

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Confidential Settlement Agreement and Release of Claims (the “Agreement”) is made and entered into by and between Jose Rocha Valdez (“Plaintiff”) on the one hand, and Thermal Structures, Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are referred to collectively as the “Parties” and individually as “Party.” This Agreement is intended to resolve all disputes and extinguish those obligations described below.

RECITALS

WHEREAS, on April 19, 2021, Plaintiff filed a class action which was later converted into representative PAGA action through a dismissal of the class claims and an amendment of the complaint in the Superior Court of California for the County of Riverside, *Jose Rocha Valdez v. Thermal Structures, Inc.*, case number CVRI2101779, wherein he alleged assorted violations of California wage and hour laws (the “Action”);

WHEREAS, Defendant denies and disputes any and all of Plaintiff’s claims and allegations in the Action and denies any wrongdoing whatsoever; and

WHEREAS, the Parties desire to avoid the disruption, inconvenience, uncertainty, and costs associated with litigation of the Action and any claims that Plaintiff has, had, or may claim to have arising out of or in connection with his employment with Defendant generally and the cessation thereof.

AGREEMENT

NOW THEREFORE, in consideration of and exchange for the promises, covenants, and releases contained in this 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 Twenty-Nine Thousand Dollars and Zero Cents (\$29,000.00) (“the Settlement Payment”), in full compromise and settlement of all claims released herein by Plaintiff. The Settlement Payment shall be made as follows:

(a) By check payable to the MOON & YANG, APC Attorney Client Trust Account in the

amount of Twenty-Nine Thousand Dollars (\$29,000.00), which sum represents the total sum owed to Plaintiff for disputed penalties, interests, and damages, as well as for Plaintiff's attorneys' fees and costs for which an IRS form 1099 will be issued to MOON & YANG, APC.

Upon delivery of the Settlement Payment, detailed above, Defendant will have fully met its obligations under this Agreement and will not be liable in any manner for any further distribution, division or payment of any portion of the Settlement Payment to or between any counsel Plaintiff may have retained and/or consulted, specifically including, but not limited to MOON & YANG, APC, and the attorneys thereof. By execution of this Agreement, Plaintiff authorizes payment to be made as set forth in this Paragraph.

2. Representation that No Claims Have Been Filed or Will be Filed; Breach. Plaintiff represents and warrants that no administrative charges, claims, or complaints have or will be filed, specifically including but not limited to complaints filed with the Department of Fair Employment and Housing ("DFEH"), Department of Industrial Relations Division of Labor Standards Enforcement ("DLSE"), and/or the Equal Employment Opportunity Commission ("EEOC"), and that no complaints, actions, or lawsuits will be filed to initiate any state, federal or arbitration proceeding. Plaintiff also represents that he will take no further action as to the letter sent by him to the California's Labor & Workforce Development Agency ("LWDA") and no further complaints, actions, or lawsuits will be filed to initiate any state, federal or arbitration proceeding and no further action taken to pursue claims under California's Private Attorneys General Act ("PAGA"). Plaintiff agrees that any breach of his representations, warranties, and/or obligations pursuant to this Paragraph shall entitle Releasees (defined in Paragraph 4, below) to the entire Settlement Payment. Additionally, Plaintiff agrees that any breach of his representations, warranties, and/or obligations pursuant to this Paragraph shall create actionable causes of action for Releasees (defined in Paragraph 4, below) against Plaintiff for claims, including but not limited to: breach of the Agreement; breach of contract; breach of the duty of good faith and fair dealing; fraud; fraudulent inducement; and intentional and negligent misrepresentation. Despite his representations and warranties in this Paragraph, by execution of this Agreement, Plaintiff agrees to dismiss, *with prejudice*, any individual claims, charges, or complaints Claimant may have filed with any governmental or administrative agency, specifically including but not limited to the LWDA, the DFEH, and/or the EEOC,

or in any judicial forum against Releasees (defined in Paragraph 3, below). In respect to the LWDA, Plaintiff agrees to take no further action and affirms that he will not initiate a PAGA claim in any court or venue. Plaintiff's alleged representative PAGA claims as interpreted by the United States Supreme Court case *Viking River Cruises, Inc. v. Moriana* (2022) 213 L.Ed.2d 179 [142 S.Ct. 1906], reh'g denied (2022) will be dismissed without prejudice as to other of Defendant's employees. Plaintiff and his counsel agree to take all steps reasonably necessary to fulfill this portion of the Agreement.

3. Notice of Settlement; Dismissal of Action; Judicial Approval of Dismissal of the Action.

Within 15 days of execution of this Agreement, the Plaintiff shall file a request for dismissal of the representative PAGA claims in the Action without prejudice and dismissal of the individual claims, including the individual PAGA claim, with prejudice. In the event that the court does not dismiss the claims as set forth above, this Agreement shall be null and void.

4. Release of Claims. Plaintiff, for himself and for his heirs, executors, administrators, successors and assigns, hereby releases, acquits and forever discharges Defendant, and its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendant and all other entities with whom Defendant has been, are now, or may hereafter be affiliated, including its 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, attorneys' fees, losses and expenses, known or unknown, suspected or unsuspected, filed or unfilled, that Plaintiff may have or has had arising out of any known or unknown fact, condition or incident occurring prior to the date of this Agreement arising out of or in connection with any claims, demand, charges, or complaints, including the Action, or arising out of or in connection with his employment, or the cessation thereof, or arising out of or in connection with Plaintiff's relationship with Defendant.

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 Local, 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.* to the extent that Plaintiff seeks to recover any individual PAGA penalties;
- (8) The California Business & Professions Code;
- (9) The Employee Retirement Income Security Act, as amended;
- (10) The Americans with Disabilities Act;
- (11) The Age Discrimination in Employment Act;
- (12) The Family Medical Leave Act;
- (13) The California Family Rights Act;
- (14) The California Pregnancy Discrimination Act;
- (15) The California Wage Orders;
- (16) The National Labor Relations Act;
- (17) The Immigration Reform and Control Act;
- (18) The California Occupational Safety and Health Act, or the Federal equivalent;
- (19) The Worker Adjustment and Retraining Notification Act; and
- (20) The Families First Coronavirus Response 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* § 1541, that is, the extinguishment of obligations herein designated. This release does not extend to claims by Plaintiff for workers' compensation benefits, or unemployment insurance benefits.

Finally, by executing this Agreement, Plaintiff represents, warrants and confirms that he is not an aggrieved employee for purposes of acting as a Private Attorney General under the PAGA, and specifically that he did not suffer any violation that would form the basis for him to pursue a claim under the PAGA. Moreover, Plaintiff disclaims any right to act as a Private Attorney General under the PAGA. This release shall not include Plaintiff's alleged representative PAGA claims as interpreted by the United States Supreme Court case *Viking River Cruises, Inc. v. Moriana* (2022) 213 L.Ed.2d 179 [142 S.Ct. 1906], reh'g denied (2022) of which, Plaintiff's representative PAGA claim will be dismissed without prejudice as to other of Defendant's employees.

4.a. 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:

Section 1542. [Certain Claims Not Affected By General Release.] 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. Acknowledgment of Rights and Waiver of Claims Under the Age Discrimination in Employment Act. Plaintiff acknowledges that he is knowingly and voluntarily waiving and releasing any rights he may have under the Age Discrimination in Employment Act ("ADEA"). Plaintiff also acknowledges that the consideration given for the waiver and release in this Agreement is in addition to anything of value to which he was already entitled. Plaintiff further acknowledges that he has been advised

in writing, as required by the Older Workers' Benefit Protection Act, that: (a) his waiver and release does not apply to any rights or claims that may arise after the Effective Date of this Agreement; (b) he should consult with an attorney prior to executing this Agreement; (c) he has at least twenty-one (21) days to consider this Agreement (although Plaintiff may by his own choice execute this Agreement earlier); (d) he has seven (7) days following his execution of this Agreement to revoke the Agreement; (e) this Agreement shall not be effective until the date upon which the revocation period has expired ("Effective Date"). Plaintiff may revoke this Agreement only by giving formal written notice of his revocation to Boris Sorsher of Fisher & Phillips LLP, located at 2050 Main Street, Suite 1000, Irvine, CA 92614, to be received by the close of business on the seventh day following Plaintiff's execution of this Agreement

6. Timing of Settlement Payment. Defendant shall provide consideration as set forth in Paragraph 1, no later than fourteen (14) days after: A) counsel for Defendant has received this Agreement, fully executed by the Parties and approved as to form by Plaintiff's counsel; B) Plaintiff and his counsel have executed and provided Form W-9s to Defendant; C) the Effective Date as defined in Paragraph 5; and D) the court dismisses the Action.

7. No Admission of Liability. It is understood and agreed by Plaintiff 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 Releasees to Plaintiff. Plaintiff further agrees that this Agreement cannot be used as evidence, nor can it be referred to or relied upon, in any arbitration, administrative, court, or legal proceeding (other than to evidence approval of the dismissal of the putative class allegations in the Action, and/or enforce the terms of this Agreement or as required by a valid court order). Defendant disclaims and denies any liability, obligation, or responsibility to Plaintiff whatsoever, and denies liability for the putative class claims.

8. 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 he has received all wages, commissions, compensation

and reimbursements due to him from Releasees and that Releasees shall owe Plaintiff nothing further for the herein described release once Plaintiff receives the Settlement Payment described in Paragraph 1, above.

9. Attorneys' Fees and Costs. The Parties agree that they will bear their own attorneys' fees and costs incurred in connection with the Action other than what is described above. Plaintiff acknowledges that he will satisfy any obligation owed to or liens asserted by any counsel he consulted or retained, including but not limited to MOON & YANG, APC., from the Settlement Payment.

10. Confidentiality. Plaintiff represents and hereby agrees that, except in support of any request for dismissal of the claims alleged in the Action he has, and will, keep the terms, amount and fact of this Agreement completely confidential, and that he will not hereafter disclose any information concerning this Agreement to anyone; provided, however, that Plaintiff may make such disclosure to his immediate family and professional representatives (e.g., attorneys, accountants, auditors, tax preparers). If any disclosures are made as provided in this paragraph, each individual shall first be informed of and agree to be bound by this confidentiality clause, or other such disclosures required by law to enforce this agreement. Plaintiff further agrees that if anybody asks him about the Action and/or about the allegations and claims relating in any way to the matters released herein, Plaintiff will respond only by stating words to the effect of: "*The matter has been resolved, and the resolution is confidential.*" Plaintiff represents and agrees that he has not and will not issue any press release, publication, or otherwise disclose this Agreement to the press, media, websites, or any service which reports verdicts and settlements. Nothing in this section shall prevent Plaintiff or his Counsel from making the necessary disclosures to the Court to effectuate the terms of the Settlement, including obtaining dismissal.

11. Liquidated Damages for Breach of Paragraph 10. Plaintiff acknowledges that a breach by Plaintiff of any of the covenants set forth in Paragraph 10 of this Agreement will cause substantial harm to Releasees, including but not limited to, the cost of prosecuting any claims and lawsuits against Plaintiff. Plaintiff also acknowledges that it is impossible for such harm to be calculated with any degree of certainty. Therefore, Plaintiff agrees that any proven breach by him of his obligations under Paragraph 10 of this Agreement shall entitle Releasees to reasonable liquidated damages in the sum of Two Thousand and Nine

Hundred Dollars and Zero cents (\$2,900.00) for each proven breach, as well as recovery of court costs suffered by Releasees. Plaintiff agrees that this provision is fair and reasonable in light of the fact that the actual damages that would be suffered as the result of any such breach of Paragraph 10 of this Agreement would be difficult to ascertain.

12. No Enticement/Inducement. Plaintiff agrees not to initiate, encourage, cause, direct, assist, support, or counsel other individual(s) to file any lawsuit, charge, complaint, claim, petition, or accusatory pleading against Defendant and/or Releasees. The only exception to the foregoing shall be in those circumstances in which Plaintiff is obligated to provide information in response to an investigation by a duly authorized governmental entity or in connection with a legal proceeding in which Plaintiff is compelled to provide information under state or federal law.

13. Non-Cooperation. To the extent permitted by law, Plaintiff agrees that he will not counsel or assist any attorneys or individuals in the presentation or prosecution of any disputes and/or differences by any third party against Releasees unless pursuant to a lawfully issued subpoena or other order by a court or agency of competent jurisdiction, or in response to an official inquiry of a governmental agency.

14. Issuance of Form 1099; No Representation of Taxability. An IRS Form 1099 will be issued to Plaintiff and his counsel to reflect the Settlement Payment provided for in Paragraph 1 above. Plaintiff understands and agrees that he 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 Plaintiff's counsel and the 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, reasonable attorneys' fees, or penalty associated therewith. Plaintiff hereby agrees to indemnify Releasees from any and all manner of liability if any should be imposed on them regarding the payment to Plaintiff under this Agreement specified above, including but not limited to any interest, reasonable attorneys' fees, penalties, and costs related to such payment.

15. Attorney Liens. Plaintiff represents and warrants that all legal expenses, bills, costs or contingency fee agreements resulting from or arising out of the representation of Plaintiff by any attorney in relation to the Action are Plaintiff's responsibility to pay, and that any liens based on any legal expenses, bills, costs or contingency fee agreements incurred as a result of the Action will be satisfied by Plaintiff. Plaintiff will indemnify, defend and hold Releasees harmless from any such claims.

16. Employment Verification. Defendant agrees to provide neutral employment verification. In response to any such inquiry, the caller will obtain verification of: (i) dates of employment, and (ii) last position held.

17. 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. If, despite the provisions of this Paragraph, any Releasee receives any claims, including a claim for contribution, any indemnity arising out of a claim brought by Plaintiff against another person, Plaintiff shall indemnify, provide a full defense for and hold harmless the Releasees for such amount. In the event a trier of fact determines (and all appeals are exhausted or the time for such appeals have expired) that any Releasee is or would be liable for indemnity under any theory of law or equity, this Agreement shall act as a general release, releasing not only the Releasee but every other individual, trustee, firm, trust, corporation, or entity of any kind, who is or would be entitled to a defense and indemnity from the Releasees with respect to any liability that person, firm, or corporation may have to Plaintiff.

18. Entire Agreement. This Agreement constitutes the entire agreement between Plaintiff and Defendant regarding actual or potential claims that could have been asserted by Plaintiff against Releasees. This Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding

those claims or potential claims and the settlement 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 the 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, which could serve as the basis for any claim or action against Releasees that has not been released in this Agreement.

19. Notices. Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to be given when served personally, or on the third business day after mailing if mailed by United States mail, postage prepaid, addressed to the other Party and/or its counsel.

20. 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 the 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.

21. 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.

22. 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.

23. Fairness of Settlement. Plaintiff agrees that this settlement is fair, reasonable and adequate as to his individual claims. The Parties covenant never to challenge this Agreement

24. 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.

25. 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.

26. Enforcement Costs. The Parties agree that in the event litigation is initiated by either Party to interpret or enforce this Agreement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees incurred in conjunction with the litigation, in addition to any other relief granted.

27. Governing Law and Jurisdiction. This Agreement shall be interpreted under the laws of the State of California, both as to interpretation and performance. This Agreement shall also be enforceable pursuant to California Code of Civil Procedure section 664.6.

28. 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.

29. Counterparts; PDF and Facsimile 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 .pdf signature shall be treated as an original signature for all purposes.

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

31. Survival of Warranties and Representations. The warranties and representations of this Agreement are deemed to survive the date of execution thereof.

32. 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 and knowing the contents thereof, and after having the opportunity to obtain legal advice from counsel, and I sign the same as my own free act.

Dated: _____, 2023

JOSE ROCHA VALDEZ

Dated: Feb 28, 2023

THERMAL STRUCTURES, INC.

By:

Its:

Gilbert Zepeda
GILBERT ZEPEDA
VICE PRESIDENT

APPROVED AS TO FORM AND ATTORNEY OBLIGATIONS ONLY:

Dated: _____, 2023

MOON & YANG, APC

By: _____

Seung Yang
Allen Feghali
Brett Gunther
Attorneys for Plaintiff
JOSE ROCHA VALDEZ

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

31. Survival of Warranties and Representations. The warranties and representations of this Agreement are deemed to survive the date of execution thereof.

32. 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 and knowing the contents thereof, and after having the opportunity to obtain legal advice from counsel, and I sign the same as my own free act.

Dated: February 28, 2023

DocuSigned by:

063A95746BDF4E6...
JOSE ROCHA VALDEZ

Dated: _____, 2023

THERMAL STRUCTURES, INC.

By: _____

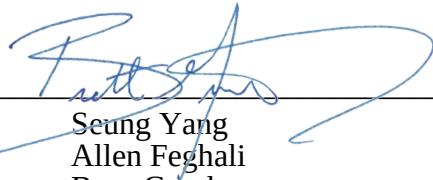
Its: _____

APPROVED AS TO FORM AND ATTORNEY OBLIGATIONS ONLY:

Dated: February 28, 2023

MOON & YANG, APC

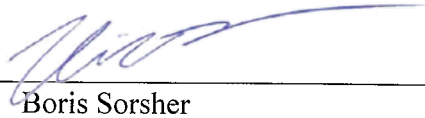
By: _____


Seung Yang
Allen Feghali
Brett Gunther
Attorneys for Plaintiff
JOSE ROCHA VALDEZ

Dated: February 28, 2023

FISHER & PHILLIPS, LLP

By: _____

A handwritten signature in blue ink, appearing to read 'Boris Sorsher', is written over a horizontal line.

Boris Sorsher
Victor Xu
Attorneys for Defendant
THERMAL STRUCTURES, INC.