

PAGA SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release (hereinafter “Settlement” or “Agreement”) is made and entered into by and between Plaintiff James Ahlborn (hereinafter “Plaintiff”) as a private attorney general on behalf of the State of California pursuant to Labor Code section 2698 *et seq.*, the Private Attorneys General Act (“PAGA”) on the one hand, and Defendant Building Materials Manufacturing Corporation (“Defendant”) on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Settlement shall be binding on Plaintiff and the State of California to the extent permitted under PAGA and on Defendant, all of their affiliated entities, parents, subsidiaries, owners, officers, executives, directors, and managers, subject to the terms and conditions hereof and the approval of the Court.

I. NATURE OF ACTION

1. On June 21, 2021, Plaintiff sent notice to the Labor and Workforce Development Agency (“LWDA”) giving notice of his intent to pursue a representative PAGA action on behalf of the State of California as well as on behalf of other aggrieved employees.

2. On July 27, 2021, Plaintiff sent an Amended PAGA Notice to the LWDA giving notice of additional facts and theories that he intended to pursue in his representative PAGA action on behalf of the State of California as well as on behalf of other aggrieved employees.

3. On August 26, 2021, Plaintiff filed a Representative Action Complaint pursuant to PAGA in the San Bernardino County for Superior Court.

4. For purposes of this settlement, the Aggrieved Employees or PAGA Members are defined as: all non-exempt employees who were employed by Building Materials Manufacturing Corporation or its predecessor, merged or related entities in California as an employee at any point from February 2, 2020 through October 16, 2022. There are 430 PAGA Members.

5. Through informal discovery, Defendant provided Plaintiff and PAGA Counsel with information about the number of potentially aggrieved employees (430), the number of pay periods potentially at issue (32,557 pay periods), and the relevant policy documents.

II. REPRESENTATIONS AND DEFINITIONS

1. “Aggrieved Employee,” “Aggrieved Employees,” “PAGA Member” or “PAGA Members” shall mean all persons currently or formerly employed by Defendant, as non-exempt, hourly-paid employees in the State of California during the Settlement Period (defined as February 2, 2020 through October 16, 2022).

2. “PAGA Representative” or “Plaintiff” shall refer to Named Plaintiff James Ahlborn.

3. “Defendant” shall mean and refer to Building Materials Manufacturing Corporation.

4. “Released Parties” shall mean and refer to Defendant and its past, present, and/or future, direct and/or indirect officers, including but not limited to directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, contractors, awarding bodies, customers, subsidiaries, affiliates, parents, divisions, predecessors, successors, assigns, and joint venturers.

5. “Lawsuit” refers to the civil action pending in San Bernardino County Superior Court titled, *JAMES AHLBORN, an individual, on behalf of the State of California, as a private attorney general, PLAINTIFF v. BUILDING MATERIALS MANUFACTURING CORPORATION, a Delaware Corporation; and DOES 1 to 50, inclusive, Defendants*, San Bernardino County Superior Court, Case No. CIVSB2124640.

6. “PAGA Counsel” shall refer to David S. Winston of the Winston Law Group, P.C., Barkodar Law Group P.C. and Accident Defenders APC.

7. “Counsel for Defendant” and “Defense Counsel” shall refer to Ryan Crosner of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

8. “Covered Period” or “PAGA Period” shall mean the period from February 2, 2020 to October 16, 2022.

9. “Court” refers to the San Bernardino County Superior Court.

10. “Aggrieved Employee Share” shall mean and refer to each PAGA Aggrieved

Employees' share of the 25% of PAGA penalties allocated to the Aggrieved Employees in accordance with Labor Code section 2699(i).

11. "Settlement Administrator" shall refer to ILYM Group, Inc.

12. "Covered Claims" means any and all claims, rights, or causes of action seeking civil penalties under PAGA that were alleged or reasonably could have been alleged against the Released Parties based on the allegations of fact set forth in the June 21, 2021 PAGA, the July 27, 2021 Amended PAGA Notice, and the August 26, 2021 Complaint, including but not limited to Labor Code sections 201, 202, 203, 204, 210, 221, 224, 226.3, 226.7, 403, 432.5, 450, 510, 512, 558, 1194, 1197, 1198, and 2802 (the "Settled Claims" or "Released Claims"). This settlement does not cover any employees' individual claims.

13. "Individual Settlement" shall mean and refer to Plaintiff James Ahlborn's separate individual settlement of \$40,000.00 that is being disclosed to the Court. A true and correct copy of Plaintiff's individual settlement agreement is attached hereto as **Exhibit B**.

14. "Eligible Pay Periods" means the total number of pay periods that each Aggrieved Employee received a wage statement during the Covered Period.

15. "Settlement" shall mean this Settlement and Release Agreement.

16. "Effective Date" and "Final" means the later of: (i) the 61st day after the Court enters an order granting approval of the PAGA Action settlement, provided no appeal or motion for reconsideration or other efforts to obtain review has been filed; (ii) if any timely appeals or motions for reconsideration or review are filed, the 61st day after final resolution of any such appeals or motions for reconsideration or review have been concluded. In this regard, the Parties intend that the Effective Date of the PAGA Action settlement shall not be a date before the Court's order approving the PAGA Action settlement has become completely final and there is no timely recourse by any person who seeks to contest the PAGA Action settlement.

17. "Service Award" means a monetary amount of up to \$7,500.00 for Plaintiff James Ahlborn, which, subject to Court approval, will be paid as provided for below.

18. "Gross Settlement Amount" or "GSA" shall mean and refer to the \$130,000.00

that Defendant is obligated to pay under the terms of the proposed settlement. The Gross Settlement Amount consists of the settlement payment to PAGA Members, settlement administration fees and costs, Plaintiff's incentive and/or enhancement as to the PAGA Action, payment to the Labor and Workforce Development Agency of its share under the Labor Code Private Attorneys' General Act of 2004 ("PAGA", codified at Labor Code section 2698, *et seq.*), and attorneys' fees and costs. The Gross Settlement Amount is non-reversionary, such that the entire amount will be disbursed and none will revert to Defendant.

19. Plaintiff alleged on behalf of the State of California that Defendant failed to pay all of the aggrieved employees shift differentials, non-discretionary bonuses, and incentive payments when calculating and paying overtime; failed to provide lawful meal periods and pay meal period premiums at the proper rate, failed to provide lawful rest periods and pay rest period premiums at the proper rate; unlawfully deducted expenses associated with uniforms from employees' wages; failed to maintain the expenses associated with uniforms in a separate bank account; forced patronage related to employee uniforms; that the information on the itemized wage statements (pay stubs) provided to employees was not mathematically correct or accurate; failed to timely pay all wages owed during and after employment; and required employees to sign documents that violated California's Labor Code as a condition of their employment. Plaintiff alleges that this underlying conduct gives rise to a claim pursuant to Labor Code Section 2698, *et seq.*

20. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit, and denies any liability or intentional wrongdoing. Defendant contends, among other things, that it has complied at all times with the California Labor Code, the related California Wage Orders, and all other state and federal wage laws, and further contends that the Lawsuit is without merit and that Plaintiff cannot pursue claims, if any, against Defendant. Defendant denied and continues to deny each and every material factual allegation and alleged claim asserted against it in the Lawsuit. Defendant further contends that the imposition of any penalties would be unjust, arbitrary, oppressive, and confiscatory. Nevertheless, Defendant is

willing to resolve this matter in accordance with the terms set forth herein.

21. The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation including the risks associated with the alleged arbitration agreement and appellate issues.

22. Plaintiff and PAGA Counsel contend that they have diligently pursued an investigation of the state of California's claims under PAGA against Defendant.

23. On April 17, 2022, the Parties participated in mediation with the USC Mediation Clinic. The Parties reached a settlement in principle at the mediation.

24. Based on their own independent investigations and evaluations, Plaintiff and PAGA Counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Settlement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the Aggrieved Employees, and the State of California in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues.

25. The purpose of this Settlement is to settle and compromise the Lawsuit and all Covered Claims that Plaintiff, the State of California and the PAGA Members have under PAGA against Defendant and the Released Parties. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Nothing herein shall constitute an admission by Defendant that the Lawsuit was properly brought as a representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit; (b) are not, shall not be

deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification, or administration other than for purposes of administering this Settlement; and (d) shall not constitute or be deemed a waiver of Defendant's alleged right to compel arbitration of any dispute with an Aggrieved Employee.

26. In order to comply with the requirements of Labor Code Section 2699(I), Plaintiff shall submit a Motion for Approval of Representative PAGA Settlement to the Court identifying the key terms of this Settlement and Release agreement and requesting that the Court approve the Settlement ("Approval Motion"). The Settlement is contingent upon the approval by the Court. If the Court denies a Motion for Approval of Representative PAGA Settlement due to concerns that the Parties cannot address through non-material modifications of this Agreement, (i) this Settlement shall be considered null and void; (ii) neither this Settlement Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement Agreement shall stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. The Parties agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack. The Parties shall make all possible good faith efforts to resolve any issues raised by the Court during the approval process.

27. In the event that the Court does not grant a Motion for Approval of Representative PAGA Settlement after several attempts and after exhausting all good faith efforts to address any concern raised by the Court, the Parties will be restored to their positions prior to the execution

of this Settlement Agreement and the Settlement Agreement shall be null and void.

III. TERMS OF SETTLEMENT

28. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of the State of California as a Private Attorney General, and Defendant agree to settle and compromise the Lawsuit and the Covered Claims, subject to the terms and conditions set forth in this Settlement.

29. The Amount of Settlement. As consideration for the settlement described herein and the release contained in this Settlement, Defendant agrees to pay the Gross Settlement Amount of \$130,000.00 in connection with the PAGA Settlement. The Gross Settlement Amount shall consist of and will be allocated as follows:

- (a) PAGA Counsel's attorney fee request of 1/3 of the Gross Settlement Amount (\$43,333.33);
- (b) PAGA Counsel's request for costs in the amount of \$2,644.46;
- (c) A PAGA service award in the amount of \$7,500.00 to Plaintiff James Ahlborn for his services on behalf of the state of California and aggrieved employees;
- (d) Administration costs of \$6,000.00 to be paid to the Settlement Administrator ILYM Group, Inc.; and
- (e) the remainder of the Settlement Payment after deducting the items (a), (b), (c), and (d) herein shall be designated as PAGA Penalties or PAGA Penalty Fund and is estimated to be \$70,522.01 and will be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i) with 75% paid to the LWDA (\$52,891.50) and 25% paid to the Aggrieved Employees on a pro-rata basis (\$17,630.51) based upon the number of pay periods worked during the Covered Period also referred to as the PAGA Period.

30. Allocation and Calculation of the PAGA Penalties. The anticipated total PAGA Penalty Fund will be approximately \$70,522.01. Seventy-five percent of the PAGA Penalty Fund

will be paid to the LWDA as required by Labor Code section 2699(i). The remaining 25% of the PAGA Penalty Fund will be distributed to Aggrieved Employees on a pro-rata basis based upon the number of pay periods worked during the Covered Period also referred to as the PAGA Period. The allocation amongst the Aggrieved Employees shall be determined by dividing the entire PAGA Fund allocated to the Aggrieved Employees by the number of pay periods in the PAGA Period. The resulting amount shall be the Pay Period Amount. Each Aggrieved Employee, including Plaintiff, shall receive a pro rata value equal to the number of pay periods worked during the PAGA Period multiplied by the Pay Period amount (the “Individual Settlement Payments”). All Individual Settlement Payments made to Aggrieved Employees will be reported on an IRS Form 1099-MISC to the extent required by law. Each Aggrieved Employee’s pro-rata share of the PAGA Penalty Fund represents their share of the 25% in PAGA penalties distributable to the aggrieved employees.

31. PAGA Representative Service Award. Plaintiff James Ahlborn may request a service award of up to \$7,500.00 in recognition for his services on behalf of the State of California and the aggrieved employees. Any service award awarded by the Court shall be paid out of the Gross Settlement Amount and will be reported on an IRS Form 1099-MISC basis. The PAGA Representative Service Award shall be an amount in addition to Plaintiff James Ahlborn’s pro-rata share of the PAGA Penalty Fund penalties awarded to the aggrieved employees. Defendant will not object to nor oppose a service award request for PAGA representative James Ahlborn in the amount of \$7,500.00. Should the Court decline to provide a service award or approve a lesser amount, any amount not awarded by the Court shall be reallocated to the Net PAGA Penalty fund and distributed to the Aggrieved Employees.

32. PAGA Counsel’s Fees and Costs. As part of the request for approval of this Settlement, PAGA Counsel will request court approval of 1/3 of the Gross Settlement Amount, which is \$43,333.33. PAGA Counsel will also request cost reimbursement in the amount of \$2,644.46 for costs incurred by PAGA Counsel. Should PAGA Counsel request a lesser amount for attorneys’ fees and costs and/or the Court approve a lesser amount, the difference shall be

allocated to the PAGA Penalty Fund and distributed accordingly. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as "PAGA Counsel Fees & Costs," shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Lawsuit and all work remaining to be performed in fully and finally resolving the Lawsuit, including but not limited to securing Court approval of the settlement, appearing at any hearings, making sure that the settlement is fairly and properly administered, defending the settlement in any appeal or other post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur. Defendant will not object to nor oppose a request for attorneys' fees in the amount of up to 1/3 of the Gross Settlement Amount nor any request for reimbursement for costs that do not exceed \$2,644.66. Any attorneys' fees awarded in this Action shall be divided as follows: 71% to Winston Law Group, P.C., 25% to Accident Defenders APC, and 4% to Barkodar Law Group P.C. Plaintiff retained these firms and has given written consent to this division of attorneys' fees, and it is herein and will be disclosed to the Court as part of the approval process. Plaintiff again acknowledges, reaffirms, and consents to this division of fees and understand that this division of fees agreed to by no means increases the amount of legal fees that Plaintiff will pay or have agreed to pay for services rendered on his and the state's behalf. Plaintiff also acknowledges and represents that he previously consented to this division of fees in writing.

33. Tax Treatment of Settlement Amounts. With regard to settlement payments to PAGA Aggrieved Employees reflecting each Aggrieved Employees' share of PAGA penalties, IRS Form 1099-MISCs will be issued if required by the Settlement Administrator. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from Defendant and that neither Defendant nor its attorneys have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is

not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any Aggrieved Employees' tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

IV. RELEASE

34. Release By All Aggrieved Employees. Upon the approval by the Court of this Settlement, Plaintiff, the State of California and each Aggrieved Employee, for the period from February 2, 2020 to October 16, 2022, shall fully release and forever discharge the Released Parties from any and all Covered Claims.

35. Release by Plaintiff. In addition to his participation in the Release By all Aggrieved Employees and except as otherwise provided herein, upon the Effective Date of this Settlement, Plaintiff has agreed to a separate individual settlement that is intended to compensate Plaintiff for all additional claims, whether known or unknown, against Defendant, including but not limited to, any individual wage and hour claims that are not at issue in this case since the state is the real party in interest in a PAGA action and claims for employment discrimination, retaliation, or other individual claims that are not being litigated in this case. This includes the claims Plaintiff filed with the California Department of Fair Employment and Housing, DFEH Case No. 202107-14295027.

36. Plaintiff is providing a full release of individual claims to the extent permitted by law, other than non-releaseable claims such as and including workers' compensation claims, as part of this Settlement. PAGA Counsel is not receiving any attorneys' fees associated with Plaintiff's individual settlement.

V. APPROVAL OF THE SETTLEMENT

37. The Parties recognize that in accordance with Labor Code Section 2699(l) Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal.4th 969 (2009), the Parties are not

obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza vs. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification.”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”); *Williams vs. Sup. Ct.*, 3 Cal.5th 531, 546-547 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class.”).

38. As explained in Paragraph 26, in order to comply with the requirements of Labor Code Section 2699(I), Plaintiff shall file a Motion for Approval of Representative PAGA Settlement identifying the key terms of this Settlement and Release agreement and requesting that the Court approve the Settlement (“Approval Motion”).

VI. THE SETTLEMENT PAYMENT PLAN AND ADMINISTRATION OF THE SETTLEMENT

39. Within 30 calendar days after the Effective Date, Defendant will compile and transmit an Aggrieved Employee list (“Aggrieved Employee List”) containing: (1) the name; (2) last known home address and telephone number; (3) the number of pay periods worked by an Aggrieved Employee during the Covered Period; and (4) the Aggrieved Employees’ social security numbers.

40. Defendant shall pay to the Settlement Administrator the Gross Settlement Amount within thirty (30) calendar days of the Effective Date. Once Defendant has complied with its obligation set forth in this paragraph, it shall be deemed to have satisfied all of the terms and conditions of this Agreement, shall be entitled to all the protections afforded it under the Agreement, and shall have no further obligations under the Agreement. Without prejudice to any other remedies, both the Settlement Administrator and PAGA Counsel shall hold Defendant

harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any failure to timely or properly compensate PAGA Members as provided in this Agreement. The Settlement Administrator shall distribute each Aggrieved Employee Share to the Aggrieved Employees, any service award and the attorneys' fees and costs awarded by the Court within forty (40) calendar days of the Effective Date.

41. The Settlement Payment checks for each Aggrieved Employee's Share shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. A letter approved by the Parties, in advance of filing the Approval Stipulation, explaining this Settlement will be included in the mailing of each Aggrieved Employee's check and submitted to the Court for its review and approval. A true and correct copy of the proposed explanatory letter is attached hereto as **Exhibit A**. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Settlement Administrator.

42. The Settlement Administrator shall ensure that 75% of the PAGA Penalty Fund is paid to the LWDA.

43. Aggrieved Employee Share checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If any Aggrieved Employee Share check remains uncashed following this period, the Settlement Administer will ensure that any such uncashed funds shall be forwarded the State of California Controller pursuant to the Unclaimed Property Law, Code of Civil Procedure Section 1500, et seq. with the identity of the PAGA Member to whom the funds belong, to be held for the PAGA Member pursuant to the California Unclaimed Property Law. The money transferred to the State of California Controller shall remain the property of the PAGA Member. This shall allow PAGA Members who did not cash their checks to collect their Individual Settlement Payments at any time in the future. Therefore, there shall be no unpaid residue or unclaimed or abandoned Aggrieved Employee fund created by this Settlement and California Code of Civil Procedure Section 384 shall not

apply, which the Parties contend do not apply to PAGA claims and only class actions. The Parties hereby expressly agree to this specific distribution for any and all unclaimed funds.

VII. DUTIES OF THE PARTIES PRIOR TO APPROVAL

44. Promptly upon execution of this Settlement, Plaintiff shall file a Motion for Approval of Representative PAGA Settlement. The Parties shall apply to the Court for the entry of an order and final judgment approving this Settlement as required by Labor Code section 2699(l). Plaintiff shall prepare and file a Motion for Approval of Representative PAGA Settlement. The Approval Motion will request Court approval of the following:

- a. Approving the terms of this Settlement and Release Agreement;
- b. Approving the amount of PAGA Counsel Fees & Costs;
- c. Appointing ILYM Group, Inc. as the Settlement Administrator and approving the amount of Settlement Administration Costs;
- d. Approving the amount of Plaintiff's Service Award; and
- e. Entering Final Judgment.

45. In conjunction with the Motion for Approval of PAGA Settlement, the Parties will submit a proposed Final Judgment requesting the entry of judgment in the amount of \$130,000.00 in favor of Plaintiff and the State of California.

46. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

VIII. MUTUAL FULL COOPERATION

47. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein.

IX. CONFIDENTIALITY

48. Other than information necessary to secure Court approval of this settlement, the Parties agree to keep confidential all matters related to this Settlement, including the terms of the Settlement and the facts and circumstances leading up to it. The Parties may, however, discuss the terms of this Settlement with their spouses, fiancées, attorneys, financial advisors, tax advisors, and accountants, or upon a valid court order, at which time the individual receiving information about the terms of this Settlement shall be informed that the terms of this Settlement are confidential, and the individual may not reveal or disclose to any third party the terms of the Settlement. Nothing in this Agreement shall prohibit PAGA Counsel from disclosing this Settlement in declarations or court proceedings concerning their qualifications to serve as Class and/or PAGA Counsel.

X. NO ADMISSION

49. Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Releasees. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant denies that it has engaged in any unlawful activity, that it failed to comply with the law in any material respect, or that it has any liability to anyone under the claims asserted in the Lawsuit. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant.

XI. NON-EVIDENTIARY USE

50. Whether or not the Effective Date occurs, neither this Agreement nor any of its terms, nor the Settlement itself shall 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 Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that an Aggrieved Employee has resolved any of his/her claims released through this Agreement.

XI. NULLIFICATION

51. If (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees), or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, except for the amount of attorneys' fees and costs shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

XII. ATTORNEYS' FEES, COSTS AND EXPENSES

52. Except as specifically set forth herein, each party shall bear their own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by her/ them arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Agreement.

XIII. CONSTRUCTION

53. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff (on behalf of himself and the State of California) and Defendant regarding actual or potential claims asserted by Plaintiff against Releasees. Excluding any Arbitration or Confidentiality Agreement executed by Plaintiff with Defendant, both of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential

claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

XIV. CAPTIONS AND INTERPRETATIONS

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

XV. MODIFICATION

55. This Settlement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVI. MISCELLANEOUS

56. This Settlement contains the entire agreement between the Parties relating to the Settlement of the Covered Claims and Plaintiff's Released Claims, and all prior or contemporaneous agreements (except any Arbitration Agreement), understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

57. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

58. This Settlement may be executed in counterparts either via a wet written signature or an electronic signatures (such as via DocuSign). When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be executed and/or transmitted electronically or by facsimile.

59. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

60. The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement. As such, both Parties agree that they bear the risk of mistake and that they each agree to bear such risks, including all potential risks associated with this Settlement, equally.

61. The San Bernardino Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

62. This Agreement shall not be subject to collateral attack by any Aggrieved Employees. Such prohibited collateral attack shall include, but not be limited to, claims that the Aggrieved Employees failed, for any reason, to timely receive his or her Individual Settlement Payment.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE,

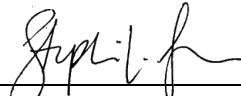
KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS
CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: December 23, 2022



JAMES AHLBORN
as PAGA Representative

DATED: December 27, 2022



FOR BUILDING MATERIALS
MANUFACTURING CORPORATION

By: Stephanie L. Shaw

Its: Chief Human Resources Officer

Exhibit A

[CLAIMS ADMINISTRATOR LETTERHEAD]

Mailing Date

NOTICE OF SETTLEMENT

Re: JAMES AHLBORN, v. BUILDING MATERIALS MANUFACTURING CORPORATION, San Bernardino County Superior Court, Case No. CIVSB2124640

On **XXXX**, the San Bernardino County Superior Court issued an Order approving the settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”). The Court approved a Settlement in the amount of \$130,000.00. After accounting for the Plaintiff’s attorney’s fees of \$43,333.33 and costs of \$2,644.66; settlement administration costs of \$6,000.00; and a service award to Plaintiff Ahlborn in the amount of \$7,500.00; the remainder of the settlement (\$70,522.01) shall be paid as PAGA penalties pursuant to Labor Code section 2699(i) with 75% of the PAGA Penalties being paid to the California Labor and Workforce Development Agency (\$52,891.50), as required under PAGA, and 25% (\$17,630.51) paid to the Aggrieved Employees on a pro-rata basis based upon the number of pay periods worked from February 2, 2020 to October 16, 2022. Specifically, the portion of PAGA penalties distributed to each PAGA Member shall be calculated by dividing the number of PAGA periods worked by a PAGA Member during the covered period (February 2, 2020 to October 16, 2022) by the total number of pay periods worked by all PAGA Members during the covered period and multiplying that amount by the amount of PAGA penalties awarded to the PAGA Members (*i.e.* \$17,630.51).

By way of this Settlement, Defendant and its past, present, and/or future, direct and/or indirect officers, including but not limited to directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, contractors, awarding bodies, customers, subsidiaries, affiliates, parents, divisions, predecessors, successors, assigns, and joint venturers have been released from claims the State of California can pursue for Labor Code violations committed against you for any and all claims and causes of action that were asserted or could have been asserted pursuant to Labor Code Section 2698 *et seq.* (also known as “PAGA”) that were alleged or reasonably could have been alleged against the Released Parties based on the allegations of fact set forth in the June 21, 2021 PAGA, the July 27, 2021 Amended PAGA Notice, and the August 26, 2021 Complaint , including but not limited to Labor Code sections 201, 202, 203, 204, 210, 221, 224, 226.3, 226.7, 403, 432.5, 450, 510, 512, 558, 1194, 1197, 1198, and 2802.

Defendant denies any liability or wrongdoing and contends, among other things, that it has complied at all times with the California Labor Code, the related California Wage Orders, and all other state and federal wage laws, and further contends that the Lawsuit is without merit.

You are receiving money under the Settlement because you are or were a non-exempt, hourly employee of Building Materials Manufacturing Corporation within the State of California who worked one or more pay periods from February 2, 2020 through October 16, 2022. Your settlement amount is <<**\$ Amount**>>. Your enclosed check is valid for one hundred and eighty (180) days from the date of its issuance. After that date, you cannot cash the check and it will be null and void. Funds attributable to such uncashed checks will be sent to the California Unclaimed Property Fund in your name.

Questions About The Settlement:

WINSTON LAW GROUP, P.C.

David S. Winston
david@employmentlitigators.com
1880 Century Park East, Suite 511
Los Angeles, California 90067
Phone: (424) 288-4568
Fax: (424) 532-4062

Questions About Your Check or Address Information:

[INSERT CONTACT INFORMATION for the Settlement Administrator]

Exhibit B

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This settlement agreement and release of all claims (the “Agreement”) is made and entered into by and among James Ahlborn (“Plaintiff”) on the one hand, and Building Materials Manufacturing Corporation (“Defendant” or “Building Materials”), on the other. Plaintiff and Defendant are referred to collectively as the “Parties” and individually as a “Party.” This Agreement is intended to resolve all disputes and extinguish those obligations described below.

RECITALS

WHEREAS, Plaintiff asserted claims arising out of Plaintiff’s employment relationship with Defendant including, but not limited to, those claims asserted in a complaint filed in San Bernardino County Superior Court (the “Action”).

WHEREAS, the Action includes claims under the Private Attorney General Act (the “PAGA”);

WHEREAS, the California Supreme Court recognized that a settlement of individual claims does not “strip an aggrieved employee” of standing to pursue a PAGA claim. *Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip an aggrieved employee of standing, as the state’s authorized representative, to pursue PAGA remedies” nor resolve the PAGA claims).

WHEREAS, Defendant denies and disputes any and all of the alleged claims and allegations in the Action or those that could have been asserted by Plaintiff as a result of Plaintiff’s employment, and/or any relationship between Plaintiff and Defendant; and

WHEREAS, the Parties have entered into a separate agreement regarding the PAGA Settlement (“PAGA Settlement”);

WHEREAS, the PAGA Settlement does not encompass all claims which Plaintiff could have individually brought as a result of Plaintiff’s employment as recognized in *Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73 (2020), any relationship between Plaintiff and Defendants, and/or generally arising out of or in connection with Plaintiff’s employment;

WHEREAS, Plaintiff alleges that he has additional claims relating to his employment not covered by the PAGA Settlement and for which he is not being compensated under the PAGA

Settlement including individual wage and hour claims, employment discrimination, and retaliation claims;

WHEREAS, Plaintiff filed a Complaint with the Department of Fair Employment and Housing alleging discrimination, harassment, and retaliation, DFEH Case No. 202107-14295027.

WHEREAS, the Parties through this Agreement desire to resolve any and all remaining possible known and unknown claims Plaintiff could have asserted as a result of Plaintiff's employment, any relationship between Plaintiff and Defendant, and/or generally arising out of or in connection with Plaintiff's employment and the cessation thereof aside from any claims for workers' compensation and/or any claims not releasable as a matter of law.

AGREEMENT

NOW THEREFORE, in consideration of and in exchange for the promises, covenants, and releases contained in the Agreement and the other valuable consideration described herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties mutually agree as follows:

1. Settlement Payment. For and in consideration of the commitments made herein by Plaintiff, Defendant agrees to provide Plaintiff the total sum of forty-thousand dollars and zero cents (\$40,000.00) ("the Settlement Payment") in full compromise and settlement of all claims released herein by Plaintiff which shall be allocated as follows:

- a. Building Materials shall deliver to James Ahlborn, a check made payable to "James Ahlborn" in the amount of Thirteen Thousand Two Hundred Dollars and 00/100 (\$13,200.00), less applicable withholdings and deductions, attributable to alleged lost wages, which shall be reflected on an IRS Form W-2 issued to James Ahlborn; and
- b. Building Materials shall deliver to James Ahlborn, a check made payable to "James Ahlborn" in the amount of Twenty-Six Thousand Eight Hundred Dollars and 00/100 (\$26,800.00), attributable to non-wages, which shall be reflected on an IRS Form 1099 issued to James Ahlborn.

2. The Settlement Payment shall be paid by check payable to Plaintiff, James Ahlborn and shall be reported on IRS forms W-2 and/or 1099. Upon delivery of the Settlement Payment, Defendant will have fully met its obligations under this Agreement. As this payment is not a part of the proposed PAGA Settlement, Defendant shall mail the settlement payment

directly to Plaintiff at 600 Hosking Ave apt. 36A, Bakersfield, CA 93307.

3. Plaintiff's Release of Claims. Plaintiff, for himself and for his heirs, executors, administrators, successors and assigns, hereby releases, acquits and forever discharges Defendant, and each of its parents, subsidiaries, affiliates, and related entities, and each of their respective officers, directors, shareholders, persons, employees, agents, servants, representatives, members, attorneys, insurers, re-insurers, assigns, and affiliates and any and all other entities with whom they have been, are now, or may hereafter be affiliated, specifically including Defendant and any of their affiliated companies, predecessors, successors and assigns, as well as their past or present officers, directors, agents, representatives, attorneys, insurers, re-insurers, assigns, or employees (collectively "Releasees"), from any and all claims, demands, obligations, actions, causes of action, liabilities, debts, promises, agreements, demands, attorneys' fees, losses and expenses, known or unknown, suspected or unsuspected, filed or unfiled, that he may have or have had arising out of any known or unknown fact, condition or incident occurring prior to the date of this Agreement, including but not limited to those arising out of or in connection with any claims, demand, charges, or complaints, including the Action, arising out of or in connection with his employment, the cessation thereof, or any other interaction or relations with Releasees. This release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, liabilities, attorneys' fees, costs, actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising out of, or based upon: all claims of harassment, discrimination, and/or retaliation in violation of State or Federal law; all claims for failure to prevent harassment, discrimination, and/or retaliation; all claims of violation of public policy, including a claim for wrongful and/or constructive termination of employment; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; all claims for unpaid commissions, wages, or other benefits, including minimum wage, overtime, double time, vacation, associated penalties and/or premiums, and expense reimbursement; all claims for rest or meal periods and associated penalties and/or premiums, and any and all claims for alleged violations of the California *Labor Code*; any claim for unlawful or unfair business

practices; all claims for emotional distress; any and all claims which were or could have been asserted by Plaintiff; and all claims generally relating to Plaintiff's employment relationship and the cessation thereof, including any alleged violation of any federal, state or other governmental statute, regulation, ordinance, or executive order, including without limitation:

- (1) The Civil Rights Acts of 1866, 1964, and 1991, as amended;
- (2) 42 U.S.C. § 1981;
- (3) The California Fair Employment and Housing Act;
- (4) Section 503 of the Rehabilitation Act of 1973;
- (5) The Fair Labor Standards Act (including the Equal Pay Act);
- (6) The California and United States Constitutions;
- (7) The California Labor Code, specifically including, but not limited to the Private Attorneys General Act pursuant to *Labor Code* § 2699, *et seq.*;
- (8) The California Business & Professions Code;
- (9) The Employee Retirement Income Security Act, as amended;
- (10) The California Family Rights Act;
- (11) The Americans with Disabilities Act;
- (12) The Family Medical Leave Act;
- (13) The California Pregnancy Discrimination Act;
- (14) The California Wage Orders;
- (15) The National Labor Relations Act;
- (16) The Immigration Reform and Control Act;
- (17) The Worker Adjustment and Retraining Notification Act;
- (18) The California Occupational Safety and Health Act, or the Federal equivalent; and
- (19) The Age Discrimination in Employment Act.

This release in all respects has been voluntarily and knowingly executed by Plaintiff with the express intention of effecting the legal consequences provided in the California *Civil Code* § 1542, that is, the extinguishment of obligations herein designated.

4. Plaintiff's Waiver of Section 1542. Plaintiff states and affirms that it is his intention in executing this Agreement that the same shall be effective as a bar to each and every claim, demand, cause of action, obligation, damage, liability, charge, attorneys' fees and costs herein above released. Plaintiff expressly waives and relinquishes all of his rights and benefits, if any, arising under the provisions of California *Civil Code* § 1542, which provides:

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

5. Concurrent PAGA Settlement. In connection with this Settlement the Plaintiff has also entered into a settlement agreement with Defendant wherein he has agreed to settle his claims on behalf of the State of California pursuant to PAGA. Unlike this agreement, the PAGA Settlement is limited to claims for PAGA penalties pursuant to Labor Code Section 2698 *et seq.*, whereas this Settlement encompasses all individual claims the Plaintiff has or could have against the Defendant as a result of his employment aside from workers' compensation and/or other claims not releasable as a matter of law. Plaintiff's PAGA Counsel is not receiving any attorneys' fees or cost reimbursement associated with Plaintiff's individual settlement. This Agreement shall be disclosed to the San Bernardino County Superior Court in the interests of transparency during the PAGA approval process.

6. Timing. Defendant has no obligation to provide the consideration as set forth in Paragraph 1 above until thirty (30) days after the Effective Date, which is defined as (i) the 61st day after the Court enters an order granting approval of the PAGA Action settlement, provided no appeal or motion for reconsideration or other efforts to obtain review has been filed; (ii) if any timely appeals or motions for reconsideration or review are filed, the 61st day after final resolution of any such appeals or motions for reconsideration or review have been concluded.

7. Acknowledgement. Plaintiff acknowledges and agrees that he would not otherwise be entitled to the consideration set forth in Paragraph 1, above, were it not for his covenants, promises, and releases set forth herein. Plaintiff acknowledges that Releasees shall

owe Plaintiff nothing, except for any Potential PAGA penalties and/or service award in association with the litigation in *JAMES AHLBORN, an individual, on behalf of the State of California, as a private attorney general, PLAINTIFF v. BUILDING MATERIALS MANUFACTURING CORPORATION, a Delaware Corporation; and DOES 1 to 50, inclusive, Defendants*, San Bernardino County Superior Court, Case No. CIVSB2124640.

8. Issuance of Tax Forms; No Representation of Taxability. An IRS Form W-2 and 1099 will be issued to Plaintiff for the Settlement Payment as detailed in Section 1(b). Plaintiff understands and agrees that he solely is responsible for payment of any taxes which are required to be paid to the State of California, the United States Government, or any other entity as a result of this settlement. Plaintiff acknowledges and agrees that Releasees have not warranted or represented how the U.S. Internal Revenue Service or other governmental taxing authorities will treat the Settlement Payment for tax purposes, and agrees that no further payment of money to Plaintiff from Releasees will be due in the event that the payment or the release of claims embodied in this Agreement, or any portion thereof, is found by a government taxing authority to be, or to result in, additional taxable income to Plaintiff. Plaintiff agrees that, in the event that any federal, state or local agency takes the position that taxes should have been withheld from amounts paid pursuant to this Agreement, Plaintiff will be solely responsible for payment of any such alleged tax obligations and will indemnify and hold Releasees harmless from any resulting tax liability, interest, attorneys' fees, or penalty associated therewith. Plaintiff has the right to consult and should consult an accountant or other tax professional if he desires.

9. Non-Cooperation. Unless compelled by a validly issued subpoena or court order, Plaintiff agrees not to invite, solicit, initiate, participate, or otherwise cooperate in any way in any legal or adversary proceedings, or in any other public or private activity, taken against Defendant or Releasees, which may be contemplated or initiated by any persons or entities not a party to this Agreement. Nothing within this Agreement is intended to prevent or interfere with Plaintiff participating in any investigation, hearing, or proceeding conducted by any governmental agency or from effectuating the dismissal or resolution of his claims before the

Department of Fair Employment and Housing.

10. No Admission of Liability. It is understood and agreed by the Parties that this Agreement represents a compromise and settlement for various matters and that the promises and payments and consideration of this Agreement shall not be construed to be an admission of any liability or obligation by the Parties.

11. Attorneys' Fees and Costs. The Parties agree that they will bear their own attorneys' fees and costs incurred in connection with this matter and this Agreement. Plaintiff's/PAGA Counsel is not receiving any attorneys' fees or cost reimbursement associated with Plaintiff's individual settlement.

12. No Additional Recovery. It is the intent of this Agreement that Plaintiff, lienholders, and any other individual or entity with an interest in Plaintiff's claims shall not recover, directly or indirectly, any sums from Releasees other than the funds received pursuant to this Agreement and set forth in Paragraph 1 and his share of the PAGA penalties in the action titled: *JAMES AHLBORN, an individual, on behalf of the State of California, as a private attorney general, PLAINTIFF v. BUILDING MATERIALS MANUFACTURING CORPORATION, a Delaware Corporation; and DOES 1 to 50, inclusive, Defendants*, San Bernardino County Superior Court, Case No. CIVSB2124640

13. Entire Agreement. This Agreement constitutes the entire agreement between Plaintiff and Defendant regarding actual or potential, known and unknown, claims asserted by Plaintiff against Releasees and the resolution of those claims, which will remain in full force and effect. Excluding any Arbitration or Confidentiality Agreement executed by Plaintiff for Defendant and the Class Settlement, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid. This Agreement cannot be orally modified. Any amendment or modification to this Agreement must be in writing, signed by Plaintiff and by a duly authorized representative of Defendant. Plaintiff further represents

that he is unaware of any agreement or promise, written or oral, between Releasees and/or anyone else, that could serve as the basis for any claim or action against Releasees that has not been released in this Agreement and/or the concurrent PAGA Settlement Agreement.

14. No Reliance Upon Representations by the Other Side. Each Party hereto represents and acknowledges that in executing this Agreement it does not rely and has not relied upon any representation or statement made by any other Party or by the agents, attorneys or representatives of the other Party with regard to the subject matter of this Agreement, or its basis, or the effects of this Agreement other than those representations specifically set forth in this written document.

15. Binding Nature; No Assignment. This Agreement, and all the terms and provisions contained herein, shall bind the heirs, personal representatives, successors and assigns of each Party, and inure to the benefit of each Party, its agents, directors, officers, employees, servants, successors, and assigns. The Parties promise and guarantee that they have not made, and will not make, any assignment of any claim, chose in action, right of action, or any right of any kind whatsoever, embodied in any of the claims that are released herein, and that no other person or entity of any kind had or has any interest in any of the claims released herein.

16. Construction. This Agreement is the product of arms-length negotiations and is considered to be jointly drafted. As such, it shall not be construed against any party because that party caused it to be reduced to a written instrument.

17. Fairness of Settlement. The Parties agree that this settlement is fair and reasonable. The Parties covenant never to challenge this Agreement.

18. Confidentiality. Except as required to disclose to the Court in the Action with respect to the PAGA Settlement and except as detailed below, the terms of this Agreement are confidential to the extent permitted by applicable law, and the Parties acknowledge that said confidentiality is an essential term of this Agreement. Accordingly, Plaintiff shall keep confidential and not disclose (including oral, written and/or electronic communications), use, publicize, or knowingly permit or authorize disclosure or publicizing of the terms or content of

this Agreement, or negotiations underlying this Agreement, to any person including, but not limited to, any current or former employee, contractor or agent of Defendant, any firm, organization or entity of any type, public or private, including any media, for any reason, unless, required by law, court order, or written agreement executed in advance by the Parties.

- a. Plaintiff is permitted to disclose the existence and terms of this Agreement to his financial or tax advisors, accountants, attorneys, tax preparers, parents and to governmental taxing authorities as required by law, or if required by court order, but upon doing so shall inform these third parties of this confidentiality provision and of their duty to maintain the confidentiality of the terms of this Agreement pursuant to this provision. If asked, Plaintiff and/or his counsel may state that the matter has been resolved.
- b. Nothing in this Agreement shall prevent Plaintiff from complying with any legal subpoena or court order to provide information regarding the terms of the Agreement. Plaintiff agrees that before producing any documents or information covered by this section, he will immediately notify Defendant, through its counsel, Ryan H. Crosner, Esq., of Ogletree Deakins, Nash, Smoak & Stewart, P.C., 400 South Hope Street, Suite 1200, Los Angeles, CA 90071, (213) 457-5869, ryan.crosner@ogletreedeakins.com.
- c. Nothing in this Agreement prevents Plaintiff from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Plaintiff has reason to believe is unlawful. Nothing in this Agreement prevents Plaintiff from discussing or disclosing factual information regarding acts of sexual assault or acts of sexual harassment as defined under Civil Code section 51.9.

19. Effect of Illegality. Should any part, term or provision of this Agreement be declared or determined by any Court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms

or provisions of this Agreement shall not be affected thereby. Said illegal, invalid or unenforceable part, term or provision shall be deemed not to be a part of this Agreement.

20. Compliance with Terms; No Waiver. The failure to insist upon compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

21. Governing Law. This Agreement shall be interpreted under the laws of the State of California, both as to interpretation and performance.

22. Section Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

23. Representative Capacity. Each Party executing this Agreement in a representative capacity represents and warrants that s/he is empowered to do so.

24. Counterparts and Facsimile/Digital Signatures. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an executed Agreement and each of which shall be deemed to be one and the same instrument. A facsimile or digital signature shall be treated as an original signature for all purposes.

25. Voluntary and Knowing. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto.

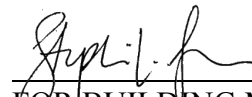
I, having read the foregoing Settlement Agreement and Release of All Claims and knowing the contents thereof, am effecting this settlement and executing this Agreement after having the opportunity to obtain legal advice from counsel, and I sign the same as my own free act.

DATED: December 23, 2022



JAMES AHLBORN

DATED: December 27, 2022



FOR BUILDING MATERIALS
MANUFACTURING CORPORATION

By: Stephanie L. Shaw

Its: Chief Human Resources Officer