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Attorneys for Plaintiff Marino Zamora, individually,
and on behalf of all others similarly situated.

[Additional counsel listed on following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MARINO ZAMORA, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

FENCESCREEN, INC.; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 30-2021-01225477-CU-OE-CXC

*Assigned for all purposes to:
Hon. Lon Hurwitz
Dept. CX101*

JOINT STIPULATION OF SETTLEMENT

BURKHALTER KESSLER CLEMENT & GEORGE LLP

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Attorneys for Defendant FENCESCREEN, INC.

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiff Marino Zamora (“Named
7 Plaintiff”) and the Class Members, on the one hand, and Defendant FenceScreen, Inc.
8 (“FenceScreen” or “Defendant”), on the other hand. Named Plaintiff and Defendant collectively are
9 referred to in this Agreement as “the Parties.”

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay the settlement amount of Four Hundred Sixty-Seven
12 Thousand Nine Hundred Sixty-Five Dollars and Zero Cents (\$467,965.00) as provided in Section
13 3.06(a) below (“Gross Settlement Amount”) pursuant to the terms and conditions of this Agreement
14 and for the consideration set forth herein, including but not limited to, a release of all claims by
15 Named Plaintiff and the Class Members as set forth herein.

16 **ARTICLE I**

17 **DEFINITIONS**

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. “Action” means the action described as follows: *Marino Zamora, individually and on*
21 *behalf of all others similarly situated v. FenceScreen, Inc.; and DOES 1 through 20, inclusive,*
22 Case No. 30-2021-01225477-CU-OE-CXC, commenced on October 7, 2021, in the Superior Court
23 of the State of California for the County of Orange.

24 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
25 Exhibit(s).

26 c. “Class” means all current and former non-exempt employees who are or were
27 employed by Defendant in California at any time during the Class Period.

28 d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

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Samuel A. Wong
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e. “Class List” means a list based on Defendant’s business records that identifies each Class Member’s name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, dates of employment, and the number of Qualifying Workweeks worked during the Class Period.

f. “Class Member(s)” means all members of the Class.

g. “Class Period” means April 11, 2017 through January 26, 2023.

h. “Court” means the California Superior Court for the County of Orange, where the Action is currently pending.

i. “Date of Finality” means the later of the following: (1) the date the Final Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or other judicial review is taken from the Court’s overruling of objections to the settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes final.

j. “Defendant” means Defendant FenceScreen, Inc.

k. “Defense Counsel” means counsel for Defendant:

l. **BURKHALTER KESSLER CLEMENT & GEORGE LLP**

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1 m. "Disposition" means the method by which the Court approves the terms of the
2 Settlement and retains jurisdiction over its enforcement, implementation, construction,
3 administration, and interpretation.

4 n. "Final Order Approving Settlement of Class Action" or "Final Order" means the final
5 formal court order signed by the Court following the Final Fairness and Approval Hearing in
6 accordance with the terms herein, approving this Agreement.

7 o. "Gross Settlement Amount" means Four Hundred Sixty-Seven Thousand Nine
8 Hundred Sixty-Five Dollars and Zero Cents (\$467,965.00) to be paid by Defendant as provided by
9 this Agreement to settle this Action. All payments to the Class, administration costs, attorney's fees
10 and costs, and Incentive Award, pursuant to Section 3.06(a) below, shall be paid out of the Gross
11 Settlement Amount. The employer's share of payroll taxes arising from the payments made under
12 this settlement shall be paid by Defendant separate from and in addition to the Gross Settlement
13 Amount. The Gross Settlement Amount is subject to a pro rata increase pursuant to Section 3.04(e)
14 below. No part of the Gross Settlement Amount shall revert to Defendant.

15 p. "Incentive Award" means a monetary amount of up to Five Thousand Dollars
16 (\$5,000.00) to the Named Plaintiff, subject to Court approval, in recognition of his effort and work
17 in prosecuting the Action on behalf of Class Members, and for their general release of claims.

18 q. "Individual Settlement Payment(s)" means each Participating Class Member's
19 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
20 by the calculations provided in this Agreement.

21 r. "Individual PAGA Settlement Payment(s)" means each PAGA Group Member's
22 respective share of the 25% of the \$36,400 allocated to the settlement of PAGA claims which, subject
23 to Court approval, will be paid to PAGA Group Members pursuant to Section 3.06(f) of this
24 Agreement.

25 s. "LWDA" means The State of California Labor and Workforce Development Agency.

26 t. "LWDA Payment" means 75% of the \$36,40000 allocated to the settlement of PAGA
27 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.06(e) of
28 this Agreement, as provided for below.

1 u. "Motion for Final Approval" means Plaintiff's submission of a written motion,
2 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
3 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
4 to enter a Final Order in this Action.

5 v. "Motion for Preliminary Approval" means Plaintiff's submission of a written motion,
6 including any evidence as may be required for the Court to grant preliminary approval of the
7 Settlement as required by Rule 3.769 of the California Rules of Court.

8 w. "Named Plaintiff" means Marino Zamora.

9 x. "Net Settlement Amount" means the Gross Settlement Amount less Court-approved
10 administration costs, Class Counsel's attorney's fees and costs, Incentive Award, and LWDA
11 Payment, pursuant to Section 3.06(a)-(f) below.

12 y. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the
13 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
14 to Section 3.04(b) below.

15 z. "Notice Packet" means collectively and in a form substantially similar to, the Notice
16 of Class Action Settlement attached hereto as **Exhibit A**, the Opt-Out Form attached hereto as
17 **Exhibit B**, and the Objection Form attached hereto as **Exhibit C**, all subject to Court approval.

18 aa. "PAGA" means the California Private Attorneys General Act of 2004, which is
19 codified in California Labor Code §§ 2698 *et seq.*

20 bb. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
21 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have
22 agreed that the PAGA Settlement Amount is Thirty-Six Thousand Four Hundred Dollars (\$36,400),
23 subject to Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA
24 Payment, and the remaining 25% will be distributed to PAGA Group Members.

25 cc. "PAGA Group Members" means all Class Members employed by Defendant at any
26 time during the PAGA Period.

27 dd. "PAGA Periods" means October 6, 2020 to January 26, 2023.

28

1 ee. "Participating Class Member(s)" is defined as a Class Member who does not timely
2 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
3 Settlement Amount automatically without the need to return a claim form. Each Participating Class
4 Member will be paid his/her Individual Settlement Payment.

5 ff. "Preliminary Approval Date" means the date the Court preliminarily approves the
6 Settlement embodied in this Agreement.

7 gg. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
8 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
9 Administrator for the benefit of Participating Class Members.

10 hh. "Qualifying Workweeks" means the number of weeks that Class Members worked
11 for Defendant as non-exempt employees during the Class Period.

12 ii. "Released Parties" means Defendant.

13 jj. "Response Deadline" means the deadline by which Class Members must postmark or
14 fax to the Settlement Administrator requests for exclusion or written notices of objection. The
15 Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by
16 the Settlement Administrator, unless the sixtieth (60th) calendar day falls on a Sunday or federal
17 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
18 Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-
19 mailing.

20 kk. "Settlement Administration Costs" means all costs incurred by the Settlement
21 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
22 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
23 Payment checks and related tax reporting forms, administration of unclaimed checks, and generation
24 of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiff for their Incentive
25 Awards, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross
26 Settlement Amount.

CONTINGENT NATURE OF THE AGREEMENT

7 Because the Parties have stipulated to the certification of the Class with respect to all causes
8 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and
9 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis.
0 This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality
1 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement
2 to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification
3 of the Class with respect to all causes of action alleged in the Action. Defendant does not consent to
4 certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date
5 of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the
6 Class as to Defendant will be vacated and Named Plaintiff, Defendant, and the Class will be returned
7 to their positions with respect to the Action as if the Agreement had not been entered into. In the
8 event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving
9 certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall
0 not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in
1 this Agreement, the fact that Defendant did not oppose the certification of a Class under this
2 Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used
3 or cited thereafter by any person or entity, including in any manner whatsoever, including without
4 limitation any contested proceeding relating to the certification of any class. If the Date of Finality
5 does not occur, this Agreement shall be deemed null and void, shall be of no force or effect
6 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly
7 reserves the right to challenge the propriety of class certification in the Action for any purpose, if the
8 Date of Finality does not occur.

1 The Parties and their respective counsel shall take all steps that may be requested by the Court
2 relating to the approval and implementation of this Agreement and shall otherwise use their
3 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
4 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
5 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
6 resolution, the Parties agree to seek the assistance of mediator Eve Wagner to resolve the dispute.

7 **ARTICLE III**

8 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

9 The procedure for obtaining Court approval of and implementing this Agreement shall be as
10 follows:

11 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

12 Named Plaintiff will bring a motion before the Court for an order conditionally certifying the
13 Class to include all claims pled in the Action based on the preliminary approval of this Agreement.
14 The date that the Court grants preliminary approval of this Agreement will be the "Preliminary
15 Approval Date."

16 **Section 3.02: The Settlement Administrator**

17 The Parties have chosen ILYM Group, Inc. to administer this Settlement and to act as the
18 Settlement Administrator, including but not limited to distributing and responding to inquiries about
19 the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement
20 Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks
21 and distributing them to Participating Class Members, establishing and maintaining the QSF, and
22 issuing the payment to Class Counsel for attorneys' fees and costs, the Incentive Award check to
23 Named Plaintiff, and the employer payroll taxes to the appropriate taxing authorities. The Settlement
24 Administrator shall expressly agree to all of the terms and conditions of this Agreement.

25 All costs of administering the Settlement, including but not limited to all costs and fees
26 associated with preparing, issuing and mailing any and all notices to Class Members and/or
27 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
28 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax

returns and any other filings required by any governmental taxing authority or agency, all costs and fees associated with preparing any other checks, notices, reports, or filings to be prepared in the course of administering disbursements from the Net Settlement Amount, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement (“Settlement Administration Costs”), shall be paid to the Settlement Administrator from the Gross Settlement Amount.

Section 3.03: Notice to Class Members

No later than five (5) business days after the Preliminary Approval Date, Defendant will provide the Settlement Administrator with a “Class List” in electronic format based on its business records, identifying the names of the Class Members, their last known home addresses, Social Security numbers or, as applicable, other taxpayer identification number, their dates of employment and weeks worked during the Class Period.

Within ten (10) business days of receiving a Class List from Defendant, the Settlement Administrator will send Class Members, by first-class mail, at their last known address, the Court approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses against the National Change of Address database and shall update any addresses before mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a Notice Packet was undeliverable. If a Class Member’s notice is re-mailed, the Class Member shall have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class Members shall not be required to submit claim forms in order to receive a proportional share of the Net Settlement Amount.

If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose

1 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
2 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
3 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
4 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
5 that reasonable means be used to locate Class Members and that the Settlement Administrator be
6 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
7 Individual Settlement Payments to all Participating Class Members.

8 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
9 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
10 status report provided to the Parties.

11 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
12 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
13 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
14 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
15 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
16 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
17 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
18 procedures set forth in Section 3.06(g) below.

19 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
20 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
21 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
22 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
23 exclusion and objections that the Settlement Administrator received.

24 **Section 3.04: Responses to Notice**

25 **a. Class Member Disputes**

26 If any Class Member disagrees with Defendant's records as to his or her Qualifying
27 Workweeks during the Class Period or pay periods worked during the PAGA Period as reflected in
28 the Notice Packet, the Class Member shall set forth in writing the Qualifying Workweeks and/or pay

1 periods he/she claims to have worked during the Class Period and/or PAGA Period and submit such
2 writing to the Settlement Administrator by the Response Deadline (or fifteen (15) days after the
3 Settlement Administrator re-mails the Notice to the Class Member, whichever is later), along with
4 any supporting documentation. The Notice will also provide a method for the Class Member to
5 challenge the employment data on which his or her Individual Settlement Payment is based. The
6 Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work in
7 good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator
8 will be the final arbiter of the Qualifying Workweeks and/or pay periods worked for each Class
9 Member during the Class Period and/or PAGA Period based on the information provided to it.

10 **b. Requests for Exclusion from Class**

11 In order for any Class Member to validly exclude himself or herself from the Class and this
12 Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class
13 Member or his or her authorized representative, and must be sent to the Settlement Administrator,
14 postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement
15 Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall
16 contain an Opt-Out Form substantially in the form attached hereto as **Exhibit B**. The date of the
17 initial mailing of the Notice Packet, and the date the signed request for exclusion was postmarked,
18 shall be conclusively determined according to the records of the Settlement Administrator. Any Class
19 Member who timely and validly requests exclusion from the Class and this Settlement will not be
20 entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this
21 Agreement, and will not have any right to object, appeal, or comment thereon.

22 Any Class Member who fails to timely submit a request for exclusion shall automatically be
23 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
24 determined by the Court's Final Order Approving Settlement of Class Action, and by the other
25 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action
26 and/or released in this Agreement will be extinguished.

1 **c. Objections to Settlement**

2 For any Class Member to object to this Agreement, or any term of it, the person making the
3 objection must not submit a request for exclusion (*i.e.*, must not opt out). Absent good cause found
4 by the court, any Class Member seeking to object to this Agreement should send to the Settlement
5 Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15) days after
6 the Settlement Administrator re-mails the Notice to the Class Member, whichever is later), a written
7 statement of the grounds of objection, signed by the objecting Class Member or his or her attorney,
8 along with all supporting papers. The Notice Packet shall contain an Objection Form substantially in
9 the form attached hereto as **Exhibit C**. The date of the initial mailing of the Notice Packet, and the
10 date the signed objection was postmarked, shall be conclusively determined according to the records
11 of the Settlement Administrator. The Settlement Administrator shall send any objections it receives
12 to Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members may
13 also appear at the final approval hearing to object. The Court retains final authority with respect to
14 the consideration and admissibility of any Class Member objections.

15 **d. Encouragement of Class Members**

16 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
17 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
18 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
19 Class Members.

20 **e. Right of Plaintiff to Adjust Gross Settlement Amount**

21 If the number of Qualifying Workweeks exceeds 11,039 by more than 5% (which is more
22 than 11,591 workweeks) as of the end of the Class Period, there will be a pro rata adjustment to the
23 Gross Settlement Amount equal to \$35.00 per additional workweek.

24 **Section 3.05: Final Fairness and Approval Hearing**

25 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
26 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement
27 and determine whether the Court should give it final approval, and (2) consider any objections made
28 and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the

Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class Action.

Section 3.06: Settlement Payment Procedures

a. Settlement Amount

In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount in the amount of Four Hundred Sixty-Seven Thousand Nine Hundred Sixty-Five Dollars and Zero Cents (\$467,965.00), subject to a pro rata increase under the condition set forth in Section 3.04(e). The Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class Members, the Individual PAGA Settlement Payments to PAGA Group Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement Amount, and the Incentive Payment.

Within thirty (30) calendar days after the Court signs the Final Order or by January 26, 2024, whichever date comes last, Defendant shall transfer the Gross Settlement Amount plus Defendant's share of employer-side payroll taxes, as set forth herein, into a QSF established by the Settlement Administrator either directly or by sending the funds to the Settlement Administrator to be deposited and distributed. The Settlement Administrator will use these funds to fund payment of the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Award, the LWDA Payment, the Individual PAGA Settlement Payments to PAGA Group Members, and the Settlement Administration Costs.

Within ten (10) calendar days after receiving Defendant's payment, funding the Gross Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments to Participating Class Members, the Individual PAGA Settlement Payments to PAGA Group Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the Incentive Award, and employer and employee tax withholdings applicable to the Net Settlement Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes.

b. Payment of Attorneys' Fees and Costs

Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One Hundred Fifty-Five Thousand Nine Hundred Eighty-Eight Dollars and Thirty-Three Cents (\$155,988.33). Class Counsel shall submit an application for an award of costs not to exceed Twenty-Five Thousand Dollars (\$25,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness and Approval Hearing. Defendant shall not object to or oppose any such application in these amounts. Class Counsel shall serve Defendant with copies of all documents submitted in support of their application for an award of attorneys' fees and costs.

Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs, and expenses related to the investigation, prosecution, and settlement of the Action incurred through the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees and/or costs that Class Counsel requests, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

c. Payment of Settlement Administration Costs

The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Five Thousand Nine Hundred Ninety Dollars (\$5,990.00).

d. Payment of Incentive Award to Named Plaintiff

Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Five Thousand Dollars (\$5,000.00), the request for which Defendant will not object to or oppose. The Incentive Award shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s) other than Named Plaintiff. To the extent that the Court approves less than the amount of incentive award that Class Counsel request, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

1 Because it is the intent of the Parties that the Incentive Award represent payment to Named
2 Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will not
3 withhold any taxes from the Incentive Awards. The Incentive Award will be reported on a Form
4 1099, which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing
5 authorities as required by law.

6 **e. Payment to the Labor and Workforce Development Agency**

7 In consideration of claims made under PAGA, Class Counsel will request that the Court
8 approve allocation of Thirty-Six Thousand Four Hundred Dollars (\$36,400) of the Gross Settlement
9 Amount to these claims. Seventy-five percent (75%) of this payment will be paid to the California
10 Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%)
11 will be distributed to PAGA Group Members. Defendant will not oppose this request. The entire
12 PAGA Settlement Amount will be paid out of the Gross Settlement Amount. The Court's adjustment,
13 if any, of the amount allocated to Named Plaintiff's PAGA claim in the Action, will not invalidate
14 this Agreement.

15 **f. Payment of Individual Settlement Payments to Participating Class Members**

16 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
17 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
18 Participating Class Members in proportion to the number of individual Qualifying Workweeks for
19 each Class Member. To calculate the minimum amount each Class Member will receive based on
20 their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total
21 number of Qualifying Workweeks by all Class Members during the Class Period and then allocated
22 on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class
23 Member's approximate Individual Settlement Payment amount will be included in his or her Notice
24 Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to
25 Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the
26 individual Qualifying Workweeks worked during the Class Period by each Participating Class
27 Member.

1 The PAGA Settlement Amount to be distributed to PAGA Group Members shall be divided
2 between all PAGA Group Members in proportion to the number of pay periods that each PAGA
3 Group Member worked during the PAGA Period. To calculate the minimum amount each PAGA
4 Group Member will receive based on their individual pay periods, 25% of the PAGA Settlement
5 Amount (or \$9,100) will be divided by the total number of pay periods worked by all PAGA Group
6 Members during the PAGA Period and then allocated on a pro rata basis. Pay periods will be rounded
7 up to the next whole integer. Each PAGA Group Member's approximate Individual PAGA
8 Settlement Payment Amount will be included in his or her Notice Packet. After final approval by the
9 Court, the PAGA Settlement Amount will be dispersed to all PAGA Group Members on a pro rata
10 basis based on the number of pay periods worked during the PAGA Period by each PAGA Group
11 Member.

12 Each Individual Settlement Payment will represent wages and penalties allocated using the
13 following formula: 20% allocated to wages; 80% allocated to interest and penalties. The PAGA
14 Settlement Amount to be distributed to PAGA Group Members are to be considered 100% penalties.
15 The amounts paid as wages shall be subject to all tax withholdings customarily made from an
16 employee's wages and all other authorized and required withholdings and shall be reported by W-2
17 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement
18 Amount. The amounts paid as penalties and interest shall be subject to all authorized and required
19 withholdings other than the tax withholdings customarily made from employees' wages and shall be
20 reported by IRS 1099 forms.

21 No later than ten (10) business days after receiving the Gross Settlement Amount from
22 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
23 Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the
24 Net Settlement Amount allocated to wages will be reduced by applicable employer and employee
25 tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of
26 the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the
27 extent required by law for the interest and penalty portions of the Individual Settlement Payments.
28 Participating Class Members shall have 180 days from the date their Individual Settlement Payment

checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or a mass search on LexisNexis or a comparable databases based on set criteria and, if another address is identified, the Settlement Administrator shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the Settlement Administrator will tender the funds from the undeliverable checks to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

g. Default on Payment.

Defendant's failure to fund the Gross Settlement Amount within thirty (30) calendar days after the Court signs the Final Order or by January 26, 2024, whichever date comes last, shall be considered a default. In the event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator will provide notice to Class Counsel and Defendant's counsel within three (3) business days of the missed payment. Thereafter, Defendant will have seven (7) days to cure the default and tender payment to the Settlement Administrator. In the event Defendant fails to cure the default within the times set forth herein, Named Plaintiff may elect to enter judgment against Defendant, on an ex parte basis, for the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiff will be entitled to recover interest at ten percent (10%) per year from the due date for such payment and reasonable attorneys' fees and costs.

h. No Credit Toward Benefit Plans.

The Individual Settlement Payments made to Participating Class Members under this Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'

intention that this Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

ARTICLE IV

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 4.01: No Admission

Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a Class should not have been certified in the Action. This Agreement is entered into solely for the purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be construed as an admission of liability or wrongdoing by Defendant.

Section 4.02: Non-Evidentiary Use

Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims released through this Agreement.

Section 4.03: Nullification

The Parties have agreed to the certification of the Class encompassing all claims alleged in the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had

1 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
2 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
3 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
4 should be certified by the Court in a non-settlement context in this Action or any other action, and in
5 any of those events, Defendant expressly reserves the right to oppose certification of the Class.

6 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
7 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

8 **ARTICLE V**

9 **RELEASES**

10 **Section 5.01: Released Claims by Class Members**

11 Upon the date Defendant fully funds the Gross Settlement Amount, Named Plaintiff and
12 Participating Class Members who do not opt out of the Settlement, release the Released Parties from
13 any and all claims alleged in Named Plaintiff's Operative Complaint, during the Class Period,
14 including but not limited to (1) failure to pay minimum wages (2) failure to pay overtime wages (3)
15 failure to provide meal periods (4) failure to authorize or permit rest periods (5) failure to reimburse
16 business expenses (6) failure to provide accurate itemized wage statements (7) failure to pay wages
17 upon separation of employment and within the required time; and (8) violation of California Business
18 and Professions Code §§17200, *et seq.*, based on the preceding claims ("Released Claims").

19 **Section 5.02: Released Claims by PAGA Group Members**

20 Upon the date Defendant fully funds the Gross Settlement Amount, the State of California
21 and PAGA Group Members release the Released Parties from all claims exhausted in Plaintiff's
22 notice(s) sent to the LWDA and alleged in the operative complaint, which arose during the PAGA
23 Period, regardless of whether PAGA Group Members opt out of the Settlement.

24 **Section 5.03: Named Plaintiffs' Release of Unknown Claims**

25 Upon the date Defendant fully funds the Gross Settlement Amount, Named Plaintiff waives,
26 releases, acquits, and forever discharges the Released Parties from any and all claims, actions,
27 charges, complaints, grievances, and causes of action, of any nature arising from Named Plaintiff's
28

1 employment with Defendant, whether known or unknown, which exist or may exist as of the Parties'
2 execution of this Agreement.

3 Section 1542 of the California Civil Code provides as follows:

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

8 Plaintiff’s general release provided herein is made with an express waiver and relinquishment
9 of any claim, right, or benefit under California Civil Code § 1542.

10 **ARTICLE VI**

11 **MISCELLANEOUS PROVISIONS**

12 **Section 6.01: Amendments or Modification**

13 The terms and provisions of this Agreement may be amended or modified only by an express
14 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
15 and approved by the Court.

16 **Section 6.02: Assignment**

17 None of the rights, commitments, or obligations recognized under this Agreement may be
18 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
19 consent of each other Party and their respective counsel. The representations, warranties, covenants,
20 and agreements contained in this Agreement are for the sole benefit of the Parties under this
21 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

22 **Section 6.03: Governing Law**

23 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
24 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
25 of laws.

26 **Section 6.04: Entire Agreement**

27 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
28 contains the entire understanding of the Parties with respect to the subject matter contained herein.

1 In case of any conflict between text contained in Articles I through VI of this Agreement and text
2 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
3 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
4 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
5 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
6 supersedes all prior agreements and understandings among the Parties with respect to the settlement
7 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
8 prior agreements or proposals.

9 **Section 6.05: Waiver of Compliance**

10 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
11 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
12 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
13 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
14 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
15 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

16 **Section 6.06: Counterparts and Fax/PDF Signatures**

17 This Agreement, and any amendments hereto, may be executed in any number of counterparts
18 and any Party and/or their respective counsel may execute any such counterpart, each of which when
19 executed and delivered shall be deemed to be an original. All counterparts taken together shall
20 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
21 signature.

22 **Section 6.07: Meet and Confer Regarding Disputes**

23 Should any dispute arise among the Parties or their respective counsel regarding the
24 implementation or interpretation of this Agreement, a representative of Class Counsel and a
25 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
26 to submitting such disputes to the Court.

1 **Section 6.08: Agreement Binding on Successors**

2 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
3 of each of the Parties.

4 **Section 6.09: Cooperation in Drafting**

5 The Parties have cooperated in the negotiation and preparation of this Agreement. This
6 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
7 was the drafter or participated in the drafting of this Agreement.

8 **Section 6.10: Fair and Reasonable Settlement**

9 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
10 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
11 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
12 further believe that the Settlement is and is consistent with public policy, and fully complies with
13 applicable law.

14 **Section 6.11: Headings**

15 The descriptive heading of any section or paragraph of this Agreement is inserted for
16 convenience of reference only and does not constitute a part of this Agreement and shall not be
17 considered in interpreting this Agreement.

18 **Section 6.12: Notice**

19 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
20 communications under this Agreement must be in writing and addressed as follows:

21 *To Named Plaintiff and the Class:*

22 Kashif Haque
23 Samuel A. Wong
24 Jessica L. Campbell
25 Kristy R. Connolly
26 AEGIS LAW FIRM, PC
27 9811 Irvine Center Drive, Suite 100
28 Irvine, California 92618
 Telephone: (949) 379-6250
 Facsimile: (949) 379-6251

 And

To Defendant:

Daniel J. Kessler
Joshua A. Waldman
Ros M. Lockwood
BURKHALTER KESSLER CLEMENT & GEORGE LLP
2020 Main Street, Suite 600
Irvine, California 92614
Telephone: (949) 975-7500
Facsimile: (949) 975-7501

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 6.14: Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to the execution of such documents, and the taking of such other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its terms. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

Section 6.15: Authorization to Act

Class Counsel warrants and represents that they are authorized by Named Plaintiff, and Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action required to effectuate the terms of this Agreement, except for signing documents, including but not limited to this Agreement, that are required to be signed by the Parties themselves. Defendant represents and warrants that the individual executing this Agreement on its behalf has the full right, power, and authority to enter into this Agreement and to carry out the transactions contemplated herein.

Section 6.16: No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of entering into and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

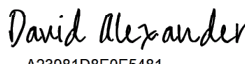
Dated: Jan 18, 2024

MARINO ZAMORA

By: 
Marino zamora (Jan 18, 2024 16:44 PST)
Named Plaintiff

Dated: 3/5/2024

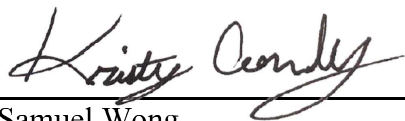
FENCESCREEN, INC.

DocuSigned by:

A23084D8E0E5481...
(Signature)
David Alexander
(Printed Name)
President
(Title)

1 **APPROVED AS TO FORM ONLY:**

2
3 Dated: 1/18/2024

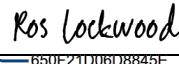
AEGIS LAW FIRM, PC

5 By: 
6 Samuel Wong
7 Kristy R. Connolly

8 Attorneys for Named Plaintiff Marino Zamora

9 Dated: 3/6/2024

**BURKHALTER KESSLER CLEMENT &
GEORGE LLP**

10 By: 
11 Daniel J. Kessler
12 Joshua A. Waldman
13 Ros M. Lockwood

14 Attorneys for Defendant FenceScreen, Inc.