number of Qualified PAGA Pay Periods by the result in (1) to obtain the amount of each PAGA Group Member’s PAGA Payment. “Qualified PAGA Pay Periods” means the total number of pay periods during the PAGA Period that PAGA Group Members performed work for Defendant as a non-exempt employee.

5. What is my approximate Individual Settlement Payment?

Based on Defendant’s records and the Parties’ current assumptions, the total number of weeks you worked in California for Defendant as a non-exempt or hourly employee during the Class Period is _____. The total number of pay periods you worked in California for Defendant as a non-exempt employee during the PAGA Period is _____.

Based on information provided above, anticipated court-approved deductions, and preliminary calculations Qualified Workweeks, it is estimated your share of the settlement will be \$_____, less applicable taxes and withholdings. This amount includes your share of the PAGA Group Payment, which is estimated to be \$_____. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an PAGA Payment under the Settlement because you did not work during the PAGA Period.)

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 11, below, of any changes to your mailing address for timely payment.

6. What am I giving up in exchange for the settlement benefits?

In exchange for the consideration provided, and upon the Settlement Administrator’s receipt of the total Maximum Settlement Amount from Defendant, Plaintiffs and each Participating Class Member will release all claims and will be legally barred from asserting any of the claims released under the Settlement. This means that unless you validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against

Defendant or Released Parties for any claims resolved by this Settlement.

The Participating Class Members will be bound by the following release:

Upon the Date of Finality, and to the fullest extent permitted by law, Plaintiffs and Participating Class Members who do not opt out of the Settlement and each of their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns shall be deemed to have generally, fully, finally, and forever waived, released, relinquished, and discharged Defendant and each and all of the Released Parties from any and all claims, transactions, occurrences, demands, rights, liabilities, attorneys' fees and costs, and causes of action alleged or which could have been alleged in the Actions or PAGA Notice, and/or which were or could have been discussed during mediation, that arose during the Class Period, including but not limited to all claims or causes of action for: (a) Failure to provide minimum wages, overtime wages, meal periods, and/or rest breaks, and any claims relating to or that could have been brought under any California Department of Industrial Relations, Industrial Welfare Commission Order, California Labor Code section, or federal, local, or other wage and hour-related law or regulation; (b) Failure to provide accurate itemized wage statements, pay all wages due upon separation of employment, pay for unreimbursed business expenses, and any claims relating to or that could have been brought under any Industrial Wage Order or Labor Code section applicable to such claims and causes of action including for waiting time penalties under Labor Code section 203; (c) Violation of California Business and Professions Code §§17200, *et seq.*; and (d) all claims for attorneys' fees and costs relating to any of the foregoing claims. The foregoing released claims will be collectively referred to as the "Released Claims". It is further acknowledged and agreed that Plaintiffs and Participating Class Members who do not exclude themselves or opt out of the Settlement may discover facts or law different from, or in addition to, the facts or law now known or believed to be true but, nonetheless, this Release shall be and remain effective in all respects, notwithstanding such different or additional facts or discovery of them.

The PAGA Group Members will release PAGA claims, regardless of whether they opt-out, and will be barred from asserting PAGA claims whether or not they exclude themselves from the Settlement. This means that all PAGA Group Members including those who are Participating Class Members and those who exclude themselves from the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim resolved by this Settlement.

The PAGA Group Members' Releases for Participating and Non-Participating Class Members are as follows:

Upon the Date of Finality, and to the fullest extent permitted by law, Plaintiffs, the State of California, the PAGA Group Members, and each of Plaintiffs' and the PAGA Group Members' respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall be deemed to have generally, fully, finally, and forever waived, released, relinquished, and discharged Defendant and each and all of the Released Parties from any and all claims and causes of action for PAGA penalties and attorneys' fees and costs that arose during the PAGA Period, were alleged or could have been alleged in the Actions or PAGA Notice, and/or which were or could have been discussed during mediation including, without

limitation: (a) Any and all claims involving Labor Code 201, 202, 203, 204, 210, 221, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1198, 2800, 2802, 2698; (b) Any claims relating to or that could have been brought under any Industrial Wage Order or Labor Code section applicable to such claims and causes of action, including but not limited to Industrial Welfare Commission Wage Order Nos. 1-2001, 4-2001 and all possible PAGA claims; and (c) any and all claims for attorneys' fees and costs.

HOW TO GET A SETTLEMENT PAYMENT

7. How do I get a settlement payment?

If the Settlement receives final approval by the Court, you will automatically receive an Individual Settlement Payment in exchange for which, whether or not you cash or deposit the payment, you will be bound by all terms of the Settlement and any Final Judgment entered in the Actions and you will give up your rights to be part of any other lawsuit against Defendant and/or the Released Parties involving the same or similar legal claims as the ones in the Actions arising during the Class Period. You will be mailed a settlement check at the address where this notice was mailed (unless you timely provide a forwarding address to the Settlement Administrator).

Additionally, if you are a PAGA Group Member, you will also receive a PAGA Payment, regardless of whether you submit an Exclusion Form. Your Individual Settlement Payment and PAGA Payment will be issued in one check.

8. When will I get my check?

Checks will be mailed to Participating Class Members and PAGA Group Members eligible to receive benefits under the Settlement after the Court grants "final approval" of the Settlement. If the judge approves the settlement after a hearing on **[insert date]** (see "The Court's Final Approval Hearing" below), there may be appeals. If there are any appeals, resolving them could take some time, so please be patient.

If the Court approves the settlement and if you do not exclude yourself or opt out, your individual payment is expected to be distributed after Defendant makes payment to the Settlement Administrator.

Please also be advised that you will only have 180 days from the date that the check is issued to cash it. If you do not cash your check within 180 days of the date of its mailing, your check shall be voided, and your share of the settlement proceeds will be distributed by the Settlement Administrator to the California State Controller's Office Unclaimed Property Fund in your name.

EXCLUDING YOURSELF FROM THE SETTLEMENT

9. How do I ask the Court to exclude me from the Settlement Class?

If you do not wish to participate in the Settlement, you must submit a written and signed letter

with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Settlement Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Actions as: ***VILLEGAS V. FIBER CARE BATHS, INC. SAN BERNARDINO COUNTY COURT CASE NO. CIVSB2114736 AND RIVERA V. FIBER CARE BATHS, INC. SAN BERNARDINO COUNTY CASE NO. CIVSB2114174***, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid.

Your **request to be excluded** to the Settlement Administrator must be postmarked no later than **[+60 days from date of mailing]** or it will be invalid. The Settlement Administrator's contact information is set forth below.

INSERT SETTLEMENT ADMIN INFO

Requests to be excluded that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective, unless otherwise ordered by the Court. If you do not submit a valid and timely request to be excluded on or before [+60 days from date of mailing], you will be bound by all terms of the Settlement, the Release, and the Final Order approved by the Court.

10. If I exclude myself, can I get anything from the settlement?

Once excluded, you will no longer be eligible for an Individual Class Payment and cannot object to any portion of the proposed Settlement. You cannot exclude yourself from the PAGA portion of the proposed Settlement. Defendant must pay the Individual PAGA Payments to all PAGA Group Members and the PAGA Group Members will be bound by the release described above.

11. If I don't exclude myself, can I sue later?

No. If you don't exclude yourself, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or the other released parties for the claims resolved by this Settlement.

12. How will the costs of the lawsuit and the settlement be paid?

Subject to court approval, Class Counsel has requested one-third (33 1/3%) of the sum of the Maximum Settlement Amount in attorneys' fees (currently equal to \$1,246,542) plus actual litigation costs and expenses (not to exceed \$40,000.00). The Court may award less than these amounts. If lesser amounts are awarded, the difference will be returned to the Net Settlement Amount.

In addition, and subject to Court approval, Defendant also agrees to pay, as part of the Maximum

Settlement Amount, up to Ten Thousand Dollars (\$10,000.00) to Plaintiff Villegas and up to Ten Thousand Dollars (\$10,000) to Plaintiff Rivera as Enhancement Awards for their participation in the Actions and for taking on the risk of litigation. Subject to Court approval, Defendant also agrees to pay Two-Hundred and Twenty-Five Thousand Dollars (\$225,000) to the State of California Labor and Workforce Development Agency for alleged civil penalties. Defendant also agrees to pay, as part of the Maximum Settlement Amount, the Settlement Administrator's costs and fees associated with administering the Settlement, estimated not to exceed Twenty-Five Thousand Dollars (\$25,000.00). The Court may award less than these amounts. If lesser amounts are awarded, the difference will be included in the Net Settlement Amount and will be available for distribution to Participating Class Members.

OBJECTING TO THE SETTLEMENT

13. How do I object to the Settlement?

If you do not exclude yourself, you may object to the proposed Settlement, or any portion thereof, by completing a written objection our your objection must be signed and mailed by regular U.S. Mail, postmarked no later than **[+60 days from date of mailing]**, to the Settlement Administrator at the following address:

[Settlement Administrator]
[insert info]

Your objection must (1) state your full name; (2) be signed by you; (3) state the grounds for the objection; and (4) must be postmarked by **[+60 days from date of mailing]** and returned to the Settlement Administrator at the specified address above. If you wish to appear at the Court's Final Approval Hearing (see response to Question 17 below) and orally present your objection to the Court, you may do so. Any Class Member who submits an objection or appears at the Final Approval Hearing remains eligible to receive monetary compensation from the Settlement. A Class Member who excludes him or herself may not object to the proposed Settlement.

14. What's the difference between objecting and asking to be excluded?

Objecting is simply telling the Court you do not like something about the Settlement. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend the hearing and you may ask to speak, but you don't have to.

15. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing on **[insert time/date]** in Department S26 of the **San Bernardino County Superior Court, located at 247 West Third Street San Bernardino, CA 92415**. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court

will also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

16. Do I have to come to the hearing?

No, but you are welcome to come. If you submit an Objection Form to the Settlement Administrator, you do not have to come to Court to talk about it. You may also pay another lawyer to attend, but it is not required. Class Counsel will not represent you in connection with any objection. You may appear by audio or video at the final approval hearing. Please visit the Court's website for further instructions: <https://www.occourts.org/directory/civil/complex-civil/calendar-schedule/civil-panel-schedule.html>

17. May I speak at the hearing?

If you wish to appear at the Final Approval Hearing and orally present your objection to the Court, you may do so regardless of whether or not you submitted an Objection Form. Please adhere to the latest COVID-19 courthouse protocol.

IF YOU DO NOTHING

18. What happens if I do nothing at all?

If you do nothing, you will be a Participating Class member, eligible to receive an Individual Settlement Payment and PAGA Payment, if applicable, as described above and you will be bound by the releases described above.

GETTING MORE INFORMATION

19. How do I get more information?

This notice summarizes the Settlement. More details are in the Joint Stipulation of Settlement and Settlement Agreement which is attached to the Declaration of Armond M. Jackson in Support of Plaintiff Villegas's and Plaintiff Rivera's Motion for Preliminary Approval of Class Action and PAGA Settlement, filed on [INSERT DATE]. The case is assigned to Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. The case file may be viewed online at <https://cap.sb-court.org/> and select "Case Search"

You may also contact Class Counsel or the Settlement Administrator for more information at the contact information listed below.

The Settlement Administrator has set up a settlement website where you may also obtain up-to-date information on the matter including any change of the date or location of any hearings in connection with this Settlement. The settlement website URL is XXXXXX

[INSERT Settlement Administrator]:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION
ABOUT THE SETTLEMENT.**

EXHIBIT B

REQUEST FOR EXCLUSION FROM CLASS ACTION SETTLEMENT

***VILLEGAS V. FIBER CARE BATHS, INC.
SAN BERNARDINO COUNTY COURT CASE NO. CIVSB2114736 AND RIVERA V. FIBER CARE
BATHS, INC. SAN BERNARDINO COUNTY CASE NO. CIVSB2114174***

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE
TO RECEIVE YOUR PORTION OF THE SETTLEMENT AMOUNT,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE
SETTLEMENT, YOU MUST SIGN THIS DOCUMENT AND MAIL IT TO THE
ADDRESS BELOW, POSTMARKED NO LATER THAN _____.**

***VILLEGAS V. FIBER CARE BATHS, INC.
AND RIVERA V. FIBER CARE BATHS, INC., ET. AL. ADMINISTRATOR***

(Administrator's Address)

(Administrator's Telephone Number)

(Administrator's Facsimile Number)

I declare as follows:

I have received notice of the proposed class action settlement in this action and wish to be **excluded** from the class and **not** to participate in the proposed class action settlement. I understand this means that I will not be bound by the settlement and also **will not receive any settlement payments**. I also understand that I will be bound by the agreement concerning PAGA claims and cannot exclude myself from the PAGA settlement. I will also receive a payment for the resolution of the PAGA claims even if I exclude myself from the class claims.

Dated: _____, 2020.

(Signature)

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Last four digits of Social Security Number)