

**DAVID FERNANDEZ V. UNI-FAB INDUSTRIES, INC. CLASS AND
REPRESENTATIVE ACTION MEMORANDUM OF AGREEMENT**

1. Defendants Uni-Fab Industries Inc. (“Uni-Fab”) and Paul R. Hitchcock (Uni-Fab and Hitchcock shall be collectively referred to as “Defendants”) and Plaintiff David Fernandez (hereinafter “Plaintiff”) hereby set forth the terms of a Memorandum of Agreement (“MOA” or “Agreement”) designed to bind the parties to terms of a settlement to be thereafter memorialized further in a long form Stipulation of Settlement, the provisions of which will be consistent with this MOA. For purposes of this MOA, “Defendants” shall include the Defendants named by Plaintiff in his Complaint in this Action – and specifically Uni-Fab Industries Inc. and Hitchcock.
2. For purposes of this Agreement, the “Action” is defined as *Fernandez v. Uni-Fab Industries, Inc.*, et al., Alameda Superior County Superior Court Case No. Case No. RG21113621. This MOA memorializes the settlement reached in the mediation on February 18, 2022 between Plaintiff, the Class, and Defendants (the “Parties”). This MOA confirms the essential terms of the settlement and assists in preparation of a comprehensive settlement agreement. This MOA is admissible and enforceable by, binding on, and subject to disclosure by all Parties.
3. The Parties intend to enter into a more formal long form agreement (the “Stipulation of Settlement”) not inconsistent with the terms of this MOA, but if they fail to execute a more formal agreement, this MOA will be final, binding and enforceable pursuant to California Code of Civil Procedure section 664.6 and admissible pursuant to California Evidence Code Section 1123. The Parties shall have 35 days from the date of this MOA to agree to the Stipulation of Settlement, including a proposed Notice form, Share form, and preliminary/final approval orders. Plaintiff shall prepare the initial draft. Because Plaintiff is preparing the initial draft of the Stipulation of Settlement, he agrees to give Defendants reasonably sufficient time to substantively review and make revisions to the Stipulation of Settlement but no less than two weeks.
4. The parties agree to cooperate fully with each other to accomplish the terms of the Agreement by entering into the long-form Stipulation of Settlement, to use their best efforts to finalize the Agreement, and to use any other efforts that may become necessary by order of the court, or otherwise, to effectuate the Agreement. In the event that the Parties do not execute the Stipulation of Settlement within 30 days of both parties’ approval of the finalized Stipulation of Settlement, either party may move for preliminary approval of this class action settlement on the basis of the terms set forth in this MOA. In that event, Plaintiff will propose customary terms and procedures for the notice process and settlement administration.
5. The Parties will stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this settlement, the Parties stipulate that class certification will be revoked without prejudice.
6. The Parties agree that the proper scope and definition of the class alleged in the operative complaint and the definition of the Settlement Class Members for purposes of this agreement are “*All persons who worked at least one shift as a non-exempt employee in the State of California for Defendant from September 17, 2017 to the date of preliminary approval or May 19, 2022, whichever is earlier.*” For the purpose of this paragraph “Defendant” shall mean and refer to Uni-Fab.

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7. The Release Period starts on September 17, 2017 and runs through the date of preliminary approval or May 19, 2022, whichever is earlier. The PAGA period starts on September 15, 2020 and runs through the date of preliminary approval or May 19, 2022, whichever is earlier.
8. The Parties and their counsel agree that the consideration described in the subparagraphs below constitute their good faith compromise of the Action based upon their assessment of the value of the case, and the mutual risks and costs of further litigation. Specifically, the consideration provided by Defendants consist of the following:
 - a. Uni-Fab shall pay the Settlement Fund Amount (“Settlement Fund Amount” or “MSA”) of \$1,000,000.00 in full and complete settlement of this matter. Defendants shall not be liable for more than \$1,000,000.00 as the Settlement Fund Amount as a result of this Agreement, except that Uni-Fab shall pay the employer’s portion of all payroll taxes outside the Settlement Fund Amount. Uni-Fab shall fund the MSA within 18 business days of the “Effective Date,” which will be more fully defined in the forthcoming long form Stipulation. The Effective Date as defined in the long form Stipulation shall contemplate, among other things, the date when the court’s order of final approval and judgment have been affirmed on appeal, should any appeal be taken by an objecting class member.
 - b. This is a non-reversionary settlement. All funds represented by uncashed checks remaining in the Qualified Settlement Fund shall be tendered to the State Controller’s Unclaimed Property Fund, so that all Settlement Class Members will have an opportunity to claim their payments after the expiration of the settlement checks.
 - c. Employer Side Payroll Tax Obligations. Under the terms of the Agreement, Defendants shall pay employer-side payroll tax obligations that shall be paid separately and in addition the Settlement Fund Amount.
9. The Parties agree that the consideration described in Paragraph 8, above, constitutes adequate consideration for the settlement and release described immediately below.
 - a. *Release by Plaintiff*: The Plaintiff shall be bound by a complete Section 1542 release and waiver of all claims known and unknown, without exception, against the “Released Parties” (below), except as may be prohibited by law. Defendants shall not oppose a request for an enhancement award for Plaintiff in the amount of \$15,000, which Plaintiff will seek for his work in resolving the case and for his signing of a general release.
 - b. *Release by Settlement Class Members*: All Settlement Class Members who do not opt out of the Settlement will be bound by a limited release that releases all claims against the Released Parties, whether known or unknown, within the definition of “Released Claims” (below).
Definition of “Released Claims”: All claims arising out of the claims and allegations made in the Complaint or that reasonably could have been alleged based on the factual allegations contained in the operative complaint or LWDA letter, including but not limited to all of the following claims for relief: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods or premium pay in lieu thereof, (4) failure to provide meal periods or premium pay in lieu thereof, (5) failure to provide accurate itemized wage statements, (6) failure to pay wages when due, (7) unfair

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business practices, and (8) civil penalties under the Private Attorneys General Act (“PAGA”). The period of the Release shall extend to the limits of the Release Period.

10. Definition of “Released Parties”: “Released Parties”, shall mean Defendant Uni-Fab, its parents, subsidiaries, affiliates, insurers, related entities and divisions, and its: (i) predecessors, successors, and assigns, and (ii) current and former agents, including but not limited to Hitchcock, heirs, executors, administrators, principals, officers, directors, shareholders, employees, founders, members, assigns, insurers, attorneys, and all other claiming through and by any of them.
11. Defendants will not oppose a request by the named Plaintiff to be appointed Class Representative and for an enhancement payment of up to \$15,000 as referenced in Paragraph 9(a), to be deducted from the Settlement Fund Amount, in exchange for his service as Class Representative. This enhancement payment is in addition to the payment to which he is entitled as Settlement Class Member. In the event that the Court reduces or does not approve the requested Class Representative enhancement payment, Plaintiff shall not have the right to revoke this MOA or this settlement, and it will remain binding.
12. The Parties designate that \$100,000 of the Settlement Fund Amount will be allocated for violations of PAGA. 75% of this amount will be payable to the LWDA and the remaining 25% will be payable to the Settlement Class.
13. Defendants will not oppose an application for an award to Class Counsel, from the Settlement Fund Amount, of up to one-third of the Settlement Fund Amount in attorneys’ fees, plus actual costs and expenses, of up to \$15,000, as supported by declaration. Even in the event that the Court reduces or does not approve the requested Class Counsel Award and costs, Plaintiff’s Counsel shall not have the right to revoke this MOA or this settlement, and it will remain binding.
14. The Parties will select a Settlement Administrator on the basis of cost and competence, with the best interests of the Class in mind. Defendants and Defendants’ counsel shall not enter into any contractual relationship with the Settlement Administrator. Fees of the Settlement Administrator shall be paid out of the Settlement Fund Amount, in the amount up to \$15,000. The Stipulation of Settlement shall make clear that Plaintiff, Plaintiff’s counsel, Defendants, and Defendants’ counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the settlement payments or development of the list of recipients of settlement payments or any increase in the fees of the Settlement Administrator that may result from such errors or omissions, which shall be paid from the Settlement Fund Amount, if necessary.
15. The Class Notice will contain an estimated individual settlement payment, dates of employment, how to opt-out of the settlement, how to contest the workweek calculation (i.e., a “Share” form), and how to object to the settlement. Settlement Class Members will be mailed a Class Notice and return postage-paid envelope. Settlement Class Members shall have 30 days to respond to the mailing.
 - a. Settlement Class Members who submit timely requests to opt out of the settlement will not participate in the settlement and will not be bound by the terms of the proposed settlement or the final judgment except as to that portion of the settlement and final judgment dedicated to alleged violations of the PAGA and associated penalties.

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- b. After reductions for the PAGA Claim, attorneys' fees, costs, administrative costs, and class representative enhancement payment, (including without limitation any penalties and interest payable thereon), the remaining (net) balance of the Settlement Fund Amount shall be distributed on a pro rata basis to Settlement Class Members, based on a reasonable allocation method to be proposed by Class Counsel, such as by shifts worked or weeks worked. Payments shall be reduced as necessary to account for mandatory tax withholdings. Recipients of payments pursuant to this Agreement are exclusively responsible for all other tax obligations.
16. The settlement payment for each individual claimant shall be allocated as follows: (a) 33% as wages; (b) 33% as penalties and 34% as interest. The Settlement Administrator will be responsible for issuing to claimants a form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated to penalties and interest.
17. Defendants maintain the right, in their sole discretion, to revoke the settlement and its stipulation to class certification prior to the final fairness hearing in the event that 15% or more of Settlement Class Members opt out of the settlement. In such case, they shall be solely responsible for all administration fees incurred through that date.
18. Uni-Fab estimates that the putative class members worked approximately 22,728 workweeks from the beginning of the Class Period to the date of mediation on February 18, 2022, and this estimate serves as a basis for Plaintiff's accepting the settlement. Plaintiff has relied upon this material representation in entering into this MOA. Should the actual number of workweeks, as of the date of mediation, increase beyond 15% or an additional 3,409 workweeks, the MSA shall increase proportionately for each additional workweek.
19. The Parties agree not to issue press releases, communicate with, or respond to, any media or publication entities concerning the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, except as required by law or as shall be contractually required to effectuate the terms of the Settlement as set forth herein. Nothing stated herein shall prohibit Class Counsel from discussing the Settlement, the fact of Settlement, and its terms and conditions: (i) with Class Members and/or (ii) in court filings, including in their respective firm resumes, and/or (iii) in all necessary motions and supporting memoranda related to preliminary and final approval of the Settlement, or for other class action settlements. This provision also does not limit Class Counsel (i) from complying with ethical obligations; or (ii) from posting a neutral description of publicly-available facts regarding the Settlement, provided that such posting does not expressly identify Defendants by name.
20. All Settlement Class Members who have not validly opted out by the stated time period will be subject to the Release.
21. The Parties and their counsel agree not to take any action to encourage, support, or induce any Settlement Class Members to opt out of and/or object to the Settlement.

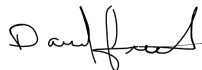
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22. Defendants expressly deny any liability. Neither this MOA nor the Stipulation of Settlement shall constitute an admission of liability or the accuracy of any allegation made by Plaintiff or his counsel.
23. Neither Defendants nor their counsel shall have any liability for any tax implications related to the receipt of settlement funds herein, including by the claims administrator. Any and all such liability and/or obligations shall be borne solely by the recipients of any funds to be paid by Uni-Fab herein, except that in no case shall any Class Member be required to pay, reimburse, or indemnify Uni-Fab for any amounts characterized or recharacterized as employer-side tax liabilities. The Parties acknowledge neither Defendants' nor Plaintiff's counsel have provided any tax-related advice whatsoever.
24. The Parties shall present the Long Form to the Court for Approval through a noticed motion requesting approval of the settlement.
25. Plaintiff shall move expeditiously to file a Motion for Preliminary Approval after the Parties execute the long-form Settlement. Uni-Fab shall transmit the names and contact information confidentially for all Settlement Class members to a mutually agreed upon claims administrator 10 calendar days after the entry of a Court order preliminarily approving the Settlement.
26. Any disputes arising from the preparation of a final stipulation for settlement, shall be resolved by Mediator Steve Pearl.

IT IS SO AGREED.

Dated: 03 / 09 / 2022

PLANTIFF



David Fernandez

DEFENDANTS

Dated: _____

By: Bud Rogers, President
Uni-Fab Industries Inc.

Dated: _____

Paul R. Hitchcock

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PLANTIFF

Dated: _____

David Fernandez

Dated: 3/17/22

DEFENDANTS

By: Bud Rogers, President
Uni-Fab Industries Inc.

Dated: 3/17/22

Paul Hitchcock