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ENEDINA SANCHEZ DE SEGURA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ENEDINA SANCHEZ DE SEGURA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

KELCOURT PLASTICS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No. 30-2021-01219806-CU-OE-CXC

*[Assigned for all purposes to the Hon. Randall J.
Sherman, Dept. CX105]*

**DECLARATION OF ELIZABETH
NGUYEN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: August 4, 2023

Time: 10:00 a.m.

Dept.: CX105

Reservation No.: 74015581

[Complaint Filed: September 3, 2021]

[FAC Filed: November 19, 2021]

1 I, ELIZABETH NGUYEN, declare as follows:

2 1. I am a shareholder of the law firm Lidman Law, APC, and counsel for the named Plaintiff
3 Enedina Sanchez de Segura (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter.
4 I am a member in good standing of the bar of the State of California and am admitted to practice in this
5 Court. I have personal knowledge of the facts stated in this declaration and could testify competently to
6 them if called upon to do so.

7 2. I am a 2005 graduate of Loyola Law School. During law school, I worked as an extern for
8 the Honorable Erithe A. Smith, U.S. Bankruptcy Court for the Central District of California. During law
9 school, I also worked as a law clerk in the Enforcement Unit of the Office of the Chief Trial Counsel for
10 the State Bar of California.

11 3. Since graduating from law school, my practice has focused almost exclusively on
12 employment litigation. In October 2007, I began working as an associate attorney at the international law
13 firm of Littler Mendelson P.C., at its Los Angeles office, which according to its website is the “largest
14 law firm in the world exclusively devoted to representing management in employment, employee benefits
15 and labor law matters.”

16 4. In June 2012, I left Littler Mendelson to work at the Los Angeles office of Reed Smith
17 LLP. During my employment at Reed Smith, I worked exclusively in the labor and employment practice
18 group. In June 2013, I returned to Littler Mendelson as an associate attorney, was promoted to Shareholder
19 in 2015, and was elevated to participating Shareholder in 2017. Since October 2007, my practice has been
20 and continues to be exclusively labor and employment law, with a strong emphasis on wage and hour
21 class actions venued in both state and federal courts. During this time period and my legal career in
22 general, I also worked on a number of single and multi-plaintiff wage and hour matters as well. During
23 my employment at Littler Mendelson, I was a member of its Class Action Practice Group.

24 5. During my employment at Littler Mendelson, I played a significant role in the class actions
25 that I was staffed on, and was primarily responsible for managing the litigation both in my role as a Senior
26 Associate and as a Shareholder. In particular, I received a wide-array of wage and hour class action
27 experience performing the following types of tasks: drafting demurrers, motions to strike and/or dismiss;
28 removing actions from state court to federal court; drafting and responding to written discovery; drafting

1 and opposing discovery related motions; arguing discovery related motions; drafting motions to
2 consolidate related matters; interviewing putative class members and obtaining declarations in connection
3 with class certification; drafting oppositions to motions for class certification; conducting exposure
4 analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class
5 certification and potential damages resulting from such claims; drafting mediation briefs; serving as the
6 primary contact to in-house counsel; deposing named plaintiffs and putative class members; deposing
7 retained expert witnesses; and defending the depositions of corporate witnesses. I also was involved in
8 the negotiations and settlements of many large wage and hour class actions. In short, I played an integral
9 role in all aspects of litigation from the inception of a matter through and beyond class certification. I also
10 supervised the work of several associate attorneys who were staffed on the same wage and hour class
11 actions.

12 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
13 actions that I performed substantial work on while I was an Associate and/or Shareholder at Littler
14 Mendelson:

- 15 ► *Branch v. PM Realty Group, Inc.* Case No. BC575759, Los Angeles Superior
16 Court, County of Los Angeles, Honorable Ann Jones, presiding.
- 17 ► *Herrera v. Pharmavite, LLC*, Case No. BC599201, Los Angeles Superior Court,
18 County of Los Angeles, Honorable Judge Carolyn Kuhl, presiding.
- 19 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
20 States District Court, Central District of California, Honorable Judge Percy
21 Anderson, presiding.
- 22 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
23 States District Court, Central District of California, Honorable Judge Percy
24 Anderson, presiding.
- 25 ► *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
26 Superior Court, County of Los Angeles, Honorable Judge Jane Johnson, presiding.¹

27
28 ¹ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

- 1 ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
2 Superior Court, County of Orange, Honorable Judge Thierry Patrick Colaw,
3 presiding.
- 4 ▶ *Page v. Luxottica Retail North America, Inc.*, Case No. FCS041512, California
5 Superior Court, County of Solano, Honorable Judge Paul Berman, presiding.
- 6 ▶ *Parker v. FedEx National LTL, Inc.*, Case No. 11-CV-006380-DSF-FFM, United
7 States District Court, Central District of California, Honorable Judge Dale Fischer,
8 presiding.
- 9 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
10 States District Court, Central District of California, Honorable Judge Margaret
11 Morrow, presiding.
- 12 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
13 District Court, Central District of California, Honorable Judge Margaret Morrow,
14 presiding.
- 15 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
16 California Superior Court, County of San Diego, Honorable Judge Jeffrey B.
17 Barton, presiding.
- 18 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
19 Court, County of Santa Clara.
- 20 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior Court,
21 County of Los Angeles, Honorable Judge Terry Green, presiding.
- 22 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
23 Court, County of San Francisco.
- 24 ▶ *Robertson v. FedEx National LTL, Inc.*, Case No. 09-CV-05016-DSF-FFM, United
25 States District Court, Central District of California, Honorable Judge Dale Fischer,
26 presiding.
- 27
28

1 ► *Wittman v. FedEx National LTL, Inc.*, Case No. 09-CV-03663-DSF-FFM, United
2 States District Court, Central District of California, Honorable Judge Dale Fischer,
3 presiding.

4 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to start a law firm
5 with another former Littler Mendelson Shareholder, Scott M. Lidman, to represent employees with work-
6 related claims, including primarily wage and hour claims and almost exclusively on a class-action basis.
7 I am currently a Shareholder of Lidman Law, APC. Currently, over ninety percent (90%) of my practice
8 is dedicated exclusively to the prosecution of wage and hour class actions, and I am currently responsible
9 for prosecuting over sixty-five (65) wage and hour class actions filed in State courts throughout
10 California, with several of them having been removed to Federal courts. I believe that my professional
11 experience renders me more than qualified to serve as class counsel in this lawsuit involving claims of
12 underpaid overtime and minimum wages, meal and rest period violations, and derivative penalty claims.
13 Not only have I litigated dozens of wage and hour cases throughout my career involving similar claims,
14 including the wage and hour class actions identified above, I have litigated similar claims from both
15 plaintiff and defense perspectives. As a result, I am able to realistically assess and evaluate the facts and
16 legal arguments that can be made in pursuit and defense of similar wage and hour claims, as well as those
17 facts and arguments in support and in opposition to class certification. Consequently, I am able to
18 appreciate the significant risks, uncertainties, and delay involved in wage and hour class action litigation.

19 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No.
20 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
21 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
22 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-2017-
23 00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Cluster
24 presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412, California Superior Court,
25 County of San Bernardino, Honorable Judge David Cohn presiding; *Molina v. Mader News, Inc.*, Case
26 No. BC685960, California Superior Court, County of Los Angeles, Honorable Judge Yvette M.
27 Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case No. BC688326, California
28 Superior Court, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez*

1 v. *H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable
2 Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California
3 Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v.*
4 *Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside,
5 Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No.
6 BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley
7 presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court,
8 County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case
9 No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes
10 presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court,
11 County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers*
12 *Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of
13 Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case
14 No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson
15 presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California
16 Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al.*
17 *v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of
18 San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578,
19 California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v.*
20 *Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles,
21 Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*,
22 Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the
23 Honorable Judge Philip S. Gutierrez presiding.

24 9. As co-counsel for Plaintiff and the proposed Settlement Class, I have been intimately
25 involved in every aspect of this case from its inception through the present, and I believe that the proposed
26 Settlement is a favorable result for the Settlement Class under the circumstances presented.

27 10. On September 3, 2021, Plaintiff filed a putative class action complaint against Kelcourt
28 Plastics, Inc. (hereinafter “Kelcourt” or “Defendant”) in Orange County Superior Court. On November

19, 2021, Plaintiff filed a First Amended Complaint against Defendant. On May 15, 2023, to effectuate the terms of the Settlement, the Parties filed a joint stipulation for Plaintiff to file a Second Amended Class and Representative Action Complaint. Once Plaintiff receives a Court order granting Plaintiff leave to amend, he will file the Second Amended Complaint. Therefore, Plaintiff alleges that Kelcourt: failed to pay all overtime wages owed; (2) failed to provide all legally required meal periods; (3) failed to authorize and permit all legally required rest periods; (4) failed to provide accurate, itemized wage statements; (5) failed to pay all wages owed upon termination; (6) engaged in unlawful business practices; (7) is liable for civil penalties under the PAGA. A true and correct copy of Plaintiff's letters to the LWDA and Kelcourt are attached hereto as **Exhibit 1**.

11. In the instant action, the Parties have engaged in formal discovery. On November 12, 2021, Plaintiff served the following written discovery on Defendant: Form Interrogatories—Employment Law (Set One), Form Interrogatories—General (Set One), Requests for Production of Documents (Set One), Special Interrogatories (Set One), and Special Interrogatories (Set Two). On December 17, 2021, Defendant served its objections to Plaintiff's Special Interrogatories (Set One). On January 31, 2022, Defendant served its responses and objections to Plaintiff's Form Interrogatories—Employment Law (Set One), Form Interrogatories—General (Set One), Requests for Production of Documents (Set One), and Special Interrogatories (Set Two), and produced documents in response to Plaintiff's Requests for Production of Documents (Set One). On May 2, 2022, Defendant served further responses to Plaintiff's Form Interrogatories—Employment Law (Set One), and Requests for Production of Documents (Set One).

On November 24, 2021, Defendant served on Plaintiff Form Interrogatories—Employment Law (Set One) and Form Interrogatories—General (Set One). On January 31, 2022, Plaintiff served her responses and objections to Defendant's Form Interrogatories—Employment Law (Set One) and Form Interrogatories—General (Set One). On May 2, 2022, Plaintiff served further responses to Defendant's Form Interrogatories—Employment Law (Set One) and Form Interrogatories—General (Set One).

On April 13, 2022, Plaintiff served Requests for Production of Documents (Set Two), Form Interrogatories—General (Set Two), and Requests for Admission (Set One). On May 17, 2022, Defendant served responses to Plaintiff's Requests for Production of Documents (Set Two), Form Interrogatories—General (Set Two), and Requests for Admission (Set One).

1 On May 24, 2022, Plaintiff served Form Interrogatories—Employment Law (Set Two) and
2 Requests for Production of Documents (Set Three). On August 26, 2022, Defendant served responses to
3 Plaintiff's Form Interrogatories—Employment Law (Set Two) and Requests for Production of Documents
4 (Set Three).

5 The *Belaire-West* notice process has been completed. The contact information for putative class
6 members who did not opt out was provided to my office on or about April 28, 2022.

7 Then after agreeing to participate in mediation, Kelcourt informally produced the time records
8 and payroll data for Plaintiff and the putative class members, its wage and hour policies and other relevant
9 documents and information relevant to the claims alleged in advance of mediation. After the detailed
10 review of the payroll and time records and other documents and policies produced by Kelcourt, Class
11 Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of
12 Plaintiff's case.

13 12. On December 6, 2022, after research and analysis, a mediation was held with Jeffrey A.
14 Ross, a well-respected wage and hour class action mediator. During mediation, the Parties vigorously
15 debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal
16 basis for the claims and defenses. The Parties did not settle at mediation and continued to discussions
17 with the assistance of the mediator. Ultimately, the parties agreed in principle on a class-wide resolution.
18 In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of
19 Class and PAGA Action Settlement ("Settlement"). A true and correct copy of the Settlement is attached
20 hereto as **Exhibit 2**. The proposed Notice Packet documents, which consists of the Notice of Pendency
21 of Class Action and Proposed Settlement, Notice of Individual Settlement Award, Request for Exclusion
22 Form, and Objection Form, are attached as Exhibit A to the Settlement.

23 13. The monetary terms of the Settlement are summarized below:
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25
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Gross Settlement Amount (“GSA”): **\$2,250,000.00²**

Minus Court-approved attorneys’ fees (1/3 of GSA): \$750,000.00

Minus Court-approved, verified costs (up to): \$30,000.00

Minus Court-approved Class Representative Service Award (up to): \$10,000.00

Minus Settlement Administration Costs: \$11,000.00

Minus PAGA Civil Penalties: \$150,000.00

Net Settlement Amount (“NSA”): **\$1,299,000.00**

Defendant shall deposit the Gross Settlement Amount (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause if such increase is triggered and elected by Defendant) and Defendant’s share of all payroll taxes on the portion allocated as wages with the Settlement Administrator within (30) days after the Effective Date.³ See Settlement, ¶ 5.C.

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA Civil Penalties, the Settlement requires Kelcourt to pay a Net Settlement Amount (“NSA”) of at least \$1,299,000.00 to all Settlement Class members who do not timely opt out. This amount does not include the \$37,500.00 PAGA Amount to be paid to the Settlement Class members.

14. According to Kelcourt, there are approximately 350 total Settlement Class members defined as: All current and former non-exempt, hourly employees of Defendant Kelcourt Plastics, Inc.

² Defendant represents that there are an estimated 32,622 Workweeks during the Class Period. If the number of Workweeks worked by the Settlement Class Members during the Class Period is ten percent (10%) or greater than this figure (*i.e.*, if there are 35,884.20 or more Workweeks worked by the Class Members), Defendant agrees to, at its option, either: (1) increase the Gross Settlement Amount on a proportional basis (*i.e.*, if there was 12% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 2%); or (2) end the Class Period and PAGA Period, including the releases, on the first date on which the Workweeks worked by the Class Members is 35,884.20 or more. Defendant will notify Plaintiff’s counsel of its election by no later than fourteen (14) days of being notified by the Settlement Administrator that the Escalator Clause is triggered. As used herein, “Workweek” shall mean any week in which a Settlement Class Member worked for Defendant at least one (1) day, during the Class Period. See Settlement, ¶ 5.F.

³ This Settlement shall become effective on the “Effective Date” which is defined as the latter of: (a) the Court’s final approval of the Settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. See Settlement, ¶ 5.B.

1 who worked at any time in California during the Class Period, except for non-exempt, hourly employees
2 who both: (a) worked at Defendant's facility located in San Diego, California; and (b) signed a Separation
3 Agreement and General Release of All Claims in connection with the reductions in force at the San Diego
4 facility between 2017 and August 31, 2020. Thus, the average Individual Settlement Payment (assuming
5 all Settlement Class members worked the same length of time) is projected to be approximately **\$3,711.43,**
6 **which is exclusive of the PAGA Amount.**

7 The proposed PAGA Employees is defined as "all current and former non-exempt, hourly
8 employees of Defendant Kelcourt Plastics, Inc., who worked at any time during the PAGA Period." For
9 purposes of this Settlement Agreement, the "PAGA Period" shall mean the time period between
10 September 3, 2020 and March 11, 2023. There are approximately 190 PAGA Employees, which means
11 the average PAGA payment is about **\$197.36.**

12 15. Settlement Class Members' claims arise from Kelcourt's common, uniform policies and
13 practices that applied to Settlement Class members during the class period. Specifically, Plaintiff alleged
14 that Kelcourt's common and uniform policies and practices resulted in the following violations: (1)
15 failure to pay all overtime wages owed; (2) failure to provide all legally required meal periods; (3) failure
16 to authorize and permit all legally required rest periods; (4) failure to provide accurate, itemized wage
17 statements; (5) failure to pay all wages owed upon termination; (6) unlawful business practices; and (7)
18 liability for civil penalties under PAGA.

19 16. As described in the accompanying Motion for Preliminary Approval, Plaintiff alleges that
20 throughout the relevant time period, that she and the other non-exempt employees received shift premium
21 pay, meal period premium pay, and/or other forms of pay not excludable as a matter of law when
22 calculating an employee's regular rate ("Incentive/Shift Pay"). Plaintiff alleges that Kelcourt failed,
23 however, to include the Incentive/Shift Pay when calculating the regular rate of pay for purposes of paying
24 Plaintiff and the other Settlement Class Members' overtime wages. Accordingly, Plaintiff contends that
25 Kelcourt did not properly calculate the regular rate of pay for Plaintiff and the other Settlement Class
26 Members, thereby causing them to be underpaid for all their required overtime wages. Plaintiff calculated
27 Kelcourt's exposure for miscalculation of regular rate at \$104,595.

28 17. Kelcourt contends that Settlement Class members received all overtime wages to which

1 they were entitled. Kelcourt further counters that any meal period premiums paid to during the relevant
2 time period did not to be included in the regular rate of pay for overtime purposes. Accordingly, based
3 on these risks, Plaintiff discounted the maximum exposure of by 20% for the risk of non-certification,
4 and an additional 15% to account for Kelcourt's defenses on the merits to arrive at an estimated exposure
5 of \$71,124.60.

6 18. Plaintiff alleges that she and the Settlement Class Members were not provided with all
7 legally-compliant first meal periods beginning before the end of the fifth hour of work. Specifically,
8 Plaintiff alleges that Kelcourt prohibited its employees from leaving the work premises in violation of
9 California law. Moreover, as a result of Kelcourt's rounding policies and practices, at least for a portion
10 of the relevant time period, Plaintiff alleges that Kelcourt rounded Plaintiff's and the other non-exempt
11 employees' meal periods in violation of California law. Additionally, Plaintiff contends that Kelcourt
12 failed to provide second meal periods and that the timekeeping records will support Plaintiff's contentions
13 that meal periods were not provided during the relevant time period were over 10.0 hours. Accordingly,
14 Plaintiff calculated Kelcourt's liability on the meal period claim based on the following violations: (1) late
15 first lunch; (2) missed first meal period; (3) short first meal break; and (4) missed second meal break on
16 shifts over 10 hours is \$1,240,354.

17 19. Kelcourt counters that it has always maintained a lawful meal period policy and provided
18 non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant
19 meal periods reflected in employee timekeeping records were solely the result of employee choice, rather
20 than any policy or practice of Kelcourt. Kelcourt points out that it is only required to "provide" the
21 opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so.
22 Kelcourt also contends that it paid meal period premiums during the relevant time period. Additionally,
23 Kelcourt argues that it used meal period waivers for second meal periods. Finally, Kelcourt contends
24 Plaintiff's meal period claim is not suited for class certification, given that a number of Class Members
25 signed arbitration agreement and since individual inquiries would be required to assess which employees
26 took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons
27 why a particular employee took a non-compliant meal period or missed a meal period during a particular
28 shift. Accordingly, Plaintiff discounted the maximum exposure by 15% for the risk of non-certification,

1 and an additional 10% to account for Kelcourt's defenses on the merits to arrive at an estimated exposure
2 of \$948,870.81.

3 20. Plaintiff alleges that she and Settlement Class Members were also not authorized and
4 permitted to take all required rest periods due to Kelcourt's rest period policies and practices. Specifically,
5 Plaintiff alleges that in order to receive a paid rest period, Kelcourt prohibited its employees from leaving
6 the work premises. Thus, Plaintiff alleges that he and other non-exempt employees experienced at least
7 one rest period violation on every shift worked in excess of 3.5 hours, which was approximately 65,847
8 shifts. Therefore, Plaintiff calculated Kelcourt's maximum exposure for the alleged rest period violations
9 at approximately 1,324,275.00.

10 21. Kelcourt contends it has always maintained and enforced lawful rest period policies and
11 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
12 periods in compliance with California law. Kelcourt also argues that Plaintiff's rest period claim is
13 inherently unsuited for class treatment as it requires an individualized inquiry into whether each
14 Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which
15 would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiff discounted the
16 maximum exposure by 20% for the risk of non-certification, and an additional 15% to account for
17 Kelcourt's defenses on the merits to arrive at an estimated exposure of \$900,507.00.

18 22. Plaintiff further alleges that Kelcourt issued inaccurate wage statements in violation of
19 Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages
20 described above. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because
21 the wage statements issued to Settlement Class Members did not include all hours worked and the rate at
22 which they were being paid. There were approximately 3,730 wage statements issued during the relevant
23 time period. Therefore, Plaintiff calculated Kelcourt's maximum exposure for wage statement violations
24 at approximately \$367,050.

25 23. Kelcourt argues that its alleged wage statement violations could not be shown to be
26 "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed]
27 injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
28 imposition of penalties. As such, Plaintiff discounted the calculated exposure by 15% for a risk of non-

1 certification and an additional 10% for a risk of being unsuccessful on the merits, to arrive at an estimated
2 total of approximately \$280,793.25.

3 24. Plaintiff alleges that Kelcourt is also liable for waiting time penalties under Labor Code
4 section 203 as a result of its failure to pay all wages. Based on the data provided by Kelcourt, there were
5 approximately 173 Settlement Class Members who have separated their employment with Kelcourt
6 during the relevant time period who could be entitled to waiting time penalties. Therefore, Plaintiff
7 calculated Kelcourt's maximum exposure for waiting time penalties at approximately \$692,138 (173
8 former employees x \$16.67 [average regular rate] x 30 days x 8 hours/day).

9 25. Kelcourt asserts it has strong defenses to the waiting time claim because there exist good-
10 faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Accordingly, Plaintiff
11 discounted the maximum exposure by 10% for the risk of non-certification, and an additional 20% to
12 account for Kelcourt's defenses on the merits, to arrive at an estimated exposure of approximately
13 \$498,339.36.

14 26. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor
15 Code violations. Plaintiff calculated Kelcourt's maximum exposure at \$2,840,000 based on each unique
16 Labor code violation for failure to pay all overtime wages due, meal period violations, rest period
17 violations, and wage statement violations.

18 27. Kelcourt argues that Plaintiff's PAGA claim will fail for the same reasons that his
19 underlying claims will fail. Kelcourt also maintains that, given its good faith defenses, this Court would
20 exercise its discretion to substantially reduce any PAGA penalties if it were to find Kelcourt liable for any
21 of Plaintiff's claims. Therefore, Plaintiff discounted the maximum exposure figure by 10% for a risk of
22 being unsuccessful on the merits, and an additional 15% to account for the possibility of this Court reducing
23 penalties, to arrive at an estimated exposure of \$2,172,600.

24 28. Using these estimated figures for each of the claims described above, Plaintiff predicted the
25 realistic total recovery for the Settlement Class would be approximately \$4,872,235.02. The proposed
26 settlement of \$2,250,000.00 therefore represents approximately 46% of the reasonably forecasted recovery
27 for the Settlement Class. Preliminary approval is appropriate as the settlement will provide tangible
28 monetary relief to Settlement Class members, and will still provide an average recovery to Settlement

1 Class members of over \$3,700.00.

2 29. Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA,
3 which is estimated to be \$750,000.00, and up to \$30,000.00 in verified costs reimbursement. Plaintiff
4 submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
5 consuming litigation on a purely contingent fee basis. My office has incurred substantial attorney fees
6 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, propounding
7 multiple sets of written discovery, responding to written discovery, participating in the Belaire-West opt
8 out notice mailing, opposing a Demurrer, reviewing Kelcourt's documents and policies, analyzing
9 Plaintiff's timekeeping data and payroll records, preparing for and attending mediation, negotiating and
10 revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. I also
11 anticipate my office incurring future attorneys' fees in overseeing the Notice process and fielding
12 questions from Settlement Class members, preparing the final approval papers and attending the Final
13 Approval hearing.

14 30. Plaintiff has provided written approval of the split of attorneys' fees in this action.

15 31. Plaintiff will seek a service award of \$10,000.00 at the time of seeking final approval, and
16 I believe this is reasonable given Plaintiff's efforts in this case and the risks she undertook on behalf of
17 the Settlement Class members, including the risk that she could be liable for Kelcourt's costs if this case
18 was unsuccessful. Plaintiff was a current employee at the time the lawsuit was filed and Plaintiff's
19 husband is currently employed by Kelcourt. Plaintiff was integral in the prosecution of this action, by,
20 among other things, providing substantial factual information and documents to Class Counsel,
21 participated in meetings with Class Counsel to discuss the claims and theories at issue in the litigation,
22 and otherwise actively participating in the prosecution of their claims.

23 32. Although the parties engaged in formal and informal discovery throughout this action, the
24 parties still had significant discovery to complete in formal litigation had the matter not settled.
25 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake
26 of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. Even if
27 the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably
28

1 more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. This
2 Settlement avoids those risks and the accompanying expense.

3 33. As of the date of the filing of the instant Motion, I am not aware of any class,
4 representative or other collective action in any other court in this or any other jurisdiction that asserts
5 claims similar to those asserted in this action on behalf of a class or group of individuals some or all of
6 whom would also be members of the defined settlement class. I have made reasonable inquiry of other
7 members of my firm and my co-counsel's firm, Haines Law Group, APC, regarding whether they are
8 aware of any class, representative or other collective action in any other court in this or any other
9 jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of
10 individuals some or all of whom would also be members of the defined class.

11 34. After this Motion is filed, I will cause a copy of it to be submitted to the LWDA and will
12 file a supplemental proof of service prior to the hearing.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing is
14 true and correct.

15 Executed on May 15, 2023 at El Segundo, California.

16
17 
18 Elizabeth Nguyen

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

September 3, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Kelcourt Plastics, Inc.
1000 Calle Recondo
San Clemente, CA 92673

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Kelcourt Plastics, Inc.
c/o C T Corporation System, Agent for Service of Process
300 N. Brand Blvd.
Glendale, CA 91203

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Kelcourt Plastics, Inc.
2500 Northwinds Pkwy 472
Alpharetta, GA 30009

Re: *Enedina Sanchez de Segura v. Kelcourt Plastics, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Enedina Sanchez de Segura in claims arising from her employment with Kelcourt Plastics, Inc., a California corporation (“Defendant”). Ms. Sanchez de Segura is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Ms. Sanchez de Segura intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all current and former hourly employees who worked in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Ms. Sanchez de Segura worked for Defendant as a “Packer” between approximately 2016 and approximately March 2021, at which time she commenced a leave of absence.

As a Packer, Ms. Sanchez de Segura's job duties included inspecting and preparing items for shipment. Ms. Sanchez de Segura regularly worked 12-hour shifts Monday, Tuesday, Friday, Saturday and Sunday, without being provided with all meal periods and without being authorized and permitted to take all rest periods as required under California law.

While working for Defendant, Ms. Sanchez de Segura and other Aggrieved Employees routinely worked in excess of eight hours per workday, in excess of 12 hours per workday and/or more than 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times and/or equal to two times their regular rate of pay for working overtime hours. Specifically, Ms. Sanchez de Segura received shift premium pay and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive/Shift Pay"). Despite Defendant's payment of Incentive/Shift Pay to Ms. Sanchez de Segura and other Aggrieved Employees, Defendant failed to include all forms of Incentive/Shift Pay when calculating Ms. Sanchez de Segura's and other Aggrieved Employees' regular rate of pay, thereby causing them to be underpaid all of their required overtime wages. Rather, Ms. Sanchez de Segura was an amount less than one and a half times (or two times in the case of double-time hours) her regular rate of pay, as Defendant failed to include the various forms of Incentive/Shift Pay earned during corresponding time periods that were required to be included in the regular rate of pay. As a result of Defendant policy and/or practice that fails to compensate for all hours worked at the correct overtime rate and/or double overtime rate, Ms. Sanchez de Segura and other Aggrieved Employees. were deprived all required overtime wages earned.

While working for Defendant, Ms. Sanchez de Segura was not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide second meal periods when Ms. Sanchez de Segura and other Aggrieved Employees worked in excess of 10.0 hours and/or in excess of 12.0 hours. Although Ms. Sanchez de Segura was not provided with all legally-compliant meal periods to which she was entitled, Defendant failed to compensate Ms. Sanchez de Segura with the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the relevant period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Ms. Sanchez de Segura and other Aggrieved Employees.

Ms. Sanchez de Segura was also not authorized and permitted to take all required rest periods due to Defendant's rest period policies/practices. Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Ms. Sanchez de Segura and other Aggrieved Employees were unable to take all required duty-free rest periods when they worked 3.5 hours or more on a shift, and were frequently not authorized or permitted to take third rest breaks, in violation of California law. Although Ms. Sanchez de Segura was not provided with all legally-compliant rest periods to which she was entitled, Defendant failed to compensate Ms. Sanchez de Segura with the required rest period premium for each workday in which she

experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the relevant period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to Ms. Sanchez de Segura and other Aggrieved Employees.

As a result of Defendant's unlawful policies or practices, Defendant failed to include all required remuneration in the regular rate of pay (including, without limitation, shift premium pay), all of which resulted in a failure to pay all overtime wages, Defendant failed to pay for all time worked at the correct overtime rate, failed to provide legally compliant meal periods, failed to permit and authorize rest periods, failed to pay all meal period or rest period premiums, Defendant maintained inaccurate payroll record, and issued inaccurate wage statements to Ms. Sanchez de Segura and other Aggrieved Employees.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendant was required to pay Ms. Sanchez de Segura and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, Ms. Sanchez de Segura received shift premium pay and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive/Shift Pay"). Despite Defendant's payment of Incentive/Shift Pay to Ms. Sanchez de Segura and other Aggrieved Employees, Defendant failed to include all forms of Incentive/Shift Pay when calculating their regular rate of pay, thereby causing them to be underpaid all of their required overtime wages. Rather, Ms. Sanchez de Segura was an amount less than one and a half times (or two times in the case of double-time hours) her regular rate of pay, as Defendant failed to include the various forms of Incentive/Shift Pay earned during corresponding time periods that were required to be included in the regular rate of pay. As a result of these policies/practices, Ms. Sanchez de Segura and other Aggrieved Employees were not compensated for all overtime wages on occasions when they worked over eight hours in a workday and/or 40 hours in a workweek.

Meal Period Violations

As alleged above, Defendant failed to provide Ms. Sanchez de Segura and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. Throughout Ms. Sanchez de Segura's employment with Defendant, Ms. Sanchez de Segura and other Aggrieved Employees were not provided all required meal periods due to Defendant's meal period policies/practices which fail to due to Defendant's meal period policies/practices which fail to provide second meal periods when Ms. Sanchez de Segura and other Aggrieved Employees worked in excess of 10.0 hours and/or in excess of 12.0 hours. As a result, Ms. Sanchez de Segura and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Ms. Sanchez de Segura and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Ms. Sanchez de Segura and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Ms. Sanchez de Segura and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As described above, Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Ms. Sanchez de Segura was unable to take all required duty-free rest periods when she worked 3.5 hours or more on a shift and was frequently not authorized or permitted to take third rest breaks, in violation of California law. As a result, Ms. Sanchez de Segura and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Ms. Sanchez de Segura and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, accurate meal and rest period premiums, rates of pay, hours worked at each rate of pay, and total hours worked, in violation of Labor Code § 226 *et seq.* Defendant's failure to

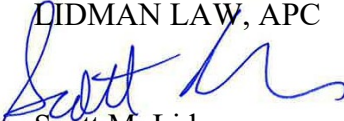
furnish Ms. Sanchez de Segura and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

As an "aggrieved employee," Ms. Sanchez de Segura will initiate a civil action on behalf of herself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Sanchez de Segura's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Sanchez de Segura and other Aggrieved Employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Sanchez de Segura and other Aggrieved Employees;
- c) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Sanchez de Segura and other Aggrieved Employees;
- d) Defendant violated Labor Code § 226 by failing to furnish Ms. Sanchez de Segura and other Aggrieved Employees with accurate and compliant itemized wage statements;
- e) Defendant violated Labor Code § 204 by failing to pay Ms. Sanchez de Segura and other Aggrieved Employees all earned wages at least twice during each calendar month;
- f) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Sanchez de Segura and other Aggrieved Employees; and

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC

Scott M. Lidman

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

March 9, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Peter John Veysey

john.veysey@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP

1 Financial Ctr, Fl 35

Boston, MA 02111-2641

Attorneys for Defendant Kelcourt Plastics, Inc.

Re: *Enedina Sanchez de Segura v. Kelcourt Plastics, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Enedina Sanchez de Segura in claims arising from her employment with Kelcourt Plastics, Inc., a California corporation (“Defendant”). This letter is to supplement the letter sent by my office on behalf of Enedina Sanchez de Segura on September 3, 2021 (the “Initial PAGA Letter”), regarding the Labor Code violations committed by Defendant against Ms. Sanchez de Segura and similarly aggrieved employees. A copy of the Initial PAGA Letter is attached and incorporated herein by reference. Plaintiff filed suit relating to those claims in the Superior Court of Orange County on September 3, 2021. That case is pending.

Ms. Sanchez de Segura is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Ms. Sanchez de Segura intends to amend her lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all current and former hourly employees who worked in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

In addition to the Labor Code violations identified in the Initial PAGA Letter, Ms. Sanchez de Segura alleges Defendant is also liable for the following:

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Ms. Sanchez de Segura and other Aggrieved Employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Ms. Sanchez de Segura and other aggrieved employees was willful and, consequently, entitles Ms. Sanchez de Segura and other similarly aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendant failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Ms. Sanchez de Segura will initiate a civil action on behalf of herself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Sanchez de Segura's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Sanchez de Segura and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

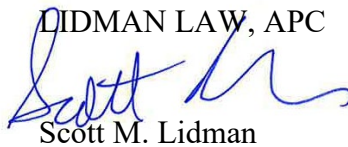
LIDMAN LAW, APC

Scott M. Lidman

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

September 3, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Kelcourt Plastics, Inc.

1000 Calle Recondo

San Clemente, CA 92673

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Kelcourt Plastics, Inc.

c/o C T Corporation System, Agent for Service of Process

300 N. Brand Blvd.

Glendale, CA 91203

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Kelcourt Plastics, Inc.

2500 Northwinds Pkwy 472

Alpharetta, GA 30009

Re: *Enedina Sanchez de Segura v. Kelcourt Plastics, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Enedina Sanchez de Segura in claims arising from her employment with Kelcourt Plastics, Inc., a California corporation (“Defendant”). Ms. Sanchez de Segura is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Ms. Sanchez de Segura intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all current and former hourly employees who worked in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Ms. Sanchez de Segura worked for Defendant as a “Packer” between approximately 2016 and approximately March 2021, at which time she commenced a leave of absence.

As a Packer, Ms. Sanchez de Segura's job duties included inspecting and preparing items for shipment. Ms. Sanchez de Segura regularly worked 12-hour shifts Monday, Tuesday, Friday, Saturday and Sunday, without being provided with all meal periods and without being authorized and permitted to take all rest periods as required under California law.

While working for Defendant, Ms. Sanchez de Segura and other Aggrieved Employees routinely worked in excess of eight hours per workday, in excess of 12 hours per workday and/or more than 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times and/or equal to two times their regular rate of pay for working overtime hours. Specifically, Ms. Sanchez de Segura received shift premium pay and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive/Shift Pay"). Despite Defendant's payment of Incentive/Shift Pay to Ms. Sanchez de Segura and other Aggrieved Employees, Defendant failed to include all forms of Incentive/Shift Pay when calculating Ms. Sanchez de Segura's and other Aggrieved Employees' regular rate of pay, thereby causing them to be underpaid all of their required overtime wages. Rather, Ms. Sanchez de Segura was an amount less than one and a half times (or two times in the case of double-time hours) her regular rate of pay, as Defendant failed to include the various forms of Incentive/Shift Pay earned during corresponding time periods that were required to be included in the regular rate of pay. As a result of Defendant policy and/or practice that fails to compensate for all hours worked at the correct overtime rate and/or double overtime rate, Ms. Sanchez de Segura and other Aggrieved Employees. were deprived all required overtime wages earned.

While working for Defendant, Ms. Sanchez de Segura was not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide second meal periods when Ms. Sanchez de Segura and other Aggrieved Employees worked in excess of 10.0 hours and/or in excess of 12.0 hours. Although Ms. Sanchez de Segura was not provided with all legally-compliant meal periods to which she was entitled, Defendant failed to compensate Ms. Sanchez de Segura with the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the relevant period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Ms. Sanchez de Segura and other Aggrieved Employees.

Ms. Sanchez de Segura was also not authorized and permitted to take all required rest periods due to Defendant's rest period policies/practices. Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Ms. Sanchez de Segura and other Aggrieved Employees were unable to take all required duty-free rest periods when they worked 3.5 hours or more on a shift, and were frequently not authorized or permitted to take third rest breaks, in violation of California law. Although Ms. Sanchez de Segura was not provided with all legally-compliant rest periods to which she was entitled, Defendant failed to compensate Ms. Sanchez de Segura with the required rest period premium for each workday in which she

experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the relevant period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to Ms. Sanchez de Segura and other Aggrieved Employees.

As a result of Defendant's unlawful policies or practices, Defendant failed to include all required remuneration in the regular rate of pay (including, without limitation, shift premium pay), all of which resulted in a failure to pay all overtime wages, Defendant failed to pay for all time worked at the correct overtime rate, failed to provide legally compliant meal periods, failed to permit and authorize rest periods, failed to pay all meal period or rest period premiums, Defendant maintained inaccurate payroll record, and issued inaccurate wage statements to Ms. Sanchez de Segura and other Aggrieved Employees.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendant was required to pay Ms. Sanchez de Segura and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, Ms. Sanchez de Segura received shift premium pay and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive/Shift Pay"). Despite Defendant's payment of Incentive/Shift Pay to Ms. Sanchez de Segura and other Aggrieved Employees, Defendant failed to include all forms of Incentive/Shift Pay when calculating their regular rate of pay, thereby causing them to be underpaid all of their required overtime wages. Rather, Ms. Sanchez de Segura was an amount less than one and a half times (or two times in the case of double-time hours) her regular rate of pay, as Defendant failed to include the various forms of Incentive/Shift Pay earned during corresponding time periods that were required to be included in the regular rate of pay. As a result of these policies/practices, Ms. Sanchez de Segura and other Aggrieved Employees were not compensated for all overtime wages on occasions when they worked over eight hours in a workday and/or 40 hours in a workweek.

Meal Period Violations

As alleged above, Defendant failed to provide Ms. Sanchez de Segura and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. Throughout Ms. Sanchez de Segura's employment with Defendant, Ms. Sanchez de Segura and other Aggrieved Employees were not provided all required meal periods due to Defendant's meal period policies/practices which fail to due to Defendant's meal period policies/practices which fail to provide second meal periods when Ms. Sanchez de Segura and other Aggrieved Employees worked in excess of 10.0 hours and/or in excess of 12.0 hours. As a result, Ms. Sanchez de Segura and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Ms. Sanchez de Segura and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Ms. Sanchez de Segura and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Ms. Sanchez de Segura and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As described above, Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Ms. Sanchez de Segura was unable to take all required duty-free rest periods when she worked 3.5 hours or more on a shift and was frequently not authorized or permitted to take third rest breaks, in violation of California law. As a result, Ms. Sanchez de Segura and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Ms. Sanchez de Segura and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, accurate meal and rest period premiums, rates of pay, hours worked at each rate of pay, and total hours worked, in violation of Labor Code § 226 *et seq.* Defendant's failure to

furnish Ms. Sanchez de Segura and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

As an "aggrieved employee," Ms. Sanchez de Segura will initiate a civil action on behalf of herself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Sanchez de Segura's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Sanchez de Segura and other Aggrieved Employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Sanchez de Segura and other Aggrieved Employees;
- c) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Sanchez de Segura and other Aggrieved Employees;
- d) Defendant violated Labor Code § 226 by failing to furnish Ms. Sanchez de Segura and other Aggrieved Employees with accurate and compliant itemized wage statements;
- e) Defendant violated Labor Code § 204 by failing to pay Ms. Sanchez de Segura and other Aggrieved Employees all earned wages at least twice during each calendar month;
- f) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Sanchez de Segura and other Aggrieved Employees; and

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

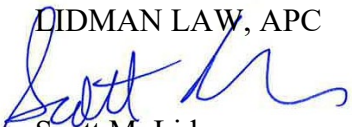
LIDMAN LAW, APC

Scott M. Lidman

EXHIBIT 2

EXHIBIT 2

STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT

This Stipulation of Class and PAGA Action Settlement (this “Settlement Agreement” or the “Settlement”) is reached by and between Plaintiff Enedina Sanchez de Segura (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Kelcourt Plastics, Inc. (“Kelcourt” or “Defendant”), on the other hand. Plaintiff and Kelcourt are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines of Haines Law Group, APC and Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC (collectively, “Class Counsel”). Kelcourt is represented by P. John Veysey of Nelson Mullins Riley & Scarborough LLP.

On September 3, 2021, Plaintiff filed a Complaint against Defendant in Orange County Superior Court, in the matter entitled *Enedina Sanchez de Segura v. Kelcourt Plastics, Inc.*, Case No. 30-2021-01219806-CU-OE-CXC (the “Action”). On November 19, 2021, Plaintiff filed a First Amended Complaint alleging that Kelcourt: (i) failed to pay all overtime wages owed; (ii) failed to provide meal periods, or premium pay for non-compliant meal periods; (iii) failed to authorize and permit rest periods, or premium pay for non-compliant rest periods; (iv) failed to issue accurate, itemized wage statements; (v) engaged in unfair business practices premised on the facts, claims, causes of action or legal theories described above; and (vi) is liable for civil penalties pursuant to the Labor Code Private Attorneys General Act, Cal. Labor Code § 2698 *et seq.* (“PAGA”) as a result of the aforementioned alleged violations of the California Labor Code.

Kelcourt denies Plaintiff’s claims.

Given the uncertainty and cost of litigation, Plaintiff and Kelcourt wish to settle the Action and the Released Class Claims (defined below), both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Kelcourt agree as follows:

1. **Second Amended Complaint.** Within thirty (30) days of the full execution of this Stipulation of Class and PAGA Settlement, the Parties shall enter into a Joint Stipulation, subject to Court approval, which shall permit Plaintiff to file an amended complaint (the “Operative Complaint” or the “Second Amended Complaint”) to add class allegations for the failure to timely pay all wages due upon separation of employment and to add, after the PAGA exhaustion period has expired, an allegation that the PAGA cause of action is also based on the alleged failure to timely pay all wages due upon separation of employment.

2. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Kelcourt stipulate to the certification of the following Settlement Class:

All current and former non-exempt, hourly employees of Defendant Kelcourt Plastics, Inc. who worked at any time in California during the Class Period, except for non-exempt, hourly employees who both: (a) worked at Defendant’s facility located in San Diego, California; and (b) signed a Separation Agreement and

General Release of All Claims in connection with the reductions in force at the San Diego facility between 2017 and August 31, 2020.

These employees shall be referred to collectively as “Settlement Class Members” and individually, each a “Settlement Class Member.” For purposes of this Settlement Agreement, the “Class Period” is defined as September 3, 2017 through March 11, 2023.

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

3. **PAGA Employees.** For the purposes of this Settlement Agreement only, Plaintiff and Kelcourt stipulate to the following definition of PAGA Employees:

All current and former non-exempt, hourly employees of Defendant Kelcourt Plastics, Inc., who worked at any time during the PAGA Period.

For purposes of this Settlement Agreement, the “PAGA Period” shall mean the time period between September 3, 2020 and March 11, 2023.

4. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion as set forth below) will fully and forever completely discharge Kelcourt, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively, the “Released Parties”), as follows:

- A. Settlement Class Members’ Release: Settlement Class Members and Plaintiff will release any and all claims, demands, rights, liabilities and causes of action that were pled in the Complaints in the Action (including the contemplated Second Amended Complaint adding a claim under Labor Code section 203), that arose during the Class Period with respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to provide meal periods, or premium pay for non-compliant meal periods; (c) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (d) failure to issue accurate, itemized wage statements; and (e) failure to timely pay all wages due upon separation of employment; and (f) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the “Released Class Claims”). The time period for the release of the Released Class Claims against the Released Parties shall be the same time period as the Class Period.

- B. PAGA Release: PAGA Employees, including Plaintiff and those who timely and properly submit a Request for Exclusion as set forth below, will release and forever discharge all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act of 2004 against the Released Parties based on (and as asserted in the Operative Complaint and the letters to the LWDA dated September 3, 2021 and March 9, 2023, such letters, the “PAGA Notices”): (a) failure to pay all overtime wages owed; (b) failure to provide meal periods, or premium pay for non-compliant meal periods; (c) failure to authorize and permit rest periods, or provide premium pay for non-compliant rest periods; (d) failure to issue accurate, itemized wage statements; and (e) failure to timely pay all wages due upon separation of employment (collectively, the “PAGA Released Claim”) that arose during the PAGA Period. The time period for the PAGA Release against the Released Parties shall be the same time period as the PAGA Period.
- C. General Release by Plaintiff: Plaintiff, as of the Effective Date of the Releases, makes the additional following general release of all claims, known or unknown. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all claims, demands, rights, liabilities, and causes of action under PAGA that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint in this Action and/or Plaintiff’s PAGA Notices (“Plaintiff’s Release.”). Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

With respect to this general release, Plaintiff stipulates and agrees that, upon the Effective Date of the Releases, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Notwithstanding the above or anything else in this Settlement, Plaintiff's waiver and release in this Settlement Agreement does not apply to: (i) those rights as a matter of law that cannot be waived, including, but not limited to, workers' compensation claims; (ii) rights or claims arising out of this Settlement Agreement. The Settlement Agreement in no way affects Plaintiff's entitlement and/or benefits to be received by Plaintiff in workers' compensation pursuant to the jurisdiction of workers' compensation. Plaintiff also agrees to not request an exclusion from this Settlement. Any class representative service award (as described in Section 5(d)(3) below) approved by the Court will result in the issuance of a Form 1099 to the class representative, who shall assume full responsibility and liability for the payment of taxes due on such award.

- D. The releases identified herein shall become effective on the date on which Defendant fully funds the Gross Settlement Amount and the employer's share of payroll taxes (the "Effective Date of the Releases"). Upon the Effective Date of the Releases, all Settlement Class Members shall be deemed to have, and by operation of Judgment shall have, released, waived and relinquished the Released Class Claims.

5. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a "Gross Settlement Amount" of Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement. All settlement administration costs shall be paid from the Gross Settlement Amount.
- B. This Settlement shall become effective on the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the Settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.
- C. Defendant shall deposit the Gross Settlement Amount (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause if such increase is triggered and elected by Defendant pursuant to Section 5(F), below) and Defendant's share of all payroll taxes on the portion allocated as wages with the Settlement Administrator within (30) days after the Effective Date.
- D. This is a **non-reversionary** settlement. The Gross Settlement Amount includes:
 - (1) All payments to the Settlement Class Members;

- (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Eleven Thousand Dollars and Zero Cents (\$11,000.00);
 - (3) An amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) for Plaintiff's Class Representative Service Award, in recognition of her contributions to the Action, and her service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke this Settlement Agreement, and this Settlement shall remain binding;
 - (4) Up to one-third of the Gross Settlement Amount (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause) in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Thirty Thousand Dollars and Zero Cents (\$30,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
 - (5) One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) of the Gross Settlement Amount has been set aside by the Parties as "PAGA Civil Penalties". Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or One Hundred Twelve Thousand Five Hundred Dollars and Zero Cents (\$112,500.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), will be payable to PAGA Employees as the "PAGA Amount," as described below.
- E. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount and is due within (30) days after the Effective Date.
- F. **Escalator Clause.** Defendant represents that there are an estimated 32,622 Workweeks during the Class Period. If the number of Workweeks worked by the Settlement Class Members during the Class Period is ten percent (10%) or greater than this figure (*i.e.*, if there are 35,884.20 or more Workweeks worked by the Class Members), Defendant agrees to, at its option, either: (1) increase the Gross Settlement Amount on a proportional basis (*i.e.*, if there was 12% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 2%); or (2) end the Class Period and PAGA Period, including the releases, on the first date on which the Workweeks worked

by the Class Members is 35,884.20 or more. Defendant will notify Plaintiff's counsel of its election by no later than fourteen (14) days of being notified by the Settlement Administrator that the Escalator Clause is triggered. As used herein, "Workweek" shall mean any week in which a Settlement Class Member worked for Defendant at least one (1) day, during the Class Period.

6. **No Undo Publicity.** Except as required to obtain preliminary or final approval in this case or to carry out their duties as the Class Representative or Class Counsel, Plaintiff and Class Counsel agree not to publicize the amount or other terms of this settlement to any person. Nothing herein will restrict Class Counsel from indicating publicly available information regarding the settlement in future judicial submissions regarding Class Counsel's qualifications and experience.

7. **Payments to the Settlement Class.** Settlement Class Members are not required to submit a claim form to receive a payment (the "Settlement Award") from the Net Settlement Amount (as defined below). Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative Service Award, the Settlement Administrator's fees and expenses for administration, and the amount designated as PAGA Civil Penalties. The remaining amount shall be known as the "Net Settlement Amount."
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class Member's Settlement Award based on the following formula:
 - i. Each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of Workweeks worked during the Class Period, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all Settlement Class Members who worked during the Class Period. As used herein, "Workweek" shall mean any week during which a Settlement Class Member worked for Defendant at least one (1) day, during the Class Period.
 - b. **PAGA Amount:** In addition, Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked during the PAGA Period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. As used herein "pay period" shall mean any payroll cycle during which

a Settlement Class Member worked for Defendant at least one (1) day, during the Class Period.

- C. Within ten (10) calendar days following Kelcourt fully funding the Gross Settlement Amount and required employer-side payroll taxes with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class Members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Kelcourt's counsel.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Seventy-Five percent (75%) as penalties and interest; and Twenty-Five percent (25%) as wages. All PAGA penalties shall be designated as 100% penalties and reported on an IRS Form 1099. If an PAGA Employee submits a Request for Exclusion, the PAGA Employee's Settlement Award shall be designated as one hundred percent (100%) penalties and reported on an IRS Form 1099. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class Member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any Settlement Award returned to the Settlement Administrator as non-delivered on or before the 180-day deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within 5 business days of receiving the returned Settlement Payment.

- E. Any funds payable to Settlement Class Members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member.

- F. Neither Plaintiff nor Kelcourt shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

8. **Attorneys' Fees and Costs.** Kelcourt will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount (including one-third of any increase of the Gross Settlement Amount pursuant to the Escalator Clauses above if triggered and such increase is elected by Defendant); the award of attorneys' fees is currently estimated to be Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

9. **Class Representative Service Award.** Kelcourt will not object to a request for a Class Representative Service Award up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff for her time and risk in prosecuting this case, and her service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Settlement Class Member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding.

10. **Settlement Administrator.** Kelcourt agrees to the appointment of Phoenix Settlement Administrators as the Settlement Administrator. Defendant will not object to Plaintiff's request to pay the Settlement Administrator Eleven Thousand Dollars and Zero Cents (\$11,000.00) from the Gross Settlement Amount for its services. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Kelcourt's share of taxes payable on the wages, which shall be paid by Kelcourt separate and apart from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class Members.

11. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;

- B. Appointing Paul K. Haines of Haines Law Group, APC and Scott M. Lidman, Milan Moore and Elizabeth Nguyen of Lidman Law, APC as Class Counsel;
- C. Appointing Enedina Sanchez de Segura as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Class and PAGA Settlement, Notice of Individual Settlement Award, Request for Exclusion Form, and Objection Form, drafts of which are attached collectively hereto as **Exhibit A**), and directing the mailing of same in both Spanish and English; and
- G. Scheduling a Final Approval hearing.

12. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within twenty (20) days after entry of an order preliminarily approving this Settlement Agreement, Kelcourt will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of employment and/or sufficient information for the Settlement Administrator to determine the number of Workweeks for each Settlement Class Member and agrees to make best efforts to provide this information in excel format (collectively referred to as the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class Member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class Member; and (iv) mail a Notice Packet in both English and Spanish to each Settlement Class Member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class Member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).

- i. The Notice Packet shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Notice Packet shall state that Settlement Class Members who submit a Request for Exclusion by the Response Deadline shall remain a PAGA Employee, bound by the PAGA Release, and receive a portion of the PAGA Amount. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class Member; (2) contain a statement that the Settlement Class Member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. Defendant shall retain the right, in the exercise of its sole discretion, to nullify this Settlement in the event that more than ten percent (10%) of the Class Members submit a timely and valid Request for Exclusion. Defendant must provide written notice to Class Counsel of its withdrawal within fifteen (15) calendar days of the Response Deadline. If Defendant exercises this right, it shall be solely responsible for the costs incurred for settlement administration up to the date of nullification.
- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Kelcourt's counsel) or by appearing at the Final Fairness Hearing to object orally. Kelcourt's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class Member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class Member for purposes of the objection; (2) a concise statement of the objection, including the factual basis for it; and (3) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to

the Settlement by appearing at the Final Approval Hearing irrespective of whether they submitted any written objections.

- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class Member shall disclose the amount of the Settlement Class Member's estimated Settlement Award, including the Settlement Class Member's number of workweeks worked during the Class Period. Settlement Class Members will have the opportunity, should they disagree with Kelcourt's records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class Member and the Parties, unless the Court determines otherwise.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class Member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member. Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class Member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, the Settlement Administrator shall continue to locate an updated address up to and including the Response Deadline to re-mail the Notice Packet. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Kelcourt's Counsel to provide notice of the proposed settlement.

13. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Service Award, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769 and posting notice of the judgment on a static website created and maintained by the Settlement Administrator.

14. **No Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Kelcourt and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the Settlement Class or any Settlement Class Member has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement.

The Parties understand and agree that this Settlement Agreement is the result of a good faith compromise of disputed claims, and no part of this Settlement Agreement, or any conduct or written or oral statements made in connection with this Settlement Agreement, whether or not the settlement is finally approved and/or consummated, or the negotiations leading to the Settlement Agreement, or any document filed or exchanged in support thereof, should be construed as an admission or concession of any kind by Defendant or of any of the Released Parties. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

15. **Legal Developments.** The Parties agree that Plaintiff will submit to the Court a motion for preliminary approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Claims.

16. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

17. **Attorneys' Fees.** In the event of any dispute arising out of the interpretation, performance, or breach of any provision of this Settlement Agreement, the prevailing party in such dispute(s) shall be entitled to recover her and/or its reasonable attorneys' fees and costs incurred arising from such dispute. Both Parties agree that the forum for such disputes shall be the Court in which this

Action is pending. This provision only applies to the Parties identified in this Settlement Agreement and does not apply to the unidentified Settlement Class Members or PAGA Employees.

18. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Peter John Veysey of Nelson Mullins Riley & Scarborough LLP, 1 Financial Ctr, Fl 35, Boston, MA 02111-2641;
john.veysey@nelsonmullins.com

if to Plaintiff: Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, 2155 Campus Drive, Suite 150, El Segundo, California 90245; slidman@lidmanlaw.com and enguyen@lidmanlaw.com

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245;
phaines@haineslawgroup.com

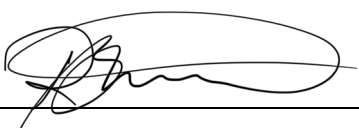
19. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

20. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

21. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

22. **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement pursuant to California Code of Civil Procedure section 664.6 for purposes of: (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administrative matters, and (iii) addressing such post-judgment matters as are permitted by law.

DATED: DEFENDANT KELCOURT PLASTICS, INC.

By:  _____

Its: Rob Bonatakis, CFO

4-25-2023
DATED:

PLAINTIFF ENEDINA SANCHEZ DE SEGURA

By: Enedina Segura
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

NELSON MULLINS RILEY & SCARBOROUGH
LLP

By: _____
P. John Veysey
Robert O. Sheridan
Christopher J. Eby
Attorneys for Defendant KELCOURT
PLASTICS, INC.

DATED:

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff ENEDINA SANCHEZ
DE SEGURA

DATED:

LIDMAN LAW, APC

By: _____
Scott M. Lidman
Attorneys for Plaintiff ENEDINA SANCHEZ
DE SEGURA

DATED:

PLAINTIFF ENEDINA SANCHEZ DE SEGURA

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: April 24, 2023

NELSON MULLINS RILEY & SCARBOROUGH
LLP

By: _____
P. John Veysey
Robert O. Sheridan
Christopher J. Eby
Attorneys for Defendant KELCOURT
PLASTICS, INC.

DATED:

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff ENEDINA SANCHEZ
DE SEGURA

DATED:

LIDMAN LAW, APC

By: _____
Scott M. Lidman
Attorneys for Plaintiff ENEDINA SANCHEZ
DE SEGURA

DATED:

PLAINTIFF ENEDINA SANCHEZ DE SEGURA

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

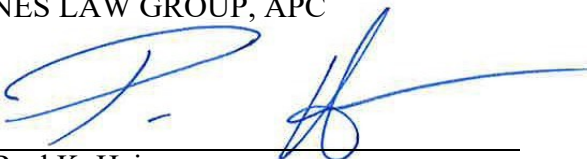
DATED:

NELSON MULLINS RILEY & SCARBOROUGH
LLP

By: _____
P. John Veysey
Robert O. Sheridan
Christopher J. Eby
Attorneys for Defendant KELCOURT
PLASTICS, INC.

DATED: April 25, 2023

HAINES LAW GROUP, APC

By:  _____
Paul K. Haines
Attorneys for Plaintiff ENEDINA SANCHEZ
DE SEGURA

DATED: April 25, 2023

LIDMAN LAW, APC

By:  _____
Scott M. Lidman
Attorneys for Plaintiff ENEDINA SANCHEZ
DE SEGURA

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE COUNTY

ENEDINA SANCHEZ DE SEGURA,

Plaintiff,

vs.

KELCOURT PLASTICS, INC., a California
corporation; and Does 1 through 100,

Defendants.

Case No. 30-2021-01219806-CU-OE-CXC

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED CLASS AND
PAGA SETTLEMENT**

To: All current and former non-exempt, hourly employees of Defendant Kelcourt Plastics, Inc. who worked at any time in California during the Class Period, except for non-exempt, hourly employees who both: (a) worked at Defendant's facility located in San Diego, California; and (b) signed a Separation Agreement and General Release of All Claims in connection with the reductions in force at the San Diego facility between 2017 and August 31, 2020. The "Class Period" is defined as September 3, 2017 through March 11, 2023. Collectively, these employees will be referred to as "Settlement Class Members."

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in the lawsuit entitled *Enedina Sanchez de Segura v. Kelcourt Plastics, Inc.*, Case No. 30-2021-01219806-CU-OE-CXC, (the "Lawsuit"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant's records show that you were employed by Defendant at any time in California during the Class Period as a non-exempt, hourly employee and you did not both: (a) work at Defendant's facility located in San Diego, California; and (b) sign a Separation Agreement and General Release of All Claims in connection with the reductions in force at the San Diego facility between 2017 and August 31, 2020. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Enedina Sanchez de Segura ("Plaintiff") brought this Lawsuit against Defendant, seeking to assert claims on behalf of a class of current and former hourly, non-exempt employees of Defendant who worked at any time in California since September 3, 2017. Plaintiff Enedina Sanchez de Segura is known as the "Class Representative," and her attorneys, who also represent the interests of all Settlement Class Members, are known as "Class Counsel."

The Lawsuit alleges that Defendant failed to pay all overtime wages owed; failed to provide meal periods, or premium pay for non-compliant meal periods; failed to authorize and permit rest periods, or provide premium pay for non-compliant rest periods; failed to timely pay all wages due upon separation of employment; and

failed to issue accurate, itemized wage statements in compliance with California law. As a result of the foregoing alleged violations, Plaintiff also alleges that Defendant engaged in unfair business practices and are liable for civil penalties under the Labor Code Private Attorney General Act (“PAGA”).

Defendant denies the claims. Defendant further denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. No Court has made any determination as to the factual allegations in the Lawsuit. Rather, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid the additional expense, inconvenience, and interference with Defendant’s business operations, the Parties have concluded that it is in their best interests and the interests of Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided relevant information to Class Counsel, the Settlement was reached following mediation and arm’s-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays, costs, and uncertainties associated with litigation.

If you are still employed by Defendant, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendant’s policies strictly prohibit unlawful retaliation. Defendant will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of the Settlement Class Member’s decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff / Settlement Class Members: LIDMAN LAW, APC Scott M. Lidman slidman@lidmanlaw.com Elizabeth Nguyen enguyen@lidmanlaw.com Milan Moore mmoore@lidmanlaw.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 322-4772 Fax: (424) 322-4775 www.lidmanlaw.com HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for Defendant Kelcourt Plastics, Inc. NELSON MULLINS RILEY & SCARBOROUGH LLP Peter John Veysey john.veysey@nelsonmullins.com 1 Financial Ctr, Fl 35 Boston, MA 02111-2641 Tel: (949) 769-6601
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What are the terms of the Settlement?

On [INSERT DATE OF PRELIMINARY APPROVAL], the Court preliminarily certified a class, comprised of, for settlement purposes only, all current and former non-exempt, hourly employees of Defendant Kelcourt Plastics, Inc. who worked at any time in California during the Class Period, except for non-exempt, hourly employees who both: (a) worked at Defendant's facility located in San Diego, California; and (b) signed a Separation Agreement and General Release of All Claims in connection with the reductions in force at the San Diego facility between 2017 and August 31, 2020. For purposes of this Settlement Agreement, the "Class Period" is defined as September 3, 2017 through March 11, 2023. Settlement Class Members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant as described below in the section titled "Released Class Claims". A Settlement Class Member who opts-out cannot opt-out of the PAGA Release.

Defendant has agreed to pay \$2,250,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Lawsuit, which includes payments to Settlement Class Members, attorneys' fees and expenses, payment to the Labor Workforce Development Agency (the "LWDA"), settlement administration costs, and the Class Representative's Service Award and monies to be paid to the LWDA. Defendant's share of payroll taxes associated with any wage payments to Settlement Class Members shall be paid by Defendants separately from, and in addition to, the Gross Settlement Amount.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved paying the Settlement Administrator a flat fee of \$11,000.00 from the Gross Settlement Amount to administer the Settlement.

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement 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. Settlement Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is currently estimated to be \$750,000.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement in an amount not to exceed \$30,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Award to Class Representative. Class Counsel will ask the Court to award the Class Representative a service award in the amount not to exceed \$10,000.00, to compensate her for her service and extra work provided on behalf of the Settlement Class Members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$150,000.00 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act ("PAGA"). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or One Hundred Twelve Thousand Five Hundred Dollars and Zero Cents (\$112,500.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), will be payable to PAGA Employees as the "PAGA Amount," as described below.

Calculation of Individual Settlement Class Members' Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount is estimated at approximately \$<< >>, to be

shared among an up to << >> estimated Settlement Class Members. The Net Settlement Amount will be divided as follows:

Each participating Settlement Class Member shall receive a proportionate Settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period.

In addition, Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. All PAGA Employees shall receive a portion of the PAGA Amount. "PAGA Employees" include all current and former non-exempt, hourly employees of Defendant Kelcourt Plastics, Inc. who worked at any time in California between September 3, 2020 and March 11, 2023. The "PAGA Period" shall mean the time period between September 3, 2020 and March 11, 2023. A PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during the PAGA Period and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked during the PAGA Period, and the denominator of which is the total number of pay periods worked by all PAGA Employees during the PAGA Period.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class Members who did not submit a valid and timely Request for Exclusion.

If you submit a Request for Exclusion, you will still receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you are a PAGA Employee.

Payment by Defendants of Gross Settlement Amount. Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator within 30 days of the Effective Date. The "Effective Date" is defined as the latter of: (a) the Court's final approval of the Settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.

Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Award amounts and provide the same to the Parties' counsel for review and approval. Within seven (7) calendar days of approval by the Parties' counsel, the Settlement Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class Members.

Allocation and Taxes. For tax purposes, each Settlement Award shall be allocated as follows: seventy-five percent (75%) as penalties and interest; and twenty-five percent (25%) as wages. All PAGA penalties shall be designated as one hundred percent (100%) penalties and reported on an IRS Form 1099. If a PAGA Employee submits a Request for Exclusion, the PAGA Employee's Settlement Award shall be designated as one hundred percent (100%) penalties and reported on an IRS Form 1099. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class Members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Released Class Claims. If the Court approves the Settlement, the Settlement Class, and each Settlement Class Member who has not submitted a timely and valid Request for Exclusion, will fully and forever completely discharge Defendant Kelcourt Plastics, Inc., and all of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively,

the “Released Parties”), from all claims, demands, rights, liabilities and causes of action that were pled in the Complaints in the Action, that arose during the Class Period defined above with respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to provide meal periods, or premium pay for non-compliant meal periods; (c) failure to authorize and permit rest periods, or provide premium pay for non-compliant rest periods; (d) failure to timely pay all wages due upon separation of employment; (e) failure to issue accurate, itemized wage statements; and (f) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the “Released Class Claims”).

The time period for the release of the Released Class Claims against the Released Parties shall be the same time period as the Class Period.

PAGA Release and PAGA Employees. If the Court approves the Settlement, all PAGA Employees (including employees who submit a Request for Exclusion) will release and forever discharge all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act of 2004 against the Released Parties based on (and as alleged in the letters to the “LWDA dated September 3, 2021 and March 9, 2023): (a) failure to pay all overtime wages owed; (b) failure to provide meal periods, or premium pay for non-compliant meal periods; (c) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (d) failure to timely pay all wages due upon separation of employment; and (e) failure to issue accurate, itemized wage statements that occurred during the PAGA Period (collectively, the “PAGA Released Claim”).

You are a PAGA Employee if you were a non-exempt, hourly employee of Defendant Kelcourt Plastics, Inc. who worked at any time in California between September 3, 2020 and March 11, 2023. The time period of the PAGA Release is the PAGA Period.

You cannot submit a Request for Exclusion from the PAGA Release.

The Released Class Claims and PAGA Release shall become effective on the date on which Defendant fully funds the Gross Settlement Amount and the employer’s share of payroll taxes (the “Effective Date of the Releases”).

Conditions of Settlement. The 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.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period (as explained above), and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Individual Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period and pay periods you worked during the PAGA Period. The information contained in Defendant’s records regarding all of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Individual Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Individual Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**.

DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Unless the Court determines otherwise, the Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by completing, signing and mailing the enclosed Request for Exclusion Form directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Class Action Settlement, and shall receive no benefits from the Class Action Settlement.

If you submit a Request for Exclusion, you will only be excluded from the Released Class Claims. You cannot submit a Request for Exclusion from the PAGA Release. You will receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you were employed between September 3, 2020 and March 11, 2023.

Do not submit both a Dispute and a Request for Exclusion. If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement by either submitting a written objection or appearing at the Final Fairness Hearing. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to submit a written objection to the Settlement, or any portion of it, you may complete, sign and mail the enclosed Objection Form to the Settlement Administrator. Your written objection must include your name, address, phone number, the case name and number, and a concise reason for your objection, including the factual basis for it. Written objections must be postmarked on or before <<RESPONSE DEADLINE>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department CX105 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701. You have the right to appear either remotely, in person or through your own attorney at this hearing. All objections or other correspondence must state the name and number of the case, which *Enedina Sanchez de Segura v. Kelcourt Plastics, Inc.*, Orange County Superior Court Case No. 30-2021-01219806-CU-OE-CXC.

Any Settlement Class Member who elects to appear personally at the Court for any reason related to this Lawsuit must comply with the Court's orders related to COVID-19. All such rules and orders can be located at the Court's website: <https://www.occourts.org/media-relations/CoronaVirusUpdate.html>

For more information on how to appear remotely, please visit the Court's website at <https://www.occourts.org/media-relations/civil.html>.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department CX105 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701. The Court will consider any requests for exclusion, objections, and disputes at the Final Approval Hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class Members. **You are not required to attend the Final Approval Hearing, although any Settlement Class Member is welcome to attend the hearing.**

Any changes to date, time, or location of the Final Approval Hearing will be posted on the Settlement Administrator's website (<http://www. .com>). Notice of the Court's final judgment will be posted on the Settlement Administrator's website (<http://www. .com>).

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 Settlement Agreement at the Office of the Clerk of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, during regular court hours. You may also access the documents at <https://civilwebshopping.occourts.org/Login.do>, enter the "01219806" for the Case Number and "2021" for the Year Filed. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANTS OR THEIR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

NOTICE OF INDIVIDUAL SETTLEMENT AWARD
SANCHEZ DE SEGURA V. KELCOURT PLASTICS, INC.
Orange County Superior Court Case No. 30-2021-01219806-CU-OE-CXC

You do NOT have to mail this Form to get your Individual Settlement Payment

Please complete, sign, date and return this form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Payment and Aggrieved Employee Payment:

According to Kelcourt Plastics, Inc.'s records ("Kelcourt"):

You worked [REDACTED] Workweeks during the Class Period for Defendant as a non-exempt, hourly employees in California and you did not sign a Separation Agreement and General Release of All Claims in connection with the reductions in force at the San Diego facility between 2017 and August 31, 2020.

Based on the above, your Individual Settlement Award is estimated to be \$ [REDACTED] and PAGA Employee Payment is estimated to be \$ [REDACTED].

(IV) If you disagree with items in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Kelcourt's records, Kelcourt's records will control unless you are able to provide documentation that establishes that Kelcourt's records are mistaken. If there is a dispute about whether Kelcourt's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED CLASS AND PAGA SETTLEMENT" that accompanies this Form. Unless the Court orders otherwise, the Settlement Administrator will render all final decisions on disputes.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE
POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>**

REQUEST FOR EXCLUSION FORM

SANCHEZ DE SEGURA V. KELCOURT PLASTICS, INC.

Orange County Superior Court Case No. 30-2021-01219806-CU-OE-CXC

**SUBMIT THIS FORM ONLY IF YOU WISH TO BE EXCLUDED FROM PARTICIPATING IN
THE CLASS ACTION SETTLEMENT**

By signing and returning this form, I represent that it is my desire to exclude myself from participating in the Settlement of the Class Action entitled *Sanchez de Segura v. Kelcourt Plastics, Inc.*, Case No. 30-2021-01219806-CU-OE-CXC, and that I received notice of the Settlement. I understand by excluding myself, I will receive a PAGA Payment if I worked during the PAGA Period, but I will not receive any other money from the Settlement reached in this matter.

Please note: Any person who submits this form will not receive an Individual Settlement Payment.

Name (Please Print): _____
(First) (Middle) (Last)

Address: _____
(Street)

(City) (State) (Zip)

Last 4 Digits of Social Security Number: _____ Telephone No.: _____

Dated: _____ Signature: _____

**TO BE VALID, THIS FORM MUST BE POST-MARKED NO LATER THAN _____, 2023 AND
MAILED TO THE SETTLEMENT ADMINISTRATOR AT:**

Sanchez de Segura v. Kelcourt Plastics, Inc.,

Administrator Name

c/o _____

OBJECTION FORM

SANCHEZ DE SEGURA V. KELCOURT PLASTICS, INC.

Orange County Superior Court Case No. 30-2021-01219806-CU-OE-CXC

**COMPLETE THIS FORM ONLY IF YOU WISH TO OBJECT TO THE
CLASS ACTION SETTLEMENT**

In order for you to object to the Class Action Settlement in *Sanchez de Segura v. Kelcourt Plastics, Inc.*, you must complete all steps listed in 1-5 below. You are not required to appear in Court in order to object to the Settlement. However, if you are planning on appearing in Court, please circle "yes" in Section 3 below. If you are planning on appearing in Court at the Final Fairness Hearing to object to the Settlement, you are not required to, but may still complete all steps listed in 1-5 below.

1. Provide the following information:

Your Name (Please Print): _____
(First) (Middle) (Last)

Your Address: _____

Last 4 Digits of your Social Security Number: _____

2. Describe the reasons for your objection to the Settlement, including the factual basis for it (please attach additional documents if you need more space):

3. Do you intend to appear in Court at the Final Fairness Hearing, currently scheduled for [ADD DATE AND TIME].

Circle One: Yes No

4. Date and sign this form below:

Dated: _____ Signature: _____

5. COMPLETE AND MAIL THIS FORM TO THE SETTLEMENT ADMINISTRATOR AT THE ADDRESS BELOW SO THAT IT IS POST-MARKED NO LATER THAN _____.

Sanchez de Segura v. Kelcourt Plastics, Inc.,

Administrator Name

c/o _____

