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Attorneys for Plaintiff, on a representative basis and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF COUNTY OF STANISLAUS

SCOTT KLIMEK, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

KINGSPAN INSULATED PANELS, INC., a
Florida Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CV-21-004201
*[Assigned to Hon. John D. Freeland, Dept 23,
for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing:
Date: May 16, 2023
Time: 8:30 a.m.
Dept.: 23

Complaint Filed: August 5, 2021

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County, and I manage the firm's employment law practice. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 22 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in over half of those actions to date, and anticipate receiving
12 final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history - a \$12.5 million-dollar court approved settlement, which followed
18 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
19 50 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
21 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
22 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
23 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
24 Both cases were appealed.

25 6. Over each of the last several consecutive years, I have been selected by my peers
26 as a “Super Lawyer” in Employment Litigation.

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8. As set forth in the Declaration of the Administrator, the Net Settlement Amount is approximately \$491,528.01, after the deductions set forth in the chart below:

9. The process of mailing the Notice Packets was very successful, as only two Class Notices were determined to be undeliverable.

11. As discussed at length in Plaintiff's motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is favorable to the Class and the release is narrowly limited to the claims alleged.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties' arms' length bargaining facilitated by a reputable and experienced wage and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that 99.5% of the Class has elected to participate and no objections were submitted thus far, the presumption of fairness is justified.

1 13. I believe that the Settlement is fair, reasonable and adequate, and in the best
2 interests of the Class, given the litigation risks and delay inherent in further litigation and
3 possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations
4 submitted in support thereof, Defendants vigorously contested Plaintiff's claims, and Plaintiff
5 faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter.
6 Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and
7 that it is desirable that the action be fully and finally settled in the manner and upon the terms
8 and conditions set forth in the Settlement Agreement in order to limit further expense,
9 inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit
10 the operation of Defendants' business without further expensive litigation and the distraction and
11 diversion of its personnel with respect to matters at issue. All parties took into account the
12 uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The
13 parties determined that it is desirable and beneficial to both the Class and Defendants that this
14 case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The
15 recoveries contemplated by the Settlement represent a good result for the Class, fairly
16 proportioned to the likely risk-adjusted recovery in litigation.

17 **ADEQUACY OF COUNSEL AND**
18 **REASONABLENESS OF REQUESTED FEE AND COST AWARDS**

19 14. As set forth above, I have handled over 250 class and representative actions, have
20 been appointed as class counsel and have successfully resolved over half of those cases, and
21 many others remain pending and will successfully resolve in the future while recovering
22 hundreds of millions of dollars for my clients and Class Members. This is substantially better
23 than average accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class
24 Actions, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which
25 found that only one-third of class actions are successful, compared to two-thirds that are defeated
26 and result in no payment to the class members.¹

27
28 ¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 15. When this case was taken on a contingency fee basis, with my firm agreeing to
2 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
3 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research
4 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

5 16. It has been my experience that the benchmark for attorney fee awards in
6 California state cases is one-third of a common settlement fund, which the CA Supreme Court
7 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
8 Counsel is seeking a fee of \$292,012, which is one-third of the Settlement Amount.

9 17. There are several additional factors why I believe that the Court should award
10 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
11 resulted in a common fund settlement amount of \$450,000, whereby the Class Members will
12 receive approximately **\$2,116.67 on average** and **up to a maximum of \$5,114** for those
13 employees that worked the entire Class Period. This is an **excellent result** in light of the
14 disputed nature of the claims alleged. This result was achieved by the work and success of my
15 office, who negotiated the settlement after extensive litigation, discovery, preparation,
16 investigation, mediation, and substantial work thereafter.

17 18. Second, Plaintiff faced significant risks going forward with the litigation. As
18 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
19 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
20 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
21 going forward with this litigation, and it would have taken several more years to realize any
22 recovery in this action along with the possibility of post-trial appeals.

23 19. Third, Class Counsel are experienced class action litigators. This experience and
24 expertise, combined with the high quality of work performed in this case, resulted in the
25 settlement achieved in this case.

26 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
27 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
28 substantial amount of time, money, and resources, and have done so since the inception of this

1 case without any payment or compensation. If Plaintiff had lost this case, we would have
2 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
3 my office, which is a small firm. If, despite these hardships and risks, the best my office could
4 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for
5 the hardships and serious risks we faced litigating this contingency case, and would not be
6 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
7 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
8 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation- coordination-
9 preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above,
10 only one-third of class actions are successful, compared to two-thirds that are defeated and result
11 in no payment to the class members.

12 21. Fifth, the request for attorney's fees in the amount of one-third of the common
13 fund falls well within the norms accepted by state and federal courts in California in comparable
14 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
15 recovery under the common fund doctrine was recently approved by the California Supreme
16 Court in *Laffitte, supra*, 1 Cal.5th 480, 503.

17 22. For all of the above reasons, a common fund fee award here in the amount of one-
18 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

19 23. At my office, this case was primarily handled by my senior associate attorney,
20 Peter Carlson, while I performed the role of the supervising attorney. As set forth in his
21 declaration, Mr. Carlson works exclusively with me on employment law matters and has been in
22 practice for 8 years. He bills at the hourly rate of \$575/hour. I have been in practice for 22
23 years, with most of those years handling complex litigation and for over the last 15 years, my
24 practice has almost entirely consisted of handling class action wage and hour matters. My billing
25 rate is \$775/hour. I believe these rates are consistent with Plaintiff and Defense attorneys who
26 handle complex class action litigation, if not somewhat lower.

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24. The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer Real Rate Report (“Real Rate Report”), provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data. For instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. In 2018, for the southern California area, which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms.

25. The table below includes a summary of the hours worked by my office and Mr. Bokhour’s office, plus an estimated 35 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the Settlement Administrator and defense counsel to finalize this matter. Thus, the actual aggregated lodestar between the attorneys that have worked on this case is approximately \$251,077, resulting in a ***small 1.16 multiplier***, which is summarized in the following table:

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Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	Trial Counsel	22	\$775	104²	\$80,600
Peter Carlson (Senior Associate – LML)	Handling Attorney	8	\$575	181.7	\$104,477
Mehrdad Bokhour (Principal – Owner)	Trial Counsel	10	\$600	110	\$66,000
Grand Total for All Attorneys					\$251,077

26. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendant does not oppose this fee request.

27. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, messenger services, postage, fax transmission expenses, transportation, mediator fees, and other incidental expenses directly related to this action. The Settlement Agreement provided up to \$20,000 in costs. Through final approval, my office incurred \$8,149.58 in litigation costs (see Exhibit “B” attached hereto), plus \$7,150 by Bokhour Law Group, for combined total costs of \$14,245.99. The saving will be placed in the Net Settlement Amount for payment to the Class Members. Defendant does not oppose this request for costs.

REASONABLENESS OF REQUESTED SERVICE AWARD

28. I also believe that the service award of \$10,000 to Plaintiff is fair and warranted for the reasons outlined in her declaration and in the motion, including the fact that she elected not to bring a separate individual claim for retaliation and wrongful termination. She came forward and worked directly with our offices in analyzing the claims and documents, providing valuable information. (See her declaration for supporting information.) Indeed, her participation was an essential element of Defendants’ desire to mediate and of the pre and post mediation

1 analysis that allowed Class Counsel to settle the case. In addition to foregoing to separate
2 individual claims, she also took on various risks, including the risk that she could have been
3 ordered to pay Defendants' costs if she lost and the risk of retaliation and being black-balled in
4 the industry. She also provided a full release of all claims. Defendants do not oppose the
5 requested service award.

6 **SUBMISSION TO THE LWDA**

7 29. The Motion and declarations, including the Settlement Agreement, have
8 concurrently been submitted to the LWDA. (See Exhibit "C").

9 **EXHIBITS AND CONCLUSION**

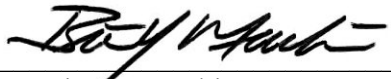
10 30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
11 "A."

12 31. Attached hereto as Exhibit "B" is a true and correct copy of an itemized statement
13 of my firm's litigation costs.

14 32. The LWDA's confirmation of receipt of this Motion and Declaration is attached
15 hereto as Exhibit "C."

16 33. For the foregoing reasons, it is respectfully requested that the Court grant final
17 approval of the settlement as being fair, reasonable, and in the best interest of the class, and
18 approve the requested attorneys fees, costs, and service award.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct. Executed on May 17, 2023, at Riverside, California.

21
22 By: 
23 Brian J. Mankin, Esq.
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28 ² Includes an estimated 35 hours that will be expended in finalizing the motion, attending the hearing, working with
the parties and administrator regarding the notice and payment process, and filing any post judgment paperwork.

EXHIBIT “A”

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Attorneys for Defendant, Kingspan Insulated Panels, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

SCOTT KLIMEK, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

KINGSPAN INSULATED PANELS, INC., a
Florida Corporation, and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CV-21-004201

**CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

1 This Class and Representative Action Settlement Agreement and Release of Claims is
2 entered into by and between Plaintiff Scott Klimek, individually, on a representative basis, and
3 on behalf of all others similarly situated and the interests of the California Labor and Workforce
4 Development Agency (“LWDA”), and Defendant Kingspan Insulated Panels, Inc., and is
5 approved by their respective counsel of record, subject to the terms and conditions hereof and the
6 Court’s approval.

7 **A. Definitions**

8 1. “Action” or “Lawsuit” means Plaintiff’s lawsuit alleging wage and hour
9 violations against Defendant captioned as *Klimek, et al v. Kingspan Insulated Panels, Inc.*
10 (Stanislaus County Superior Court, Case No. CV-21-004201).

11 2. “Agreement,” “Settlement” or “Settlement Agreement” shall mean this Class and
12 Representative Action Settlement Agreement and Release of Claims, including any attached
13 Exhibits.

14 3. “Aggrieved Employees” means all current and former non-exempt employees
15 who worked at a Kingspan Facility in California at any time during the PAGA Period, including
16 Direct Hires of Kingspan and Temporary Employees.

17 4. “Attorney’s Fees and Cost Award” shall have the meaning ascribed to it in
18 Paragraph 54(f) below.

19 5. “Class Counsel” refers to Brian Mankin and Peter Carlson of Lauby Mankin
20 Lauby LLP and Mehrdad Bokhour of Bokhour Law Group, P.C.

21 6. “Class Data of Kingspan” means a complete list that Defendant will diligently and
22 in good faith compile from its records and provide to the Settlement Administrator on one
23 spreadsheet and shall include the Direct Hires of Kingspan’s full names; last known addresses;
24 Social Security Numbers; and dates of employment.

25 7. “Class Data of Staffing Agencies” means a list that Defendant will diligently and
26 in good faith compile from its records and from information sought from Staffing Agencies and
27 provide to the Settlement Administrator and shall include, on a spreadsheet, the Temporary
28 Employees’ full names; last known addresses; Social Security Numbers; and dates of

1 employment Defendant will diligently and initially work to obtain additional information from
2 the Staffing Agencies, including the Temporary Employees' last known addresses; telephone
3 numbers; employment dates; and Social Security Numbers. However, to the extent Defendant is
4 unable to do so, the Parties shall make additional efforts to obtain the Temporary Employees'
5 information, including by subpoenas by Plaintiff to the Staffing Agencies. The Parties and their
6 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
7 issues related to missing or omitted Class Data.

8 8. "Class Period" is deemed to be any time during the period of August 5, 2017,
9 through October 1, 2022.

10 9. "Class Representative" or "Plaintiff" means and refers to Scott Klimek.

11 10. "Complaint" refers to the operative complaint filed in the Action, alleging Class
12 Claims and PAGA Claims, which is pending in the Court.

13 11. "Court" (or "Judge") means the California Superior Court, County of Stanislaus.

14 12. "Kingspan Facility" means the sole warehouse facility in California that Kingspan
15 owned or operated during the Class Period, which is the facility located in Modesto, California.

16 13. "Defendant" or "Kingspan" means and refers to Kingspan Insulated Panels, Inc.

17 14. "Defendant's Counsel" or "Defense Counsel" means and refers to Andrew Saxon
18 and Jason Geller of Fisher & Phillips LLP.

19 15. "Direct Hires of Kingspan" means and refers to individuals who were hired
20 directly by Kingspan and employed to work at the Kingspan Facility.

21 16. "Effective Date" means the latest of the following dates: (i) if no Class Member
22 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
23 Procedure § 663, then the date the Court enters an order granting Final Approval of the
24 Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
25 sixty-one (61) calendar days following the date the Court enters an order granting Final
26 Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes
27 or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates another
28 collateral attack, and if a timely appeal is filed, then the date of final resolution of that appeal or

1 other collateral attack (including any requests for rehearing and/or petitions for *certiorari*),
2 resulting in final judicial approval of the Settlement.

3 17. “Escalator Clause:” Defendant has represented that the Settlement Class Members
4 worked a total of approximately 24,652 Weeks Worked during the Class Period, which includes
5 approximately 8,000 workweeks for the Temporary Employees and approximately 16,652
6 workweeks for the Direct Hires of Kingspan. If the total count of 24,652 Weeks Worked
7 increases by more than 10%, the Gross Settlement Amount shall be increased by \$35.48 for any
8 Weeks Worked determined to be above 10% of 24,652 Weeks Worked (i.e., 27,117 Weeks
9 Worked).

10 18. “Final Approval” refers to the order of the Court granting final approval of this
11 Settlement Agreement and entering a judgment approving this Agreement on substantially the
12 terms provided herein or as the same may be modified by subsequent agreement of the Parties.

13 19. “Gross Settlement Amount” or “GSA” shall have the meaning ascribed to it in
14 Paragraph 54(a) below.

15 20. “Individual Settlement Payment” shall have the meaning ascribed to it in
16 Paragraph 54(c) below.

17 21. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 54(b)
18 below.

19 22. “Notice” means the notice of settlement of class action that will be sent to the
20 Settlement Class Members.

21 23. “Notice Response Deadline” is 30 calendar days from the date the Notice is
22 mailed to the Settlement Class Members.

23 24. “Objecting Settlement Class Member” means a Settlement Class Member, other
24 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
25 respect to the Released Class Claims, pursuant to Paragraph 78(c) below.

26 25. “PAGA Notice” means Plaintiff’s August 5, 2021, letter to Defendant and the
27 LWDA providing notice pursuant to Labor Code section 2699.3(a).

28 26. “PAGA Penalties” means the amount that the Parties have agreed to pay to the

1 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
2 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
3 as the individual PAGA payment allocated to each Aggrieved Employee.

4 27. “PAGA Period” is deemed to be any time during the period of August 5, 2020,
5 through October 1, 2022.

6 28. “Participating Class Member” means any and all Settlement Class Members who
7 are deemed to participate, who will receive an Individual Settlement Payment, and who do not
8 opt-out by submitting a timely valid Request for Exclusion.

9 29. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class, and
10 Defendant, collectively.

11 30. “Preliminary Approval Date” means the date the Court approves the Settlement
12 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

13 31. “Preliminary Approval Order” means the judicial Order to be entered by the
14 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
15 and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of
16 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
17 hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and
18 costs. Defendant will not oppose Plaintiff’s motion for preliminary approval, but will be
19 provided with an opportunity to review and comment upon the motion at least ten days before it
20 is filed.

21 32. “QSF” means the Qualified Settlement Fund set up by the Settlement
22 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
23 from which the settlement payments shall be made, and which is intended to be a fund that
24 qualifies under Internal Revenue Code Sec. 468.

25 33. “Release” shall mean the release and discharge of the Released Class Claims by
26 Plaintiff and all of the Participating Class Members and the release and discharge of the Released
27 PAGA Claims by Plaintiff and all of the Aggrieved Employees. The *res judicata* effect of the
28 Judgment will be the same as that of the Release of the Released Class Claims and Released

1 PAGA Claims.

2 34. “Released Class Claims” or “Class Claims” by the Participating Class Members
3 upon Final Approval of the Settlement will include any and all claims that were or could have
4 been alleged based upon the facts pled in the operative complaint and arising during the Class
5 Period, including without limitation: (a) failure to pay minimum and regular wages, (b) failure to
6 pay overtime and double time wages, (c) failure to provide meal periods, (d) failure to provide
7 rest breaks, (e) failure to pay vested vacation, (f) failure to timely pay wages each period and
8 upon separation of employment, (g) failure to provide accurate itemized wage statements, (h)
9 unfair and unlawful competition, and (i) all other claims for statutory penalties, damages,
10 injunctive relief, declaratory relief, and/or restitution based on the facts or claims alleged in the
11 operative complaint. The time period governing the Released Class Claims shall be the same as
12 the Class Period. As to the Temporary Employees, the Released Class Claims shall only release
13 claims relative to work performed at the Kingspan Facility or otherwise for the benefit of
14 Kingspan.

15 35. “Released PAGA Claims” means any and all claims for civil penalties under the
16 California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*, that
17 Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees and State of
18 California, based on the facts stated in the Complaint and in Plaintiff’s Notice Letter to the
19 LWDA, including: (a) failure to pay minimum and regular wages, (b) failure to pay overtime and
20 double time wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e)
21 failure to pay vested vacation, (f) failure to failure to timely pay wages each period and upon
22 separation of employment, (g) failure to provide accurate itemized wage statements, and (h) all
23 other claims for civil penalties recoverable under the California Labor Code Private Attorneys
24 General Act of 2004, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the
25 operative complaint. These claims include, but are not limited to, California Labor Code
26 sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558,
27 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and all related provisions of the California Code of
28 Regulations, and the California Industrial Wage Orders. The time period governing the Released

1 PAGA Claims shall be any time during the PAGA Period.

2 36. "Released Parties" means Defendant and its past and present officers, directors,
3 shareholders, executors, administrators, founders, members, assigns, insurers, attorneys,
4 employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers
5 and reinsurers, and their respective parent corporations, subsidiaries, divisions, affiliates,
6 attorneys, related entities and divisions, successors and assigns, and all others claiming through
7 or by any of them, as well as temporary service providers and Staffing Agencies employing
8 Temporary Employees, past and present, and each of them and anyone acting in concert with
9 foregoing.

10 37. "Request for Exclusion" means and refers to a valid and timely request for
11 exclusion from the Settlement of the Released Class Claims, which may be submitted by any
12 Settlement Class Member, other than Plaintiff, pursuant to Paragraph 78(a) below.

13 38. "Service Payment" or "Service Award" means the amount approved by the Court
14 to be paid to the Class Representative in addition to his Individual Settlement Payment as a
15 Participating Class Member.

16 39. "Settlement Administrator" means and refers to CPT Group, the third-party class
17 action settlement administrator based on low bid or mutually agreed to by the Parties that will
18 provide the Notice Packet to the Class Members and distribute the settlement amounts as
19 described in this Agreement.

20 40. "Settlement Administration Costs" means the costs payable from the Gross
21 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
22 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
23 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
24 due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount,
25 and providing necessary reports and declarations, as requested by the Parties. The Settlement
26 Administration Costs shall be paid from the Gross Settlement Amount, including, if necessary,
27 any such costs in excess of the amount represented by the Settlement Administrator as being the
28 maximum costs necessary to administer the Settlement.

1 41. “Settlement Class” consists of all current and former non-exempt employees who
2 worked at a Kingspan Facility in California at any time during the Class Period, including Direct
3 Hires of Kingspan and Temporary Employees.

4 42. “Settlement Class Member” or “Class Member(s)” refers to individual members
5 of the Settlement Class.

6 43. “Staffing Agency” means and refers to a temporary staffing agency that employed
7 and assigned Temporary Employees to work at the Kingspan Facility, including the following
8 staffing agencies or their related entities: Trinity Personnel Inc., Adecco USA, Inc., Hedy
9 Holmes Staffing, and Balancing Staffing Workforce LLC.

10 44. “Temporary Employees” refers to individuals who were jointly employed by a
11 Staffing Agency and Kingspan, and assigned to work at the Kingspan Facility at any time during
12 the Class Period and/or PAGA Period.

13 45. “Weeks Worked,” “Workweeks” or “Eligible Weeks,” in the context of
14 Settlement Class Members, means all weeks derived or estimated from Class Data of Kingspan
15 and Class Data of Staffing Agencies during the Class Period in which the Settlement Class
16 Member was employed as a Direct Hire of Kingspan or a Temporary Employee and worked at
17 least one shift during the week. Likewise, in the context of Aggrieved Employees, it means all
18 weeks during the PAGA Period derived or estimated from Class Data of Kingspan and Class
19 Data of Staffing Agencies in which the Aggrieved Employee was employed as a Direct Hire of
20 Kingspan or a Temporary Employee and worked at least one shift during the week.

21 **B. General Terms and Recitals**

22 46. On August 5, 2021, Plaintiff commenced this Action by filing the Complaint
23 alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure
24 to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks;
25 (5) Failure to Pay Vested Vacation; (6) Failure to Timely Pay Final Wages; (7) Failure to
26 Provide Accurate Itemized Wage Statements; (8) Unfair and Unlawful Competition, and (9)
27 related PAGA Claims.

28 47. Pursuant to Labor Code section 2699.3(a), Plaintiff gave timely written notice to

1 Defendant and the LWDA by sending the PAGA Notice.

2 48. Defendant denies Plaintiff's claims and allegations and contends that the Action is
3 not suitable for class certification or manageable as a class or representative action.

4 49. The Class Representative believes he can proceed with his representative and
5 class claims, that the Action is meritorious, and that class certification is appropriate.

6 50. The Parties have conducted a thorough investigation into the facts of the Action.
7 In preparation for mediation, the Parties exchanged discovery informally, including Defendant's
8 written policies and practices and the production of payroll and timekeeping records for
9 Settlement Class Members, which allowed Class Counsel and their expert to evaluate a
10 representative sampling of Class Members' time keeping and payroll records over the course of
11 nearly 15,000 daily work shifts. Class Counsel represents, and Defendant understands, that each
12 has diligently pursued an investigation of the proposed Class Members' and Aggrieved
13 Employees' claims against Defendant and is both knowledgeable about the claims and damages
14 and has done extensive research with respect to the applicable law and potential defenses to the
15 claims. Class Counsel represents, and Defendant understands, that each has diligently pursued
16 an investigation of the Class Members' claims against Defendant. Based on the foregoing data
17 and on their own independent investigation and evaluation, Class Counsel is of the opinion that
18 the settlement with Defendant for the consideration and on the terms set forth in this Settlement
19 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members and
20 Aggrieved Employees/LWDA in light of all known facts and circumstances, including the risk of
21 significant delay and uncertainty associated with litigation, various defenses asserted by
22 Defendant, and numerous potential appellate issues.

23 51. On July 28, 2022, Plaintiff and Defendant participated in mediation before Lynn
24 Frank, who is one of the most highly experienced and respected class action mediators in
25 California. The matter did not settle on the day of mediation, but within a few weeks thereafter it
26 resolved pursuant to a mediator's proposal.

27 52. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
28 to be performed or judgments to be entered pursuant to the terms of the Settlement and

1 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
2 any statute or law or liability on the claims or allegations in the Action.

3 53. Stipulation for Class Certification and Representative Treatment. For settlement
4 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
5 do not submit a Request for Exclusion from the Settlement Class may be conditionally certified
6 as a settlement class and that the Aggrieved Employees are appropriate for representative
7 treatment for purposes of settlement only. This stipulation to certification and representative
8 treatment is in no way an admission that class action certification and/or representative treatment
9 is proper and shall not be admissible in this or in any other action except for the sole purposes of
10 enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval,
11 the Parties' stipulation to class certification and representative treatment as part of the Settlement
12 shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in
13 connection with, the issue of whether or not certification and/or representative treatment would
14 be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares
15 that it would continue to oppose class certification, representative treatment, and the substantive
16 merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves
17 his rights and declares that he will continue to pursue class certification, representative treatment,
18 and a trial should the Court decline to issue Final Approval.

19 **C. Terms of Settlement**

20 54. The financial terms of the Settlement are as follows:

21 (a) Gross Settlement Amount: The Parties agree to settle this Action for Eight
22 Hundred Seventy-Six Thousand Thirty-Six Dollars and No Cents (\$876,036) ("the Gross
23 Settlement Amount"). The Gross Settlement Amount is the maximum amount that will be paid
24 by Defendant (except for the employer's share of payroll taxes and withholdings and subject to
25 the Escalator Clause), and includes Individual Settlement Payments, Attorneys' Fees and Costs
26 Award, the Service Payment to the Class Representative, all Settlement Administration Costs,
27 and PAGA Penalties. Defendant shall separately pay the employers' share of applicable payroll
28 tax obligations, which shall be reported through the Settlement Administrator.

1 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
2 Gross Settlement Amount less the Attorneys’ Fees and Costs Award, the Service Payment to the
3 Class Representative, as approved and awarded by the Court, the Settlement Administration
4 Costs, as approved and awarded by the Court, and PAGA Penalties. If the Court reduces the
5 Attorneys’ Fees and Costs Award, Service Award, or Settlement Administrator Costs, or either
6 increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement Amount
7 shall be increased or decreased accordingly, and the increase or decrease shall not impact the
8 validity and enforceability of the Settlement.

9 (c) Individual Settlement Payments for the Settlement Class: Individual
10 Settlement Payments will be calculated and apportioned from the Net Settlement Amount based
11 on the number of Eligible Weeks a Settlement Class Member worked at the Kingspan Facility
12 during the Class Period. Specific Calculations of Individual Settlement Payments will be made as
13 follows:

- 14 • Defendant will calculate the total number of Weeks Worked by each
15 Settlement Class Member, whether as a Direct Hire of Kingspan or a
16 Temporary Employee, during the Class Period and the aggregate total number
17 of Weeks Worked by all Settlement Class Members during the Class Period.
- 18 • To determine each Settlement Class Member’s estimated Individual
19 Settlement Payment, the Settlement Administrator will use the following
20 formula: Temporary Employees will receive funds calculated based upon a
21 rate of \$20/Workweek for all Eligible Weeks in which they worked at the
22 Kingspan Facility, and Direct Hires of Kingspan will receive funds calculated
23 based upon a rate of \$43/Workweek for all Eligible Weeks in which they
24 worked at the Kingspan Facility.
- 25 • In the event that this formula does not extrapolate exactly to the aggregate
26 total number of Weeks Worked by all Settlement Class Members during the
27 Class Period, then the Settlement Administrator will adjust the formula pro
28 rata with the \$20/\$43 per Workweek, as set forth above.

- Individual Settlement Payments will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings and deductions.
- The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each remaining Participating Class Member according to the formula above, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: 20% will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and 80% to interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion in exchange for the services Plaintiff performed on behalf of the Class and for entering into the general release of all claims discussed hereinafter. The Service Payment is not to exceed \$10,000 to Scott Klimek. Defendant agrees not to oppose this request. Plaintiff will not request exclusion from the Settlement Class. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount. The Class Representative will be issued IRS Form 1099 in connection with this payment and shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement nor to appeal this aspect of the Court's ruling. Should the Court approve a lesser

1 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
2 be distributed to the Participating Class Members.

3 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
4 request by Class Counsel to the Court for an award of attorneys' fees of not more than one-third
5 (33.333%) of the Gross Settlement Amount (\$292,012), subject to Court approval, plus
6 reasonable litigation costs not to exceed \$20,000, which shall be allocated according to proof and
7 subject to Court approval ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose
8 any contention by Class Counsel that attorneys' fees should be based on the common fund
9 theory. The Attorney's Fee and Cost Award shall be paid from the Gross Settlement Amount,
10 and except for this award, Defendant shall have no further obligation to pay any attorneys' fees,
11 costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is
12 sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be
13 distributed to the Participating Class Members. The Parties agree that any amount awarded as
14 attorneys' fees and costs to Class Counsel less than the requested amount shall not be a basis for
15 Class Counsel to rescind or otherwise void this Settlement Agreement. The Settlement
16 Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys'
17 fees and costs awarded by the Court. As of the date on which the Gross Settlement Amount has
18 been fully funded and the Effective Date, and upon receipt by Class Counsel of the amounts
19 approved by the Court for Class Counsel's fees and expenses, and except as otherwise provided
20 by this Settlement Agreement, Class Counsel will waive any claim to costs or attorneys' fees or
21 other expenses against Defendant and the Released Parties arising from or related to the Action,
22 including but not limited to claims based on the California Labor Code, the California Code of
23 Civil Procedure, and any other statute, law, or other legal or equitable authority or theory.

24 (g) Settlement Administration Costs: The fees and other charges of the
25 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$18,250
26 unless approved by all Parties and the Court.

27 (h) PAGA Penalties: The Parties agree that \$50,000 is allocated to PAGA
28 Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this

1 amount, \$37,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
2 Private Attorney General Act of 2004 (“PAGA”) and \$12,500 (25%) will be paid to the
3 Aggrieved Employees on a Weeks Worked basis, which will be treated entirely as civil penalties
4 and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice
5 to the LWDA of the Settlement.

6 (i) Tax Liability: Class Counsel, Defendant, and Defendant’s counsel make
7 no representations as to the tax treatment or legal effect of Settlement Amounts called for
8 hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or
9 representation by Class Counsel, Defendant, or Defendant’s counsel in this regard. Plaintiff,
10 Participating Class Members, and Aggrieved Employees understand and agree that they will be
11 solely responsible for the payment of any taxes and penalties assessed on their respective
12 Settlement Amounts described herein. The amount of federal income tax withholding will be
13 based upon a flat withholding rate for supplemental wage payments in accordance with Treas.
14 Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be
15 made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2
16 and/or Forms 1099 will be distributed at times and in the manner required by the Internal
17 Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the
18 regulations promulgated thereunder, or other applicable tax law, are changed after the date of this
19 Agreement, the processes set forth in this Section may be modified in a manner to bring
20 Defendant into compliance with any such changes. Plaintiff, Participating Class Members, and
21 Aggrieved Employees understand and agree that they will be solely responsible for the payment
22 of any taxes and penalties assessed on their respective payments described herein and will hold
23 Defendant harmless from and against any claims resulting from treatment of such payments as
24 non-taxable damages.

25 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
26 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
27 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
28 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO

1 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
2 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
3 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
4 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
5 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
6 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
7 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
8 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
9 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
10 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
11 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
12 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
13 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
14 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
15 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
16 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
17 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
18 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
19 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
20 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

21 55. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
22 Participating Class Members under this Agreement, as well as any other payments made
23 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
24 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
25 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
26 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
27 intention that this Settlement will not affect any rights, contributions, or amounts to which any
28 Settlement Class Members may be entitled under any benefit plans. The Parties agree that the

1 amounts paid pursuant to this Settlement are not for days or hours worked, and are not included
2 toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

3 56. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under
4 no circumstances will any portion of the Gross Settlement Amount revert to Defendant.
5 Participating Class Members will not have to make a claim in order to receive an Individual
6 Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive
7 their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments,
8 will be made directly to each Participating Class Member and Aggrieved Employee. The
9 Settlement Administrator shall be responsible for accurately and timely reporting and remittance
10 obligations with respect to unclaimed funds as a result of a Participating Class Member or
11 Aggrieved Employee not cashing an Individual Settlement Payment by the check cashing
12 deadline, as set forth herein.

13 57. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
14 adequate, and will so represent same to the Court.

15 **D. Release by Participating Class Members, LWDA and Aggrieved Employees**

16 58. Released Class Claims. Upon entry of the Final Approval Order and Defendant’s
17 funding of the Settlement Amount, the Participating Class Members will forever completely
18 release and discharge the Released Parties from the Released Class Claims for the Class Period.
19 It is the intent of the Parties that the Final Approval Order and judgment entered by the Court
20 shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding
21 upon Participating Class Members regarding the Released Class Claims.

22 59. Each Participating Class Member will be deemed to have made the foregoing
23 Release as if by manually signing it.

24 60. Plaintiff and Defendant intend that the Settlement described in this Agreement
25 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
26 arbitration, demand, or other action of any kind, by each and all of the Participating Class
27 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
28 Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph

only applies to Participating Class Members and, thus, does not apply to any Class Member who timely and validly submits a Request for Exclusion, nor does it apply to Aggrieved Employees with respect to the Released PAGA Claims.

61. Released PAGA Claims. Upon entry of the Final Approval Order and Defendant's funding of the Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA, and on behalf of the State of California and all Aggrieved Employees, will forever completely release and discharge the Released Parties from the Released PAGA Claims through the PAGA Period. It is the intent of the Parties that the Final Approval Order and judgment entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon Aggrieved Employees regarding the Released PAGA Claims.

62. Plaintiff and Defendant also intend that the Settlement described in this Agreement will release and preclude any further PAGA claim to obtain a recovery based on, arising out of, and/or related to any and all of the Released PAGA Claims. The Aggrieved Employees shall be so notified in the Notice and Class Counsel shall provide appropriate notice to the LWDA of this Agreement prior to the filing of the Motion for Preliminary Approval. This section is not intended to preclude any Aggrieved Employee other than Plaintiff from bringing any claim other than the Released PAGA Claims.

63. Labor Code Section 206.5. Class Representative, on behalf of himself and the Participating Class Members, acknowledge and agree that the claims, including claims for unpaid wages and untimely payment of wages, are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representative, on behalf of himself and the Participating Class Members, acknowledge and agree that California Labor Code Section 206.5 is not applicable to the Parties hereto, except as provided for in the Released PAGA Claims and the Released Class Claims. Section 206.5 provides in pertinent part as follows:

1 An employer shall not require the execution of any release of any claim or
2 right on account of wages due, or to become due, or made as an advance
3 on wages to be earned, unless payment of those wages has been made.

4 **E. Release by Plaintiff/Class Representative**

5 64. As a material inducement to Defendant to enter into this Settlement Agreement,
6 Class Representative does hereby, for himself and for his respective spouse, heirs, successors,
7 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
8 personal representatives, and assigns forever and completely release and discharge the Released
9 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
10 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
11 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
12 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
13 from the beginning of time through the execution of this Agreement, whether known or
14 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
15 upon, or relating to Class Representative's employment with Defendant or the remuneration for
16 or termination of such employment (collectively, the "Class Representative's Claims").

17 65. Without limiting the generality of the foregoing, this general release by Class
18 Representative includes all claims or rights arising out of alleged violations of any contracts,
19 express or implied (including but not limited to any contract of employment); any contract or
20 covenant of good faith or fair dealing (express or implied); any tort, including negligence, fraud,
21 misrepresentation under California Labor Code 970, negligent infliction of emotional distress,
22 intentional infliction of emotional distress, and defamation; any "retaliation" claims; any claims
23 relating to any breach of public policy; and all federal, state, local and other governmental
24 statutory claims, regulations, and ordinances, and federal and state common law claims
25 (including but not limited to those for contract, tort and equity), including without limitation the ,
26 Age Discrimination in Employment Act,), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
27 Standards Act, the California Constitution, the California Unfair Competition Act (California
28 Business and Professions Code section 17200 et seq.), Title VII of the Civil Rights Act of 1964

(race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment), sections 503 and 504 of the Rehabilitation Act of 1973 (disability discrimination), the Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay), the Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination), the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave), the California Fair Employment and Housing Act, Cal. Gov't Code § 12900, *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex (including pregnancy), sexual orientation, genetic, or age, including retaliation for reporting discrimination or harassment), the California Family Rights Act, Cal. Gov't Code § 12945.1, *et seq.* (family/medical leave), the California Labor Code or any Industrial Welfare Commission Wage Order, Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment), Executive Order 11141 (age discrimination), and the Employee Retirement Income Security Act, 29 U.S.C. § 1000, *et seq.* (employee benefits).

66. Class Representative agrees that there is a risk that any injury that he may have suffered by reason of the Released Parties' relationship with him might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Class Representative agrees to forever and fully release and discharge the Released Parties, and understands that by the execution of this Settlement Agreement no further claims for any such injuries that existed at the time of the execution of this Settlement Agreement may ever be asserted by Class Representative with respect to claims arising in the time period from the beginning of time to the execution of this Settlement Agreement.

67. Class Representative expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

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

8 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
9 full and complete release and discharge of all parties, Class Representative and Class Counsel
10 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
11 without limitation, all claims whether known or unknown, suspected or unsuspected, contingent
12 or non-contingent, that now exist, upon any theory of law or equity, including without limitation,
13 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or
14 rule, without regard to the subsequent discovery or existence of such different or additional facts,
15 in favor of the Class Representative against the Released Parties, or any of them, for the time
16 period from the beginning of time to the execution of this Settlement Agreement, and that this
17 Settlement Agreement contemplates the extinguishment of any such Class Representative's
18 claims. Notwithstanding the above, the general release by Class Representative shall not extend
19 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
20 that may not be released by law.

21 **F. Interim Stay of Proceedings**

22 68. Pending completion of all of the prerequisites necessary to effectuate this
23 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
24 except such as are necessary to effectuate the Settlement.

25 **G. Notice Process**

26 69. Appointment of Settlement Administrator. The Parties have agreed to the
27 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
28 including mailing the Notice, using standard devices to obtain forwarding addresses,
independently reviewing and verifying documentation associated with any claims or opt-out
requests, resolving any disputes regarding the calculation or application of the formula for
determining the Individual Settlement Payments, drafting and mailing the settlement checks to

1 Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms,
2 unclaimed funds due diligence, reporting and remittance obligations, and performing such other
3 tasks as set forth herein or as the Parties mutually agree or that the Court orders. The Settlement
4 Administrator (along with any of its agents) shall represent and warrant that it will: (a) provide
5 reasonable and appropriate administrative, physical and technical safeguards for any personally
6 identifiable information (“PII”), which it receives from Defendant and the Temporary Agencies;
7 (b) not disclose the PII to Class Counsel, Plaintiff, any party or third parties, including agents or
8 subcontractors, without Defendant’s consent; (c) not disclose or otherwise use the PII other than
9 to carry out its duties as set forth herein; (d) promptly provide Defendant with notice if PII is
10 subject to unauthorized access, use, disclosure, modification, or destruction; and (e) continue to
11 protect the PII upon termination of its services.

12 70. Disputes Regarding Settlement Administration. Any and all disputes relating to
13 administration of the Settlement by the Settlement Administrator (except for disputes regarding
14 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
15 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
16 the Court that all payments and obligations contemplated by this Settlement Agreement have
17 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
18 confer in good faith to resolve the dispute without the necessity of Court intervention. The
19 Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class
20 Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may
21 be required by law for all amounts paid pursuant to this Agreement. The Settlement
22 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding
23 all payroll taxes and penalties to the appropriate government authorities.

24 71. Class Data of Kingspan. Within 30 calendar days after entry of the Preliminary
25 Approval Order, Defendant shall provide the Class Data of Kingspan to the Settlement
26 Administrator. The Settlement Administrator will run a check of the Class Members’ addresses
27 against those on file with the U.S. Postal Service’s National Change of Address List. The Class
28 Data provided to the Settlement Administrator will remain confidential, shall be used solely to

1 administer the Settlement, and it will not be used or disclosed to anyone (including Class
2 Counsel), except as required by applicable tax authorities, pursuant to Defendant's express
3 written consent, or by order of the Court.

4 72. Class Data of Staffing Agencies. Upon execution of this Agreement, Defendant
5 will begin making a good faith effort to identify the full name, last known address, full social
6 security number and number of weeks at issue for the Temporary Employees, including
7 contacting the Staffing Agencies and requesting that they agree to informally provide the Class
8 Data for Staffing Agencies. Within 90 days after the end of the Class Period, Defendant will
9 inform Plaintiff whether it was able to obtain the information informally. To the extent
10 Defendant is unable to obtain the Staffing Agencies cooperation to provide the requested
11 information informally, Plaintiff shall issue subpoenas to the Staffing Agencies (whom are
12 identified below by Defendant) to obtain the Temporary Employees' full names, last known
13 addresses, full social security numbers and Weeks Worked for the full duration of the Class
14 Period and PAGA Period. Class Counsel shall provide said information to Defendant's counsel
15 within 14 days of Class Counsel's receipt of said information from Staffing Agencies so that
16 Defendant's counsel may incorporate such information into Class Data of Staffing Agencies to
17 be provided to the Settlement Administrator. To the extent that Temporary Employees cannot be
18 located through the means noted above, Class Counsel and Defendant may be required to
19 determine a method acceptable by the applicable court (such as public notice) to provide notice
20 of, and payment to, Temporary Employees as part of the settlement.

21 73. Staffing Agencies. The following is a list of Staffing Agencies that Defendant
22 represents assigned Temporary Employees to the Kingspan Facility during the Class Period: a)
23 Trinity Personnel Inc., b) Adecco USA, Inc., c) Hedy Holmes Staffing, and d) Balancing Staffing
24 Workforce LLC.

25 74. Combined Class Data. Upon receipt of the Class Data of Kingspan and the Class
26 Data of Staffing Agencies, the Settlement Administrator will combine the lists (the "Combined
27 Class Data") and run a check of the Class Members' addresses against those on file with the U.S.
28 Postal Service's National Change of Address List. The Combined Class Data provided to the

1 Settlement Administrator will remain confidential, shall be used solely to administer the
2 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
3 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
4 order of the Court. Ten days prior to mailing the Notice, the Settlement Administrator shall
5 provide the Parties with a (redacted) spreadsheet containing the estimated payments from the
6 GSA, the total number of Class Members, the total Weeks Worked by the Settlement Class and a
7 summary (with names redacted) of the payments to each Settlement Class Member.

8 75. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
9 Administrator to the Settlement Class Members, by first class mail, in English and Spanish,
10 within thirty (30) calendar days following the Settlement Administrator's receipt of the
11 Combined Class Data. The Settlement Administrator shall use standard devices, including a skip
12 trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

13 76. Returned Notices. The Settlement Administrator will take steps to ensure that the
14 Notice is received by all Settlement Class Members, including utilization of the National Change
15 of Address Database maintained by the United States Postal Service to review the accuracy of
16 and, if possible, update a mailing address. Notices will be re-mailed to any Settlement Class
17 Member for whom an updated address is located within ten (10) calendar days following both
18 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.
19 The Notice shall be identical to the original Notice, except that it shall notify the Settlement
20 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
21 the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

22 77. Disputes Regarding Information on Notices. Class Members are deemed to
23 participate in the Settlement, unless they opt-out, and Aggrieved Employees may not opt out of
24 the Released PAGA Claims. The Notice will inform Class Members of his/her estimated
25 Individual Settlement Payment and the number of Weeks Worked during the Class Period and
26 during the PAGA Period. Class Members may dispute their Weeks Worked if they feel they
27 should be credited with more Eligible Weeks than the Combined Class Data shows by timely
28 submitting evidence to the Settlement Administrator. The Combined Class Data will be

1 presumed determinative absent reliable evidence to rebut it, but the Settlement Administrator
2 will evaluate the evidence submitted by the Class Member and provide the evidence submitted to
3 Class Counsel and Defense Counsel who agree to meet and confer in good faith about the
4 evidence to determine the Class Member's actual number of Weeks Worked and estimated
5 Individual Settlement Payment. If Class Counsel and Defense Counsel are unable to agree, they
6 agree to submit the dispute to the Settlement Administrator to render a final decision. Class
7 Members will have until the Notice Response Deadline to dispute Weeks Worked, object or opt
8 out, unless extended by the Court. In the event that the Settlement Administrator increases the
9 number of Weeks Worked for any Settlement Class Member, then the Settlement Administrator
10 will recalculate the Participating Class Members' Individual Settlement Payments; accordingly,
11 in no event will Defendant be required to increase the Gross Settlement Amount.

12 78. Settlement Class Members' Rights. Each Settlement Class Member will be fully
13 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
14 Released Class Claims, and the ability to opt-out or request exclusion from the Settlement with
15 respect to the Released Class Claims. The Notice will inform the Settlement Class Members of
16 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
17 with respect to the Released Class Claims in accordance with the following guidelines:

18 (a) Requests for Exclusion from Participating in the Settlement Class. Any
19 Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement
20 Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on
21 or before the Notice Response Deadline. The Request for Exclusion should state:

22 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
23 CLASS IN THE KINGSPAN LAWSUIT. I UNDERSTAND
24 THAT IF I ASK TO BE EXCLUDED FROM THE
25 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY
26 FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS
27 LAWSUIT."

28 To be valid, any Request for Exclusion must include the full name, address, telephone
number, last four digits of the social security number or date of birth, and signature of the
Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by

1 mail to the Settlement Administrator at the specified address. Any such Request must be made
2 in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
3 if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
4 Any Settlement Class Member who timely requests exclusion in compliance with these
5 requirements: (i) will not have any rights under this Agreement with respect to the Released
6 Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be
7 entitled to receive any payments under this Agreement for the Released Class Claims; and (iii)
8 will not be bound by this Agreement, or the Judgment, with respect to the Released Class
9 Claims. Any Aggrieved Employee who requests timely exclusion will still be subject to the
10 Released PAGA Claims to the fullest extent permitted by law and shall be sent his or her share of
11 PAGA Penalties.

12 (b) Binding Effect on Participating Class Members. Except for those
13 Settlement Class Members who exclude themselves in compliance with the procedures set forth
14 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
15 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
16 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
17 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
18 reasonableness, and adequacy of the Settlement.

19 (c) Objections to Settlement of the Released Class Claims. Any Settlement
20 Class Member, other than Plaintiff, may object to the terms of this Agreement, except as to the
21 Released PAGA Claims. To object, a Settlement Class Member shall inform the Settlement
22 Administrator, in writing, of his or her objection which must be postmarked by the Notice
23 Response Deadline at the address set forth in the Notice. Such objection shall include the
24 objecting Settlement Class Member's full name, address, telephone number, and dates of
25 employment with Defendant, the case name and number, the basis for the objection, including
26 any legal support and each specific reason in support of the objection, as well as any
27 documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is
28 represented by counsel, the name and address of his or her counsel. The Settlement

1 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
2 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
3 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
4 Participating Class Member who files an objection remains eligible to receive monetary
5 compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees,
6 costs, or expenses incurred by any Class Member and/or his or her counsel related to any
7 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
8 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
9 and properly intervening or filing a motion to vacate the judgment under Code of Civil
10 Procedure Section 663. To the extent a Class Member submits a Request for Exclusion and
11 objection, the objection shall be disregarded and the Class Member shall be excluded from the
12 Class. Settlement Class Members and Aggrieved Employees may not object to or opt-out of the
13 Settlement with respect to the PAGA Claims.

14 (d) Failure to Object. Any Settlement Class Member who desires to object to
15 the Released Class Claims in the Settlement but fails to timely submit a written objection or in
16 person objection at the Final Approval Hearing waives any right to object and will be foreclosed
17 from making any objection to this Settlement. Any Settlement Class Member who does not
18 timely and properly become a party of record by intervening or filing a motion to vacate the
19 judgment waives any and all rights to appeal from the Judgment, including all rights to any post-
20 judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for
21 new trial, a motion under California Code of Civil Procedure Section 473, and extraordinary
22 writs.

23 (e) Responses to Objections. Counsel for the Parties may file a response to
24 any objections submitted by objecting Settlement Class Members at least five (5) court days
25 before the date of the Final Approval Hearing.

26 (f) Settlement Class Members will have until the Notice Response Deadline
27 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
28 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what

1 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
2 request of Class Counsel or Defense Counsel.

3 (g) Defective Submissions. If a Settlement Class Member's Request for
4 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
5 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
6 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
7 defective submission to advise the Settlement Class Member that his or her submission is
8 defective and that the defect must be cured to render the Request for Exclusion or objection
9 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
10 (ii) 15 calendar days from the date of the cure letter to postmark a revised Request for Exclusion
11 or objection. If the revised Request for Exclusion or objection is not postmarked within that
12 period, it will be deemed untimely.

13 79. Declaration of Due Diligence. The Settlement Administrator shall provide
14 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing,
15 a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

16 80. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
17 the QSF of the Gross Settlement Amount within thirty (30) calendar days after the Effective
18 Date. Defendant separately shall pay into the QSF its share of employer payroll taxes as
19 calculated and directed by the Settlement Administrator, which shall be distributed and reported
20 by the Settlement Administrator. Once Defendant has complied with its obligation set forth in
21 this paragraph, it shall be deemed to have satisfied all of the terms and conditions of this
22 Agreement, shall be entitled to all the protections afforded it under the Agreement, and shall
23 have no further obligations under the Agreement. The Settlement Administrator (and not
24 Defendant) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to the
25 Class Members and Aggrieved Employees.

26 81. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
27 Gross Settlement Amount into the QSF, the Settlement Administrator will mail the Individual
28 Settlement Payments to the Participating Class Members, the payment to Class Counsel for the

1 Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the payment
2 to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs. To
3 comply with California Rules of Court, rule 3.771, settlement checks shall include the following
4 language on the check: "A Court has approved settlement of the class action and PAGA
5 representative actions and entered judgment for claims asserted in Klimek v. Kingspan Insulated
6 Panels, Inc., Stanislaus Superior Court Case No. CV-21-004201."

7 82. Deadline for Cashing Settlement Checks. Participating Class Members and
8 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
9 Administrator to cash their settlement checks. If any Participating Class Member's or Aggrieved
10 Employee's check is not cashed within that period, the check will be void and a stop-payment
11 will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California
12 State Controller's Office in the name of the Class Member or Aggrieved Employee, or as
13 otherwise directed by the Court. The release will be binding upon all Participating Class
14 Members and Aggrieved Employees who do not cash their checks within the 180-day period. In
15 the event that any settlement check is returned to the Settlement Administrator within 180 days
16 of mailing, the Settlement Administrator will, within five (5) business days of receipt of the
17 returned settlement check, perform a skip trace to locate the individual, and notify Defense
18 Counsel and Class Counsel of the results. If a new address is located by these means, the
19 Administrator will have ten (10) business days to re-issue the check. Neither Defendant,
20 Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any
21 liability for lost or stolen settlement checks, forged signatures on settlement checks, or
22 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a
23 Participating Class Member or Aggrieved Employee notifies the Settlement Administrator that
24 he or she believes that a settlement check has been lost or stolen, the Settlement Administrator
25 shall immediately stop payment on such check. If the check in question has not been negotiated
26 prior to the stop payment order, the Settlement Administrator will issue a replacement check.

27 83. No person shall have any claim against Defendant (or their designees),
28 Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on

1 mailings, distributions, payments or reports made in accordance with or pursuant to this
2 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
3 Agreement.

4 84. Without prejudice to any other remedies, the Settlement Administrator shall agree
5 to be responsible for any breach of its obligations (whether committed by the Settlement
6 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
7 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
8 and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

9 **H. Duties of the Parties Prior to the Court's Approval**

10 85. Promptly after execution of this Settlement Agreement, Plaintiff will move the
11 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
12 accomplishing the following:

13 (a) Scheduling the Final Approval Hearing on the issue of whether this
14 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
15 and a hearing on fees, costs and the Service Payment;

16 (b) Approving as to form and content the proposed Notice;

17 (c) Directing the mailing of the Notice by first class mail to the Settlement
18 Class Members;

19 (d) Preliminarily approving this Settlement; and

20 (e) Preliminarily certifying the class for purposes of this Settlement.

21 86. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
22 hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate,
23 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within
24 this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent
25 Court hearings.

26 **I. Duties of the Parties Following Court's Final Approval**

27 87. In connection with the Final Approval Hearing provided for in this Settlement
28 Agreement, Class Counsel shall submit a proposed Final Approval Order:

1 (a) Approving the Settlement, adjudging the terms thereof to be fair,
2 reasonable and adequate, and directing consummation of its terms and provisions;

3 (b) Approving Class Counsel's application for an award of attorneys' fees and
4 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
5 and the payment to the Settlement Administrator for costs of administering the settlement; and

6 (c) Entering judgment approving settlement, thereby permanently barring all
7 Participating Class Members from prosecuting any Released Class Claims against any of the
8 Released Parties and permanently barring all Aggrieved Employees and the LWDA from
9 prosecuting any Released PAGA Claims against any of the Released Parties.

10 88. Final Judgment. The Settlement Administrator shall give the Participating Class
11 Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter
12 that will be included with the Individual Settlement Payments. If any amended judgment is
13 required under Code of Civil Procedure section 384, the Parties will work together in good faith
14 to jointly submit and a proposed amended judgment.

15 **J. Voiding the Agreement**

16 89. If the number of Class Members whose share of the Net Settlement Amount is ten
17 percent (10%) or more of the total Settlement Class timely and properly Requests Exclusion
18 from the Settlement, Defendant will have, in its sole discretion, the right to rescind and terminate
19 the Settlement Agreement, without prejudice to its pre-settlement positions and defenses, by
20 giving written notice to the Settlement Administrator and Class Counsel within 10 days of the
21 end of the Notice Response Deadline. Should Defendant withdraw from the Settlement under
22 this Provision, and Defendant shall be responsible for paying any expenses incurred by the
23 Settlement Administrator.

24 90. All Parties, signatories and their counsel shall not encourage opt-outs or
25 objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or
26 indirectly, through any means.

27 91. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
28 have no further obligations under the Settlement, including any obligation by Defendant to pay

1 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
2 Settlement.

3 92. If the Settlement is voided or fails for any reason (other than Defendant's
4 withdraw due ten percent [10%] or more of the Settlement Class opting out), any costs incurred
5 by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless
6 otherwise specified in this Agreement.

7 **K. Other Terms**

8 93. Waiver. The waiver by one Party of any breach of this Agreement by another
9 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

10 94. Full and Complete Defense. This Agreement may be pleaded by any Released
11 Party as a full and complete defense to, and may be used as the basis for an injunction against,
12 any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted,
13 asserting any Released Claim.

14 95. Parties' Authority. The signatories hereto represent that they are fully authorized
15 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
16 hereof.

17 96. No Publicity. Communications regarding this Settlement prior to the Preliminary
18 Approval Date shall be limited to Court-Approved Notices in the Action. After the Preliminary
19 Approval Date, Class Counsel and Class Representative agree that they will not publicize this
20 Settlement on their website, social media, blogs, micro-blog, vlogs or any other media, or any
21 verdict reporting services. Nothing herein shall be construed to prevent Class Counsel from the
22 public filing of motions or other case materials in the Action related to seeking and obtaining
23 Court approval of this Settlement and the related awards of attorneys' fees and costs, or to
24 communications with Settlement Class Members or their representatives about this Settlement,
25 including through the posting of Court-filed documents on Class Counsel's websites for access
26 solely by the Settlement Class Members, or to prevent the Parties or their representatives from
27 communicating with financial or legal advisors regarding the Settlement.

28 97. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to

1 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
2 such documents and to take such other action as may reasonably be necessary to implement the
3 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
4 best efforts, including all efforts contemplated by this Settlement Agreement and any other
5 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
6 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
7 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
8 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
9 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
10 Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval
11 Motion for review at least five days prior to the filing deadline.

12 98. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
13 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
14 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
15 cause of action or rights released and discharged by this Settlement Agreement.

16 99. No Admission. Defendant denies any and all liability to Plaintiff and/or any
17 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
18 that might have been asserted in this Action. Nothing in this Settlement Agreement is intended
19 or shall be construed as an admission of liability, fault or wrongdoing by Defendant. Nothing in
20 this Settlement Agreement shall operate or be construed as an admission of any liability or that
21 class certification is appropriate in any context other than this Settlement Agreement.
22 Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Complaint to
23 avoid further substantial expense and the inconvenience and distraction of protracted and
24 burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent
25 in litigation, and without conceding any infirmity in the defenses that they have asserted or could
26 assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims
27 be settled in the manner and upon the terms and conditions set forth in this Agreement.

28 100. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval

Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement and corresponding judgment. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

101. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Settlement Class Members and Aggrieved Employees:

Brian Mankin
brian@LMLfirm.com
Lauby Mankin Lauby LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Mehrdad Bokhour
mehrdad@bokhourlaw.com
Bokhour Law Group, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493 | Fax: (310) 675-0861

1 To Defendant:

2 Jason A. Geller
3 *jgeller@fisherphillips.com*
4 Andrew E. Saxon, Esq.
5 *asaxon@fisherphillips.com*
6 Kevin L. Quan, Esq.
7 *kquan@fisherphillips.com*
8 FISHER & PHILLIPS LLP
9 One Montgomery Street, Suite 3400
10 San Francisco, CA 94104
11 Tel: (415) 490-9000 | Fax: (415) 490-9001

12 102. Construction. The Parties hereto agree that the terms and conditions of this
13 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
14 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
15 by reason of the extent to which any Party or his or its counsel participated in the drafting of this
16 Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory
17 rule of construction that ambiguities should be construed against the drafter of an agreement and
18 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
19 all cases construed as a whole, according to its fair meaning.

20 103. Captions and Interpretations. Paragraph titles or captions contained herein are
21 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
22 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
23 Settlement Agreement is contractual and not merely a recital other than paragraphs 45-51.

24 104. Modification. This Settlement Agreement may not be changed, altered, or
25 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
26 Settlement Agreement may not be discharged except by performance in accordance with its
27 terms or by a writing signed by all of the Parties hereto.

28 105. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
provide written notice to the other Party and allow an opportunity to cure the alleged
deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator to resolve any
dispute they are unable to resolve informally. During this period, the Parties shall bear their own

attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

106. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents and obligations of this Agreement.

107. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in a court of law.

108. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California.

109. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, 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.

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

111. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

112. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest

1 extent possible consistent with applicable precedents so as to define all provisions of this
2 Settlement Agreement valid and enforceable.

3 113. No Collateral Attack. This Settlement Agreement shall not be subject to
4 collateral attack by any Settlement Class Member, Aggrieved Employee, or any recipient of the
5 Class Notice after the Effective Date. Such prohibited collateral attacks shall include but not be
6 limited to claims that the Settlement Class Member or Aggrieved Employee failed for any reason
7 to receive timely notice of the procedure for disputing the calculation of her or his Individual
8 Settlement Payment and/or individual PAGA payment.

9 114. Counterparts. This Settlement Agreement may be executed in counterparts. An
10 electronic or legible faxed and scanned copy/pdf may be used as an original for all purposes.

11
12 Dated: November 22, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

13 

14 Scott Klimek (Nov 22, 2022 11:37 PST)

15 Scott Klimek

16 Dated: November 22, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

17
18 

19 Brian Mankin
20 Attorneys for Plaintiff

21 Dated: November 22, 2022

CLASS COUNSEL:
BOKHOUR LAW GROUP, P.C.

22 

23 Mehrdad Bokhour
24 Attorneys for Plaintiff
25
26
27
28

1 Dated: December 5, 2022

DEFENDANT:
KINGSPAN INSULATED PANELS, INC.

2
3 

4 By: Chris Carpenter, HR Director - N. America

5
6 Dated: December 5, 2022

DEFENDANT'S COUNSEL:
FISHER & PHILLIPS LLP

7
8 

9 Jason Geller
10 Andrew Saxon
11 Attorneys for Defendant

12 END OF DOCUMENT
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EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
 Group By Staff Member Group
 Client - Project = 14000-00463 Klimek v Kingspan Insulated (Active Only)
 Activity Code = All
 Expense Code = All
 View = Original
 Approval Status = All
 Selected Expenses = All
 From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
Scott Klimek									
14000-00463 Klimek v Kingspan Insulated									
08-05-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	75.00	0.00	1.00	75.00
LWDA Order #ORD-000129749 to submit PAGA letter Case Number LWDA-CM-840457-21									
08-05-2021	Approved		Non-Billable	E101 Copying	Aguilera, Sophia J.	0.20	0.00	44.00	8.80
44 copies @ \$0.20 for letters to employer									
08-05-2021	Approved		Non-Billable	E108 Postage	Aguilera, Sophia J.	16.14	0.00	1.00	16.14
Postage for the month of August 2021									
08-06-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	464.05	0.00	1.00	464.05
One Legal Order #16718834 to file complaint									
08-12-2021	Approved		Non-Billable	Attorney Service	Aguilera, Monica A	100.20	0.00	1.00	100.20
Bocso Inv 5982450 Serve: Kingspan Insulated Panels, Inc., a Florida Corporation Summons; Complaint; Civil Case Cover Sheet; ADR Court: Stanislaus County Superior Court - Civil									
08-13-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	16.06	0.00	1.00	16.06
One Legal Order #16750450 to file POS									
01-25-2022	Approved		Non-Billable	E125 Mediation fees	Aguilera, Monica A	4,500.00	0.00	1.00	4,500.00
Frank & Feder Inv 3637-4813 for 7-28-22 Mediation with Lynn Frank									
08-02-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	16.57	0.00	1.00	16.57
OneLegal Order #18662480 - File Ntc of COA									
08-12-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	16.57	0.00	1.00	16.57
OneLegal Order #18725210 - file CMS									
08-14-2022	Approved		Non-Billable	E119 Experts	Chiarito, Tracie	1,600.00	0.00	1.00	1,600.00
Berger Inv #6585-2									
12-19-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	12.87	0.00	1.00	12.87
OneLegal Order #19480969 - file Motion for Preliminary Approval									
12-20-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	109.38	0.00	1.00	109.38

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
 Group By Staff Member Group
 Client - Project = 14000-00463 Klimek v Kingspan Insulated (Active Only)
 Activity Code = All
 Expense Code = All
 View = Original
 Approval Status = All
 Selected Expenses = All
 From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
Scott Klimek 14000-00463 Klimek v Kingspan Insulated OneLegal Order #19497179 - resubmit Motion for Preliminary Approval									
01-31-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	191.95	0.00	1.00	191.95
Bosco Inv #8272073 Serve: Diamond PEO, LLC Deposition Subpoena for Production of Business Records Court: Stanislaus County Superior Court - Civil Attorney Name: Brian J. Mankin, Esq. Completed on: 1/30/2023									
01-31-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	349.90	0.00	1.00	349.90
Bosco Inv #8272566 Serve: Fisher & Phillips LLP Deposition Subpoena for Production of Business Records Court: Stanislaus County Superior Court - Civil Completed on: 01/24/2023									
01-31-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	191.95	0.00	1.00	191.95
Bosco Inv #8272202 Serve: Trinity Personnel, Inc. Deposition Subpoena for Production of Business Records Court: Stanislaus County Superior Court - Civil Attorney Name: Brian J. Mankin, Esq. Completed on: 1/31/2023									
02-17-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	84.20	0.00	1.00	84.20
Bosco Inv #8307216 Serve: Diamond PEO, LLC for Scott Klimek Deposition Subpoena for Production of Business Records Court: Stanislaus County Superior Court - Civil Attorney Name: Brian J. Mankin, Esq. Completed on: 2/16/2023									
03-10-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	134.05	0.00	1.00	134.05
Bosco Inv #8320530 Serve: Trinity Personnel, Inc. for Klimek v Kingspan Deposition Subpoena for Production of Business Records Court: Stanislaus County Superior Court - Civil Attorney Name: Brian J. Mankin, Esq. Completed on: 03/8/2023									

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00463 Klimek v Kingspan
Insulated (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
Scott Klimek									
14000-00463 Klimek v Kingspan Insulated									
05-17-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	225.00	0.00	1.00	225.00
Estimated costs to file MFA and supplemental documents via OneLegal									
Project Total									8,112.69
Client Total									8,112.69
Grand Total									8,112.69

EXHIBIT “C”