

Brian J. Mankin, Esq. [SBN 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [SBN 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Mehrdad Bokhour, Esq. (Cal. Bar No. 285256)
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

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
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. Judge John D. Freeland,
Dept 23, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing
Date: January 10, 2023
Time: 8:300 a.m.
Dept.: 23

Complaint filed: August 5, 2021

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I manage the employment department within my firm where I am also a Partner. I
4 represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge
5 of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for
6 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
7 competently testify thereto.

8 **COUNSEL'S EXPERIENCE**

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

13 3. I have handled over 500 employee vs. employer litigation matters during my 21
14 years in practice. Over the last 15 years, my practice has almost entirely consisted of
15 representing employees, the majority of which has included class action and representative
16 action wage and hour matters. In total, I have handled over 250 class action and representative
17 action wage/hour cases, and have been appointed by the court as class counsel and have received
18 final court approval and judgment in close to half of those actions to date, and anticipate
19 receiving final approval in many more of those in the future.

20 4. As part of these settlements and judgments, I have recovered in excess of \$250
21 million in damages for my clients and the class members (who often work as nurses, ambulance
22 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
23 countless other trades). As of the end of last year, my team and I held the record for the largest
24 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
25 approved settlement, which followed extensive litigation, summary adjudication and writs to the
26 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
27 Court).

28 ///

1 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
2 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
3 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
4 against Walmart that was tried to the jury in District Court for the Central District, wherein the
5 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
6 were appealed.

7 6. Over the last four or five consecutive years, I have been selected by my peers as a
8 “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

9 **BRIEF SUMMARY OF THE SETTLEMENT**

10 7. Following a contested but productive mediation, Plaintiff and Defendant
11 (collectively, the “Parties”) entered into a Class Action and PAGA Settlement Agreement
12 resolving the wage and hour claims of the putative class (the “Settlement Agreement”), which
13 is attached hereto as **Exhibit A**. The Settlement Agreement seeks to release and discharge
14 Defendant from the claims brought against it in exchange for Defendant’s agreement to pay
15 \$876,036 on a non-reversionary, non-claims made basis (each Class Member will receive
16 his/her share of the Net Settlement Amount without having to submit a claim form or take any
17 action, except for those who opt-out). Plaintiff seeks to represent a class of all current and
18 former non-exempt employees who worked at a Kingspan Facility in California at any time
19 during the Class Period of August 5, 2017, through October 1, 2022, including Direct Hires of
20 Kingspan and Temporary Employees. Under the terms of the Settlement Agreement,
21 Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’
22 fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not
23 to exceed \$20,000, settlement administrator costs of \$18,250, PAGA Penalties of \$50,000 of
24 which \$37,500 will be paid to the LWDA and the remaining \$12,500 will be paid to the
25 Aggrieved Employees, and a service award not to exceed \$10,000 to Plaintiff. After
26 subtracting the agreed-upon deductions from the Settlement Amount, approximately
27 \$485,774.00 will be available to pay the individual settlement amounts to approximately 1,800
28 Class Members who do not opt-out of the settlement, as follows:

<i>Gross Settlement Amount</i>	\$ 876,036.00
Attorneys' Fees (1/3)	\$ 292,012.00
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 18,250.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 485,774.00

8. Assuming approximately 1,800 total Class Members employed during the Class Period, each Class Member will receive approximately \$24.00 per Workweek as a Direct Hire and \$11.16 per Workweek as a Temporary Employee.

9. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks Worked he/she is credited with working during the Class Period (attached hereto as **Exhibit B**).

PROCEDURAL BACKGROUND

10. My office and my co-counsel have performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, Plaintiff's Counsel (i.e., my office) believes this settlement to be fair, reasonable, and adequate.

11. After being retained by Plaintiff, we submitted an August 5, 2021, letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit C**, and simultaneously sent a letter to Defendant requesting the production of his personnel and timekeeping records to further evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

///

1 12. That same day, we filed a putative class action and representative action
2 complaint that alleges claims for: (1) failure to pay minimum wages, (2) failure to pay overtime
3 wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay
4 vested vacation, (6) failure to timely pay final wages, (7) failure to provide accurate itemized
5 wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code
6 §17200 *et seq.*, and (9) related claims under PAGA.

7 13. Defendant retained counsel and immediately began to defend the case. Plaintiff
8 then propounded a full set of written discovery, including Special Interrogatories, Form
9 Interrogatories, Requests for Production, and Requests for Admissions. However, before
10 Defendant's responses were due, counsel for the parties met and conferred and discussed staying
11 formal discovery and pursuing informal discovery in connection with mediation. Thereafter, the
12 Parties scheduled mediation with Lynn Frank on July 28, 2022.

13 14. In preparation for the mediation, the Parties informally exchanged documents and
14 information that allowed both sides to calculate the potential damages and evaluate potential risk,
15 including policies and procedures pertaining to each claim alleged, and statistics relating to the
16 number of current and former employees, number of shifts, pay periods worked and other things.
17 Defendant also provided its written policies and practices and a robust sampling of payroll and
18 timekeeping records for Class Members covering nearly 15,000 shifts worked. This information
19 enabled both parties to take a deep dive into the claims. Additionally, during this process,
20 Plaintiff and his counsel analyzed, researched, and investigated the potential issues, including
21 matters related to the calculation of damages, trial, and appellate issues and risks.

22 15. On July 28, 2022, Plaintiff and Defendant participated in mediation before Lynn
23 Frank, who is one of the most highly experienced and respected class action mediators in
24 California. The matter did not resolve at mediation, but the Parties continued negotiations and
25 Ms. Frank issued a mediator's proposal which was accepted by the Parties on September 2, 2022.
26 The Parties memorialized the terms of the settlement in a long-form Settlement Agreement.
27 Under the terms of the settlement, the Parties now seek preliminary approval of the Settlement.

28 ///

1 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL’S INVESTIGATION**

2 16. The putative Class in this case consists of approximately 1,800 similarly situated
3 non-exempt employees who worked at a Kingspan Facility in California at any time during the
4 Class Period, including Direct Hires of Kingspan and Temporary Employees. Plaintiff alleged
5 numerous wage and hour violations on behalf of the Class Members. However, Defendant
6 vigorously contested and denied each of Plaintiff’s material allegations on the merits and as to
7 the propriety of a class action or PAGA representative action, as discussed herein.

8 17. One of the primary claims in this action was for wage statement violations due to
9 Defendant’s alleged failure to state all applicable rates of pay and hours worked on its wage
10 statements. To illustrate, during the relevant period, Defendant paid the Class Members on an
11 hourly basis plus additional compensation in the form of “shift differentials” for undesirable
12 shifts (such as second shift). Kingspan’s uniform wage statements labeled these payments as
13 “Shift Premiums,” yet allegedly failed to provide information regarding the applicable rate of
14 pay or hours worked. Defendant disputed Plaintiff’s claim and specifically disputed that the
15 wage statements were inaccurate or that they otherwise failed to comply with Labor Code section
16 226. Furthermore, Defendant contended that, even if Plaintiff could identify a technical error in
17 some employees’ wage statements, the claims still fail for multiple reasons, including without
18 limitation, because Plaintiff cannot establish a “knowing and intentional” violation or that
19 Plaintiff and other employees suffered an “injury” as required by Labor Code section 226(e).
20 Defendant further contended that class treatment was inappropriate and that this matter could not
21 be manageably litigated on a representative basis.

22 18. Additionally, Plaintiff alleged that Defendant failed to pay all required minimum
23 and overtime wages because he and other Class Members were required to complete health
24 questionnaires prior to clocking in, which led to unpaid yet compensable time, in violation of the
25 California Labor Code. Defendant raised multiple defenses to this claim, including the
26 arguments that Class Members were directed to complete the health questionnaire *after* clocking
27 in and employees were, in fact, clocked in when doing so; therefore; any off-the-clock claim
28 would fail. Defendant also argues that the process was required by relevant health regulations –

1 and was not put in place by choice of the company itself – which rendered any such time *not*
2 compensable.

3 19. Plaintiff also raised the claim that he and *formerly-employed* Class Members were
4 not paid all vested vacation owed at termination. This claim was not based on a “use-it-or-lose-
5 it” policy; instead, it was based on the argument that Defendant was required by Labor Code §
6 227.3 to pay vested vacation at termination at the final rate of pay (including shift differentials)
7 rather than simply at the base rate of pay (not including shift differentials). But Defendant
8 challenged this claim, and argued that companies are not required to offer vacation pay under
9 California law, and that companies are further allowed to set the rates at which they pay
10 employees for such vacation.

11 20. Plaintiff also argued that the Class Members were often denied compliant meal
12 and rest breaks due to the nature of the work. However, Defendant argued that it provided and
13 made available meal and rest breaks to all employees, and any employee who did not take a meal
14 or rest break did so entirely of his or her own volition. In this regard, Defendant produced its
15 written policies and practices, which it argued show full compliance with the law. As such,
16 Defendant argued that these claims were without merit because, for each violation, a fact-finder
17 would have to determine why a break was noncompliant/nonexistent, because if it was by the
18 employee’s choice, no liability attaches to Defendant.

19 21. Plaintiff also alleged various other Class and PAGA claims, such as the failure to
20 timely pay all wages owed upon termination, and other claims related to the alleged violations
21 mentioned above. However, Defendant argued that these other claims, as well as the
22 “derivative” claims, have no merit.

23 22. Nonetheless, the Parties concluded that further litigation of the Action would be
24 protracted and expensive, and that it is desirable that the Action be fully and finally settled in
25 order to limit further risk, expense and protracted litigation.

26 **EVALUATION OF THE SETTLEMENT**

27 23. In preparation for mediation, Peter Carlson, a senior associate within my office,
28 our co-counsel, and I formulated a damages model and risk analysis based upon detailed data

1 obtained through informal discovery and information exchanges. The summary of the claims
2 below is based on calculations by our expert and us, and the risks that we potentially faced,
3 giving significant credit to the defenses that Defendants raised or would like raise in further
4 proceedings. Following the informal exchange and other information provided by Defendants,
5 we estimated the following data points through the date of mediation: (1) 134 Direct Hires, (2)
6 16,652 Direct Hire Workweeks, (3) 1,645 Temporary Employees, and (4) 8,000 Temporary
7 Employee Workweeks. From these metrics, and when factoring in claim certification
8 probabilities and liability probabilities, we formulated detailed damages models to value the
9 claims in preparation for mediation and to reach a realistic and reasonable resolution.

10 24. Plaintiff contended that his strongest claim was for wage statement violations,
11 which primarily focused on the “shift premium” violation discussed above. In total, Plaintiff
12 estimated that the *maximum* value of this claim (assuming a violation on 100% of all paystubs)
13 was \$425,000 [using the \$50/100 penalty under § 226(e) for 4,500 allegedly violative wage
14 statements]. However, this theoretical maximum fails to account for the variety of risks and
15 defenses raised by Defendant, namely that the wage statements did not violate Labor Code § 226
16 and, even if there was a “technical” violation, that Plaintiff would be unable to prove the required
17 “knowing and intentional” and “injury” elements. Additionally, Defendant contended that
18 (without admitting liability), any instances of the alleged “Shift Premium” violations were
19 extremely limited in number since: (a) the Direct Hires rarely received such payments, and (b)
20 the Temporary Employees did not receive Shift Premiums. Based on these facts and defenses,
21 Plaintiff placed a nominal 5% risk at the class certification stage and estimated a 90% chance of
22 success on the merits, but only for a smaller subset of the wage statements. As such, Plaintiff
23 placed a risk-adjusted value of \$300,000 on the wage statement claim.

24 25. Additionally, Plaintiff alleged that Defendant failed to pay all wages owed to the
25 Class due to the COVID health screening practices. Plaintiff’s counsel estimated that there were
26 approximately 60,000 shifts to which this claim applied (*i.e.*, the COVID era) and, after
27 investigating the alleged frequency of violations, Plaintiff’s counsel estimated that there were
28

1 5,100 unpaid hours during the Class Period at an applicable rate of pay of \$48.50.¹ Thus, the
2 maximum potential value for the unpaid wage claims was \$244,800. However, Defendant
3 vehemently opposed these unpaid wage claims by arguing that employees were instructed to
4 clock in before completing the health screenings, employees were clocked in when doing so, and
5 that the health screenings were not implemented by Defendant's choice or for its benefit and,
6 thus, the time was not compensable even if the employees failed to clock in before completing the
7 questionnaire. Thus, Defendant argued that there was no "off-the-clock" time and, even if there
8 were, it had no actual or constructive notice of the same and would not be liable. As such,
9 Defendant alleged that, due to these defenses, Plaintiff's claims are the prototypical example of
10 "individualized issues" for which certification would not be proper. Plaintiff placed a 20% risk
11 on these claims at the class certification stage. Moreover, in addition to its other defenses on the
12 merits, Defendant argued that Plaintiff would be unable to meet its evidentiary burden at
13 summary judgment and/or trial because Plaintiff and the Class would be unable to introduce
14 evidence as to the amount of unpaid wages (since the claims are not apparent from the
15 timekeeping records), thus defeating liability. For this reason, Plaintiff's counsel assigned
16 another 20% risk on the merits. When factoring in these risks and defenses, Plaintiff calculated
17 the risk-adjusted value of the unpaid wage claims to be \$156,672.

18 26. Plaintiff also alleged meal and rest break claims against Defendant. Given the
19 total number of shifts at issue (an estimate of 98,934), and when incorporating violation rates
20 from expert review of the timekeeping records and other evidence, Plaintiff's counsel estimated a
21 30% violation rate for meal breaks and a 50% violation rate for rest breaks, leading to 29,680
22 alleged meal violations and 49,467 alleged rest break violations. This established a maximum
23 potential value for these claims of \$1,603,518 (using \$20.26 as the applicable premium rate
24 under § 226.7). However, Defendant raised numerous arguments in response to this claim,
25 including that it maintained fully compliant written policies and specifically authorized the Class
26 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
27 or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to

¹ Since these unpaid hours were alleged to occur *after* 8 hours in a day, this blended rate is the overtime rate plus liquidated damages (for unpaid minimum wages) under Labor Code § 1194.2.

1 determine for each Class Member whether a break was missed and why, and why a break was
2 noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to
3 Defendant. These defenses are factored into Plaintiff's analysis in two ways. First, these issues
4 raise questions regarding whether the meal and rest break claims could be certified, and Plaintiffs
5 placed a 40% risk at the class certification stage. Second, these defenses also go toward the
6 merits given the evidentiary question of proving the number of meal and rest violations. As
7 such, Plaintiff placed a 40% risk on the merits, setting the risk-adjusted value for the meal and
8 rest break claims at \$577,267.

9 27. Moreover, Plaintiff alleged that Defendant failed to pay all vested vacation wages
10 due and owing upon separation of employment at the proper rate of pay under Labor Code §
11 227.3. However, the independent value of this claim was not large (since it was a fractional
12 underpayment per occurrence); instead, the value of this claim was that, if proven, it triggered
13 full waiting time penalties for each employee under Labor Code § 203.

14 28. Plaintiff's claim for waiting time penalties was based on the claim that Defendant
15 failed to pay all wages due and owing to its employees due to the unpaid wage claim (COVID
16 health screening), unpaid wage premiums for meal and rest break violations (*see Naranjo v.*
17 *Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 117), and the underpaid vested vacation.
18 Plaintiff calculated the maximum waiting time penalties by estimating that each former
19 employee (in the 3-year lookback period) was entitled to the full 30-day waiting time penalty.
20 As such, the maximum potential value of this claim was \$4,860,000 [\$162 average daily pay x
21 30 days x 1,000 employees]. But this maximum value failed to account for many risks and
22 defenses. For instance, this claim was derivative of the unpaid wage and meal/rest break claims
23 (*e.g.*, the unpaid wage premiums). If those claims failed at certification or on the merits, there
24 would be no waiting time penalties owed, so the same risks for those claims applied to this
25 claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification
26 and on the merits, Plaintiff would have to prove that the violations (if any existed) were "willful"
27 under the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a
28 finding of a "willful" violation since it had compliant written policies and any deviations

therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiff's counsel applied a 40% risk at class certification and another 50% risk on the merits, leading to a risk-adjusted value of \$1,458,000.

29. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

•	Wage Statement Claims	\$	200,000
•	Unpaid Wage Claims	\$	156,672
•	Meal and Rest Break Claims	\$	577,267
•	Waiting Time Penalty Claims	\$	<u>1,458,000</u>
•	Total Risk Adjusted Penalties and Damages	\$	2,391,939

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

30. The settlement was the product of extensive arm's length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

31. The settlement will result in a fair payment to each class member based on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

///

1 32. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
2 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
3 and investigation, making it possible to exercise informed judgment throughout the settlement
4 process, including significant document review (e.g. documents pertaining to Defendant's
5 policies and procedures, personnel documents, among others), and conducted an extensive
6 analysis of the detailed class-wide data provided by Defendant.

7 33. Based on my experience in other cases, including wage and hour matters, I
8 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
9 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
10 settlement at this time is in the best interests of the class. The settlement provides each class
11 member with compensation for the alleged violations when viewed in relation to the costs and
12 risks inherent in obtaining class certification and proceeding to trial.

13 34. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
14 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

15 35. Of course, the settlement amount represents a compromise figure, taking into
16 account the various risks surrounding class certification and the merits of Defendant's asserted
17 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
18 members, with no reversion to Defendant.

19 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

20 36. Plaintiff seeks an enhancement payment of \$10,000 for his service to the class,
21 which I believe is fair and warranted. Mr. Klimek came forward in an effort to effectuate a
22 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
23 He assumed significant risk in bringing this litigation—namely, had he lost, he would have been
24 ordered to pay Defendant's costs.

25 37. Plaintiff provided invaluable assistance to my office and the Class in this case,
26 including providing factual background for the Class Complaint; reviewing the litigation
27 documents; providing information and documents about Defendant's policies and practices;
28 participating in phone calls to discuss litigation and settlement strategy; and reviewing the

1 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
2 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
3 the reasons why he believes that the service award should be approved.

4 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
5 **REQUESTED FEES AND COSTS**

6 38. As set forth above, I have handled over 250 class and representative actions, have
7 been appointed as class counsel and have successfully resolved over half of those cases, and
8 many others remain pending and will successfully resolve in the future.

9 39. When this case was taken on a contingency fee basis, with my firm agreeing to
10 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
11 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
12 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
13 those expenditures.

14 40. It is my experience that attorney fee awards of one-third of a common fund
15 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
16 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
17 is further warranted because it is within the range of reasonableness typically awarded in class
18 actions. The litigation costs are reasonably capped at \$20,000 and will be based on the actual
19 amount of costs incurred at the time of final approval.

20 **SETTLEMENT ADMINISTRATOR**

21 41. The parties request that the Court appoint CPT Group to serve as the Settlement
22 Administrator. CPT Group is experienced in administering class action settlements, and has
23 provided a proposal to administer this settlement for a total of \$18,250, which is attached hereto
24 as **Exhibit D**.

25 **SUBMISSION TO THE LWDA**

26 42. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
27 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit E**.

28 ///

EXHIBITS AND CONCLUSION

43. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “A.”

44. The proposed Class Notice is attached as Exhibit “B.”

45. A true and correct copy of the notice letter we submitted to the LWDA is attached as Exhibit “C.”

46. CPT’s proposal to administer the Settlement is attached hereto as Exhibit “D.”

47. The LWDA’s confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit “E.”

48. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys’ fees, costs, and enhancement payment to the Class Representative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 15, 2022, at Riverside, California.

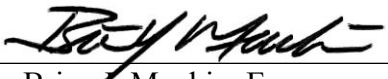
By: 
Brian J. Mankin, Esq.

EXHIBIT “A”

Brian J. Mankin [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY MANKIN LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Mehrdad Bokhour, Esq. (Cal. Bar No. 285256)
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

Attorneys for Plaintiff Scott Klimek, and all others similarly situated

Jason A. Geller (SBN 168149)
jgeller@fisherphillips.com
Andrew E. Saxon, Esq.
asaxon@fisherphillips.com
Kevin L. Quan, Esq.
kquan@fisherphillips.com
FISHER & PHILLIPS LLP
One Montgomery Street, Suite 3400
San Francisco, CA 94104
Tel: (415) 490-9000 | Fax: (415) 490-9001

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 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
14 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
15 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
16 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
17 ADVISER'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 *jpgeller@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
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Klimek v. Kingspan Insulated Panels, Inc.
Superior Court of the State of California, County of Stanislaus
Case No. CV-21-004201

To: All current and former non-exempt employees who worked at the Kingspan Facility in Modesto, California at any time between August 5, 2017, and October 1, 2022, including Direct Hires of Kingspan and Temporary Employees (the “Class”):

As used in this Notice, “Direct Hires” refers to individuals hired directly by Kingspan and employed to work at the Kingspan Facility (which refers to the warehouse in Modesto, California), whereas “Temporary Employees” refers to individuals who were employed by a Staffing Agency, and assigned to work at the Kingspan Facility in Modesto, California. Both Direct Hires and Temporary Employees who worked at the Kingspan Facility between August 5, 2017 and October 1, 2022 (the “Class Period”) are included in this Settlement and collectively referred to as “Class Members.”

THIS NOTICE is of a proposed settlement of a class action and representative lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2023, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately **\$INSERT AMOUNT** as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of Weeks Worked at the Kingspan Facility during the Class Period as a Direct Hire of Kingspan and/or Temporary Employee. Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section III.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion from the Settlement Class by [REDACTED], 2023 (see Section V for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment for the Class Claims, but you will preserve your right to pursue the Released Class Claims described in Section III subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2023 (see Section IV for more details on how to object). If you would like to object, you may not opt out of this settlement.
DISPUTE YOUR NUMBER OF WEEKS CREDITED	If you believe the number of weeks that you were credited with working during the Class Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section III for more details on how to dispute your credited weeks). Kingspan’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that the Weeks Worked calculation is inaccurate.

I. Why did I get this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Klimek v. Kingspan Insulated Panels, Inc., et al.*, Stanislaus County Superior Court Case No. CV-21-004201 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You have received this notice because the records show that you were employed and worked at the Kingspan Facility, either as a Direct Hire or Temporary Employee, as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point between August 5, 2017, and October 1, 2022 (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you meet the definition of a Class Member and received this Notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

Plaintiff and Class Representative Scott Klimek filed class and representative action lawsuit against Kingspan Insulated Panels, Inc. on behalf of the Class Members (the “Action” or “Lawsuit”). The pending Action alleges the following Class Claims against Kingspan on behalf of the Class Members: (a) failure to pay minimum wages, regular wages and/or overtime pay (including any theory of failure to pay any and all wages for all time worked or earned); (b) failure to provide meal periods; (c) failure to provide rest breaks; (d) failure to pay vested vacation wages; (e) failure to provide complete and accurate wage statements; (f) failure to pay wages upon termination; and (g) violations of the California Business & Professions Code §§ 17200 *et seq.* (the “Class Claims”). The Lawsuit also sought civil penalties on behalf of the California Labor Workforce Development Agency (“LWDA”) and Aggrieved Employees. The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA Claims is August 5, 2020, to October 1, 2022 (“PAGA Period”). You are considered an Aggrieved Employee if you worked at the Kingspan Facility during the PAGA Period, and you are eligible to receive a share of the PAGA Penalties.

Kingspan expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiff or to the Class Members. By agreeing to settle, Kingspan is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. Kingspan has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Kingspan. However, to avoid additional expense, inconvenience, and risks of continued litigation, Kingspan and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation with a respected and experienced class action mediator. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Kingspan the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed as a Direct Hire or Temporary Employee, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Kingspan will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the Class Members' attorneys?

<u>Attorneys for the Class Members:</u>	<u>Attorneys for Kingspan:</u>
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Avenue, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444 Mehrdad Bokhour <i>mehrdad@bokhourlaw.com</i> Bokhour Law Group, P.C. 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (310) 975-1493	Jason A. Geller (SBN 168149) <i>jgeller@fisherphillips.com</i> Andrew E. Saxon, Esq. <i>asaxon@fisherphillips.com</i> Kevin L. Quan, Esq. <i>kquan@fisherphillips.com</i> Fisher & Phillips LLP One Embarcadero Center, #2050 San Francisco, CA 94111-3712 Tel: (415) 490-9000

III. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former non-exempt employees who worked at the Kingspan Facility in Modesto, California at any time during the Class Period, including Direct Hires and Temporary Employees (the "Settlement Class" or "Class Members") and approved a representative class of all Aggrieved Employees who worked at the Kingspan Facility in Modesto, California at any time during the PAGA Period, including Direct Hires of Kingspan and Temporary Employees ("Aggrieved Employees"). Class Members who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become "Participating Class Members" and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain claims against Kingspan.

Without admitting any wrongdoing, Kingspan has agreed to pay \$876,036 (the "Gross Settlement Amount") to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved CPT Group to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, approximately \$18,250 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The California Labor Code Private Attorneys General Act ("PAGA") authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other PAGA Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$50,000 of the Gross Settlement Amount will be allocated to Plaintiff's PAGA Claims. Of this amount, \$37,500 will be paid to the LWDA in satisfaction of the claims for civil penalties under PAGA, and the remaining \$12,500 will be divided between all Aggrieved Employees based on the number of weeks worked during the PAGA Period, regardless of their receipt of payments for settlement of the Class Claims. You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Aggrieved Employees includes "all current and former non-exempt employees who worked at the Kingspan Facility in Modesto, California at any time during the PAGA Period, including Direct Hires of Kingspan and Temporary Employees." Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$12,500 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative a Service Payment to compensate him for his service and extra work provided on behalf of the Class Members and in exchange for a general release of claims totaling \$10,000. The Class Representative will also receive an individual share of the Settlement as a Class Member.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of one-third (33.33%) of the Gross Settlement Amount (which is \$292,012) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$20,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$[REDACTED]. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount primarily based on the number of weeks a Class Member is credited with working during the Class Period as either a Direct Hire or Temporary Employee. A Class Member is credited with one Week Worked each time the Class Member works at least one shift in a week as a Direct Hire or Temporary Employee at the Kingspan Facility. Specific calculations of Individual Settlement Payments will be made as follows. First, the Settlement Administrator will calculate the total number of Weeks Worked by each Direct Hire of Kingspan and Temporary Employee. Next, Temporary Employees will receive funds calculated based upon a rate of approximately \$20/Workweek for all weeks in which they worked at the Kingspan Facility, and Direct Hires of Kingspan will receive funds calculated based upon a rate of approximately \$43/Workweek for all weeks in which they worked at the Kingspan Facility during the Class Period to determine the Individual Settlement Payment, prior to legal deductions/withholdings, for each Class Member. If any Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out).

Weeks Worked as a Direct Hire during the Class Period	Weeks Worked as a Temporary Employee during the Class Period	Your Share of the Net Settlement Amount
INSERT	INSERT	\$INSERT

Disputes to Weeks Credited. For each Settlement Class Member, the Weeks Worked at the Kingspan Facility during the Class Period will be based on Kingspan's available records. If you disagree with the weeks credited in the chart above, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2023, with documentation to establish the number of eligible Workweeks you claim to have actually worked at the Kingspan Facility between August 5, 2017, and October 1, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and after Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Aggrieved Employees who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share of PAGA civil penalties only for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. Participating Class Members and Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date.

Allocation and Taxes. 20 percent of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (IRS Form W-2 reporting). The remaining 80 percent will be considered and reported as interest and penalties (IRS Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for

which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, Kingspan and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims (aka the “Released Class Claims”). Once the Court approves the proposed Settlement and enters Judgment, and Kingspan funds the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement and will bar them from bringing the Class Claims against Defendant Kingspan and the Released Parties (defined below). Specifically, the Participating Class Members will fully release and discharge the Released Parties of any and all claims stated or could have been alleged in the operative complaint and those based upon the facts in the complaint, including but not limited to: (a) failure to pay minimum and regular wages, (b) failure to pay overtime and double time wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to pay vested vacation, (f) failure to timely pay wages each period and upon separation of employment, (g) failure to provide accurate itemized wage statements, (h) unfair and unlawful competition, and (i) all other claims for statutory penalties based on the facts or claims alleged in the operative complaint (the “Released Class Claims”). The time period governing the Released Class Claims shall be the same as the Class Period (i.e., August 5, 2017 to October 1, 2022). As to the Temporary Employees, the Released Class Claims shall only release claims relative to work performed at the Kingspan Facility.

Release of PAGA Claims (aka the “Released PAGA Claims”). Also upon the Court’s approval of the Settlement, entry of Judgment, and Kingspan Insulated Panels, Inc.’s funding of the Settlement Amount, the Settlement Agreement will bind the LWDA, Plaintiff, and all Aggrieved Employees, and will bar them from bringing PAGA claims against Kingspan and the Released Parties based on the facts stated or could have been asserted in the Complaint and in Plaintiff’s notice letters to the LWDA, including: (a) failure to pay minimum and regular wages, (b) failure to pay overtime and double time wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to pay vested vacation, (f) failure to timely pay wages each period and upon separation of employment, (g) failure to provide accurate itemized wage statements, and (h) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged or that could have been alleged in the operative complaint. These claims include, but are not limited to, California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and all related provisions of the California Code of Regulations, and the California Industrial Wage Orders (the “Released PAGA Claims”). The time period governing the Released PAGA Claims shall be any time during the PAGA Period (i.e., August 5, 2020 to October 1, 2022).

Released Parties. “Released Parties” means Defendant Kingspan Insulated Panels, Inc. and its past and present officers, directors, shareholders, executors, administrators, founders, members, assigns, insurers, attorneys, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations, subsidiaries, divisions, affiliates, attorneys, related entities and divisions, successors and assigns, and all others claiming through or by any of them, as well as temporary service providers and Staffing Agencies employing Temporary Employees, past and present, and each of them and anyone acting in concert with foregoing. “Staffing Agency” means and refers to a temporary staffing agency that employed and assigned Temporary Employees to work at the Kingspan Facility, including the following staffing agencies or their related entities: Trinity Personnel Inc., Adecco USA, Inc., Hedy Holmes Staffing, and Balancing Staffing Workforce LLC.

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

IV. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.
- B. **Exclude Yourself from the Class Claims in the Settlement.** If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE KINGSPAN LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.”

Any person who submits a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You will still be bound by this Settlement with respect to the release of the PAGA Claims.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, address, telephone number, dates of employment at Kingspan Insulated Panels, Inc., the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2023. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2023, at [REDACTED] a.m. in Department [REDACTED] of the Stanislaus County Superior Court, located at [REDACTED]. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2023. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

V. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle any and all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were

employed and/or worked at the Kingspan Facility at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Class Claims. All Aggrieved Employees will be deemed to have entered into a release of the Released PAGA Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect.

VI. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representatives on [REDACTED], 2023 at XX a.m. in Department XX of the Stanislaus County Superior Court, located at XX.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement at Office of the Clerk, Stanislaus County Superior Court, XX, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

VIII. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Released Class Claims is [REDACTED], 2023. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2023. These deadlines will be strictly enforced.

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

EXHIBIT “C”



August 5, 2021

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Kingspan Insulated Panels, Inc.
726 Summerhill Dr.
Deland, FL 32724

Kingspan Insulated Panels, Inc.
c/o Agent for Service of Process
Attn: C T Corporation System
330 N. Brand Blvd.
Glendale, CA 91203

Re: PAGA Civil Penalty Claim
Scott Klimek v. Kingspan Insulated Panels, Inc., et al.

To the Labor and Workforce Development Agency and Kingspan Insulated Panels, Inc.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Scott Klimek (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Kingspan Insulated Panels, Inc. and/or any affiliated entities, as well as its owners (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately October 2020 through August 2021. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. As one such example, the Company required Claimant and the Aggrieved Employees to undergo mandatory COVID-19 screening prior to clocking in for payroll purposes. However, because this time was spent under the Company’s control but before being allowed to clock in, it was uncompensated in violation of California law and led to minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation”).

Also, at all relevant times, Claimant was compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the pay period, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime wages for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

Additionally, on the occasions when Claimant and the Aggrieved Employees were denied compliant meal periods and/or rest breaks, the Company failed to pay the "premium" under Labor Code § 226.7. And, on the occasions when the Company did pay a premium for such violations, it only paid at the employee's base rate rather than at the employee's "regular rate," as mandated by California law. See *Ferra v. Loews Hollywood Hotel, LLC* (July 15, 2021) No. S259172, 2021 Cal. LEXIS 4877 (the California Supreme Court unanimously held that the meal (and rest period) premiums must be calculated in the same fashion as overtime pay and, therefore, must factor in shift differential pay and other forms of nondiscretionary compensation).

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break. Additionally, the Company failed to maintain any mechanism for the payment of rest period premium payments as required by Labor Code § 226.7.

Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, on the occasions when the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, the Company failed to pay the departing employees all vacation hours and, further, failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3. As a result, Claimant and the Company did not receive compensation for all accrued but unused vacation hours – in violation of Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, wages, and all mandated sick time since the company only paid sick time at the base rate than the statutorily mandated rate (*i.e.*, "calculated in the same manner as the regular rate of pay"). Finally, during his employment with the Company, Claimant received



inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

In an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Company's owners are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked, the failure to compensate for time spent during mandated COVID-19 screening, and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ..." Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

Section 12 of applicable IWC Wage Order states in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each



work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee’s separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company failed to pay all accrued and unused vacation upon termination. And the Company also only paid vested vacation upon separation at the base rate of pay rather than at the required final rate, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

Here, on the occasions that the Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2)). As such, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”



As a result of the Company's failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202(a) states in pertinent part "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Labor Code § 203(a) states "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a "waiting time penalty." (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to direct violations of Labor Code § 226(a)(9) [wage statements must identify "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate"]. Specifically, Claimant alleges that he often received shift differentials for every hour worked at a set rate of pay. These shift differentials were indisputably an "applicable hourly rate" during the periods when they were earned, yet the Company's wage statements failed to provide any information regarding the rate of pay or number of hours worked at the shift differential hourly rate – in direct violation of Labor Code § 226(a)(9). In addition, the Company's wage statements failed to comply with other requirements of Labor Code § 226 due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect the compensable hours spent in COVID-19 screening); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to



accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

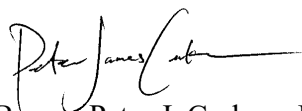
Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmlfirm.com

IMI

4590 Allstate Drive, Riverside, CA 92501
Toll Free 888.959.8508

EXHIBIT “D”

CASE NAME: KLIMEK V. KINGSPAN

Date: September 6, 2022
Requesting Attorney: Brian Mankin
Plaintiff or Defense: Plaintiff
Firm Name: Lauby Mankin & Lauby LLP
Telephone: (951) 320-1444
Email: brian@lmlfirm.com

All-In Settlement
Class Size: 200
Opt-Out Rate: 1.5%
No. of Checks Issued: 197
Postage Total: \$278.66
Grand Total: \$11,816.01
NOT TO EXCEED: \$10,000.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. All Pertinent Documents will be Posted on a Case Specific Website.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	2	\$190.00
Programming: Data Base Setup	\$150.00	2	\$300.00
TOTAL			\$490.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA. CPT will Mail a Full-Length Notice & 1-Page Exclusion Form.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
Print & Mail Notice Packets	\$1.00	200	\$200.00
First-Class Postage (up to 1 oz.)*	\$0.60	200	\$120.00
TOTAL			\$645.00

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 6% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 91% of the Notice Packets are Remailled.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	12	\$6.00
Skip Trace for Best Address	\$1.00	10	\$10.00
Print & Remail Notice Packets	\$1.00	9	\$9.00
First-Class Postage (up to 1 oz.)	\$0.60	9	\$5.40
TOTAL			\$90.40

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Out Requests	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out & Change of Address Processing	\$2.00	3	\$6.00
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.60	1	\$0.60
Review & Process Deficiency Responses	\$10.00	1	\$10.00
		TOTAL	\$323.10

TELEPHONE SUPPORT

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	40	\$120.00
		TOTAL	\$420.00

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	197	\$19.70
		TOTAL	\$454.70

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	197	\$492.50
First-Class Postage (up to 1 oz.)*	\$0.60	197	\$118.20
		TOTAL	\$2,600.70

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	10	\$1,500.00
Update Undeliverable Checks Database	\$0.50	16	\$8.00
Skip Trace for Best Address	\$1.00	16	\$16.00
Remail Undeliverable Checks	\$2.50	15	\$37.50
First-Class Postage (up to 1 oz.)	\$0.60	15	\$9.00
Re-Issue Checks as Required	\$5.00	10	\$50.00
First-Class Postage (up to 1 oz.)	\$0.60	10	\$6.00
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$4,666.50

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	41	\$6.15
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	4	\$20.00
First-Class Postage (up to 1 oz.)	\$0.60	4	\$2.40
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$2,125.61

GRAND TOTAL \$11,816.01

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
- Confidentiality.** Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this

Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT “E”