

SULLIVAN & YAECKEL LAW GROUP, APC
Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com
Ryan T. Kuhn [CSB No. 324538]
ryan@sullivanlawgroupapc.com
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

WILSON TURNER KOSMO LLP
DANIEL C. GUNNING (259642)
MICHAELA P. DELACRUZ (292724)
402 West Broadway, Suite 1600
San Diego, California 92101
Telephone: (619) 236-9600
Facsimile: (619) 236-9669
E-mail: dgunning@wilsonturnerkosmo.com
E-mail: mdelacruz@wilsonturnerkosmo.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL DIVISION - HALL OF JUSTICE

CARLOS HERNANDEZ, in a Representative
capacity only, and on behalf of other members of
the general public similarly situated,

Plaintiff,

v.

EAST & WEST ALUM CRAFT INC., a
California Corporation and DOES 1-10,
inclusive,

Defendants.

Case No. 37-2022-00002587-CU-OE-CTL
[IMAGED]

**JOINT STIPULATION OF CLASS AND
PAGA ACTION SETTLEMENT AND
RELEASE**

Judge:
Dept.:

Hon. Carolyn Caietti
C-70

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between
2 Plaintiff Carlos Hernandez (“Plaintiff”) and Defendant East & West Alum Craft, Inc. (“East &
3 West”). The Agreement refers to Plaintiff and East & West collectively as “Parties,” or individually
4 as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations and claims
7 pursuant to the Private Attorneys’ General Act (“PAGA”) on a class and collective action basis
8 against East & West captioned *Carlos Hernandez v. East & West Alum Craft, Inc.*, Case No. 37-
9 2022-00002587-CU-OE-CTL, initiated on January 21, 2022, and pending in Superior Court of the
10 State of California, County of San Diego.

11 1.2. “Administrator” means CAC Services Group, LLC, the neutral entity the Parties have
12 agreed to appoint to administer the Settlement.

13 1.3. “Administration Expenses Payment” means the amount the Administrator will be
14 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
15 with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary
16 Approval of the Settlement.

17 1.4. “Aggrieved Employee” means all non-exempt employees of East & West in
18 California from November 17, 2020, through the date of approval of the settlement.

19 1.5. “Class” means all non-exempt employees of East & West in California from January
20 21, 2018, through the date of preliminary approval of the settlement.

21 1.6. “Class Counsel” means William Sullivan, Eric Yaeckel, and Ryan Kuhn of Sullivan
22 Law Group, APC.

23 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
24 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
25 expenses, respectively, incurred to prosecute the Action.

26 1.8. “Class Data” means Class Member identifying information in East & West’s
27 possession including the Class Member’s name, last-known mailing address, Social Security
28 number, and number of Class Period Workweeks and PAGA Pay Periods.

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from January 21, 2018 to the date of preliminary approval of the settlement.

1.13. "Class Representative" means the named Plaintiff in the operative First Amended Complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of San Diego.

1.16. "East & West" means Defendant East & West Alum Craft, Inc.

1.17. "Defense Counsel" means Daniel C. Gunning and Michaela Delacruz of Wilson Turner Kosmo LLP.

1.18. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. Final means when all of the following events have occurred: (1) The Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant's Counsel; (2) The Court has given preliminary approval to the Settlement; (3) The Court has held a Final Settlement Approval Hearing and has entered a Final Order and Judgment, approving the Settlement. It is the Parties' intention that the Settlement shall be final for purposes of the Effective Date at the time of Final Approval if no objections to the settlement are filed. Only in the event that written objections

are filed prior to the Final Settlement Approval Hearing, which are not later withdrawn prior to final approval, the Effective Date shall be the later of: (a) the date of final affirmance on an appeal of the Judgment; the expiration of the time for a petition to review the Judgment; and, if review is granted, the date of final affirmance of the Judgment following review; or (b) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment; or (c) if no appeal is filed, the expiration date for filing any appeal from the Judgment either (i) the date sixty (60) calendar days after the entry of Final Judgment and Order Approving Settlement, if no motions for reconsideration and no appeals or other efforts to obtain review have been filed, or (ii) in the event a motion for reconsideration, an appeal or other effort to obtain review of the Final Judgment and Order Approving Settlement, the date sixty (60) calendar days after such reconsideration, appeal or review has been finally concluded and is no longer subject to review, whether by appeal, petition for rehearing, petition for review or otherwise. In the event that the Court fails to approve the settlement, or if the appropriate appellate court fails to approve the settlement, and/or Plaintiff fails to effectuate the dismissal of the Action as specified: (1) this Settlement Agreement shall have no force and effect and the Parties shall be restored to their respective positions prior to entering into it, and no Party shall be bound by any of the terms of the Settlement Agreement; (2) Defendant shall have no obligation to make any payments to the LWDA, Aggrieved Employees, Class Members, Plaintiff, or Plaintiff's Counsel; and (3) any preliminary approval order and/or Final Approval Order shall be vacated. The Gross Settlement Amount will include payments to Class Members and/or Aggrieved Employees, payment to the LWDA for civil penalties sought under the Private Attorneys General Act of 2004 ("PAGA"), any Class Representative Enhancement Payment, Class Counsel's attorneys' fees and costs, and Settlement Administrator Costs (if any). In no event shall East & West be required to pay anything more than the Gross Settlement Amount. East & West shall fund the Gross Settlement Amount no later than 30 days after the Effective Date.

1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. "Gross Settlement Amount" means TWO-HUNDRED AND TWELVE THOUSAND FIVE HUNDRED DOLLARS AND Zero Cents (\$212,500.00), which is the total amount EAST & WEST agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.

1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).

1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).

1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for East & West for at least one day during the PAGA Period.

1.31. "PAGA Period" means the period from November 17, 2020, through the date of preliminary approval of the settlement.

1.32. "PAGA" means the Private Attorneys General Act (Lab. Code, § 2698 et seq.).

1.33. "PAGA Notice" means Plaintiff's November 11, 2021, letter to East & West and the LWDA, providing notice pursuant to Labor Code section 2699.3, subdivision (a).

1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$20,000.00), allocated 25% to the Aggrieved Employees (\$5,000.00) and 75% to LWDA (\$15,000.00) in settlement of PAGA claims.

1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. "Plaintiff" means Carlos Hernandez, the named plaintiff in the Action.

1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.41. "Released Parties" means East & West and each of its current and former direct and indirect affiliates, other related business entities, parents, and equity holders, owners, and each of their respective divisions, subsidiaries, joint ventures, customers, partners, actual or alleged joint employers, officers, directors, employees, contractors, agents, principals, representatives, accountants, auditors, consultants, attorneys, insurers and reinsurers, other representatives or persons or acting by, through, under or in concern with any of the forgoing, and each of the forgoing successors, predecessors and heirs, and any other persons that could be jointly liable with East & West for any of the Released Claims, including East & West's customers and other business

///

relationships. For the avoidance of doubt, Released Parties shall expressly include East & West Alum Craft, Inc., East & West Alum Craft Ltd, and any and all of its direct and indirect affiliates.

1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. "Response Deadline" means 30 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email or mail his, her, or their Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.45. "Workweek" means any week during which a Class Member worked for East & West for at least one day, during the Class Period.

2. RECITALS.

2.1. On January 21, 2022, Plaintiff commenced this Action by filing a Complaint alleging a claim for relief under the PAGA asserting meal and rest period violations, minimum wage and overtime violations, wage statement and final pay violations, and failure to reimburse business expenses. Plaintiff filed a stipulated First Amended Complaint (the "Operative Complaint") on or about May 5, 2022, adding the following class action claims in addition to the PAGA claim for penalties: (1) Violation of Labor Code §§ 226.7 and 512 and applicable IWC wage orders (failure to provide meal periods and rest breaks), (2) Violation of Labor Code §§ 510, 1194, and 1197 and applicable IWC wage orders (failure to pay minimum wages and overtime compensation, including failure to properly calculate the regular rate of pay for purposes of paying overtime); (3) Violation of Labor Code § 226 (wage statement violations); (4) Violation of Labor Code § 2802 (failure to reimburse business expenses); (5) Violation of Labor Code §§ 201-203 (waiting time penalties). East & West denies the allegations in the Operative Complaint, denies any failure to comply with the

///

laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to East & West and the LWDA by sending the PAGA Notice.

2.3. On August 10, 2023, the Parties participated in an all-day mediation presided over by Hon. Jan Adler (Ret.), which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through formal and informal discovery, time and pay records for putative class members, and relevant documents and information related to East & West's employment policies and practices. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, East & West promises to pay TWO-HUNDRED AND Twelve THOUSAND Five Hundred DOLLARS AND Zero Cents (\$212,500.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. East & West has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to East & West.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

///

1 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
2 Representative of not more than FIVE-THOUSAND DOLLARS (\$5,000.00) (in addition to
3 any Individual Class Payment and any Individual PAGA Payment the Class Representative is
4 entitled to receive as a Participating Class Member). East & West will not oppose Plaintiff's
5 request for a Class Representative Service Payment that does not exceed this amount. As part
6 of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment,
7 Plaintiff will seek Court approval for any Class Representative Service Payments no later
8 than 16 court days prior to the Final Approval Hearing. If the Court approves a Class
9 Representative Service Payment less than the amount requested, the Administrator will retain
10 the remainder in the Net Settlement Amount. The Administrator will pay the Class
11 Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility
12 and liability for employee taxes owed on the Class Representative Service Payment.

13 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%,
14 which is currently estimated to be \$70,833.33, and a Class Counsel Litigation Expenses
15 Payment of not more than \$10,000.00. East & West will not oppose requests for these
16 payments provided that they do not exceed these amounts. If the Court approves a Class
17 Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the
18 amounts requested, the Administrator will allocate the remainder to the Net Settlement
19 Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's
20 Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class
21 Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees
22 Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class
23 Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees
24 Payment and the Class Counsel Litigation Expenses Payment and holds East & West
25 harmless, and indemnifies East & West, from any dispute or controversy regarding any
26 division or sharing of any of these Payments.

27 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
28 \$5,000.00 except for a showing of good cause and as approved by the Court. To the extent

1 the Administration Expenses are less or the Court approves payment less than \$5,000.00, the
2 Administrator will retain the remainder in the Net Settlement Amount.

3 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated
4 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all
5 Participating Class Members during the Class Period and (b) multiplying the result by each
6 Participating Class Member's Workweeks.

7 3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each
8 Participating Class Member's Individual Class Payment will be allocated to
9 settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
10 withholding and will be reported on an IRS W-2 Form. The remaining 80% of each
11 Participating Class Member's Individual Class Payment will be evenly allocated to
12 settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-
13 Wage Portions are not subject to wage withholdings and will be reported on IRS 1099
14 Forms. Participating Class Members assume full responsibility and liability for any
15 employee taxes owed on their Individual Class Payment.

16 3.2.4.2 Effect of Non-Participating Class Members on Calculation of
17 Individual Class Payments. Non-Participating Class Members will not receive any
18 Individual Class Payments. The Administrator will retain amounts equal to their
19 Individual Class Payments in the Net Settlement Amount for distribution to
20 Participating Class Members on a pro rata basis.

21 3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
22 \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated
23 to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA
24 Payments.

25 3.2.5.1 The Administrator will calculate each Individual PAGA Payment by
26 (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
27 (\$5,000.00) by the total number of PAGA Period Pay Periods worked by all
28 Aggrieved Employees during the PAGA Period and (b) multiplying the result by each

Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, East & West estimates, and Plaintiff agrees, there are 87 Class Members who collectively worked a total of approximately 4,046 Workweeks during the Class Period, and 42 Aggrieved Employees who collectively worked a total of approximately 1,689 PAGA Pay Periods.

4.2. Class Data. Not later than 10 days after the Court grants Preliminary Approval of the Settlement, East & West will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. East & West has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which East & West must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. East & West shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay East & West's share of payroll taxes by transmitting the funds to the Administrator no later than 30 calendar days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 10 days after East & West funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class

1 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
2 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
3 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
4 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
5 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
6 Payments.

7 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
8 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
9 postage prepaid. The face of each check shall prominently state the date (not less than 180
10 days after the date of mailing) when the check will be voided. The Administrator will cancel
11 all checks not cashed by the void date. The Administrator will send checks for Individual
12 Settlement Payments to all Participating Class Members (including those for whom Class
13 Notice was returned undelivered). The Administrator will send checks for Individual PAGA
14 Payments to all Aggrieved Employees including Non-Participating Class Members who
15 qualify as Aggrieved Employees (including those for whom Class Notice was returned
16 undelivered). The Administrator may send Participating Class Members a single check
17 combining the Individual Class Payment and the Individual PAGA Payment. Before mailing
18 any checks, the Settlement Administrator must update the recipients' mailing addresses using
19 the National Change of Address Database.

20 4.4.2. The Administrator must conduct a Class Member Address Search for all other
21 Class Members whose checks are returned undelivered without United States Postal Service
22 ("USPS") forwarding address. Within 7 days of receiving a returned check the Administrator
23 must re-mail checks to the USPS forwarding address provided or to an address ascertained
24 through the Class Member Address Search. The Administrator need not take further steps to
25 deliver checks to Class Members whose re-mailed checks are returned as undelivered. The
26 Administrator shall promptly send a replacement check to any Class Member whose original
27 check was lost or misplaced, requested by the Class Member prior to the void date.
28

1 4.4.3. For any Class Member whose Individual Class Payment check or Individual
2 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall
3 transmit the funds represented by such checks to the California Controller's Unclaimed
4 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject
5 to the requirements of Code of Civil Procedure section 384, subdivision (b).

6 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments
7 shall not obligate East & West to confer any additional benefits or make any additional
8 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
9 specified in this Agreement.

10 **5. RELEASES OF CLAIMS.**

11 Effective on the date when East & West fully funds the entire Gross Settlement Amount and
12 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
13 Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as
14 follows:

15 5.1. Plaintiff's Release. Plaintiff and his respective former and present spouses,
16 representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and
17 discharge Released Parties from all claims, transactions or occurrences with Released Parties up to
18 the Effective Date of this Agreement, including, but not limited to: (a) all claims that were, or
19 reasonably could have been, alleged, based on the facts contained, in the Operative Complaint; (b)
20 all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the
21 Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under
22 5.2, below; and all claims and causes of action arising from his employment and termination of
23 employment with East & West. ("Plaintiff's Release.") This is meant to be a general release as to
24 Plaintiff. However, Plaintiff's Release does not extend to any claims or actions to enforce this
25 Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social
26 security benefits, or workers' compensation benefits that arose at any time. Plaintiff acknowledges
27 that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff
28 now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain

1 effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of
2 them.

3 5.1.1. Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of
4 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and
5 benefits, if any, of section 1542 of the Civil Code, which reads: A GENERAL RELEASE
6 DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY
7 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
8 OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD
9 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
10 OR RELEASED PARTY.

11 5.2. Release by Participating Class Members Who Are Not Aggrieved Employees: All
12 Participating Class Members, on behalf of themselves and their respective former and present
13 representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released
14 Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the
15 Class Period facts stated in the Operative Complaint and ascertained in the course of the Action
16 [including, e.g., "(a) any and all claims involving any alleged failure to pay minimum wage; (b) any
17 and all claims involving alleged meal and/or rest break violations; (c) any and all claims involving
18 the alleged failure to pay for all hours worked, including overtime at the proper rate; (d) any and all
19 claims involving the alleged failure to properly reimburse reasonable business expenses; (e) any and
20 all claims involving the alleged failure to pay waiting time penalties; and (f) any and all claims
21 involving the alleged failure to provide itemized wage statements in compliance with California law,
22 etc.]. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not
23 release any other claims, including claims for vested benefits, wrongful termination, violation of the
24 Fair Employment and Housing Act, unemployment insurance, disability, social security, workers'
25 compensation or claims based on facts occurring outside the Class Period.

26 5.3. Release by Non-Participating Class Members Who Are Aggrieved Employees: All
27 Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of
28 themselves and their respective former and present representatives, agents, attorneys, heirs,

administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice and ascertained in the course of the Action[including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; (b) any and all claims involving alleged meal and/or rest break violations; (c) any and all claims involving the alleged failure to pay for all hours worked, including overtime at the proper rate; (d) any and all claims involving the alleged failure to properly reimburse reasonable business expenses; (e) any and all claims involving the alleged failure to pay waiting time penalties; and (f) any and all claims involving the alleged failure to provide itemized wage statements in compliance with California law, etc.].

6. MOTION FOR PRELIMINARY APPROVAL.

The Parties agree that Plaintiff’s Counsel will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1. Plaintiff’s Responsibilities. Plaintiff’s counsel will prepare Plaintiff’s motion for preliminary approval. Not later than five (5) court days prior to the submission of the motion for preliminary approval of this Settlement Agreement to the Court, Class Counsel will submit a near-final draft thereof (including all supporting papers and proposed order) to counsel for Defendant for their review and comment.

6.2. Responsibilities of Counsel. As soon as practicable after execution of this Settlement Agreement, the Class Representative and Class Counsel shall apply to the Court for the entry of a preliminary approval order which would accomplish the following:

a. Schedule a hearing (the “**Final Approval Hearing**”) on the question of whether the Settlement, including, *inter alia*, the payment of Attorneys’ Fees and Costs, Enhancement Award, and PAGA Amount should be finally approved as fair, reasonable, and adequate, and finally resolving any outstanding issues or disputes remaining from the administration of the notice of the settlement;

///

- 1
- 2 b. Approve, as to form and content, the proposed Notice;
- 3 c. Direct the mailing of the Notice by first class mail to the Class Members;
- 4 d. Preliminarily approve the Settlement and monetary allocations for
- 5 awards/payments of Attorneys' Fees and Costs, Settlement Administration Costs, Enhancement
- 6 Award, and PAGA Amount, subject to the final review and approval by the Court;
- 7 e. Preliminarily approve CAC Services Group, LLC as the Settlement
- 8 Administrator;

9 Plaintiff's Counsel shall be responsible for ensuring that all required submittals and

10 notifications to the LWDA under PAGA regarding this Settlement are made by Plaintiff.

11 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for

12 Preliminary Approval, Class Counsel and Defense Counsel will expeditiously work together on

13 behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the

14 disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval

15 on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously

16 work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to

17 modify the Agreement and otherwise satisfy the Court's concerns.

18 **7. SETTLEMENT ADMINISTRATION.**

19 7.1. Selection of Administrator. The Parties have jointly selected CAC Services Group,

20 LLC to serve as the Administrator and verified that, as a condition of appointment, CAC Services

21 Group, LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified

22 in this Agreement in exchange for payment of Administration Expenses. The Parties and their

23 Counsel represent that they have no interest or relationship, financial or otherwise, with the

24 Administrator other than a professional relationship arising out of prior experiences administering

25 settlements.

26 7.2. Employer Identification Number. The Administrator shall have and use its own

27 Employer Identification Number for purposes of calculating payroll tax withholdings and providing

28 reports state and federal tax authorities.

1 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that
2 meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation
3 section 468B-1.

4 7.4. Notice to Class Members.

5 7.4.1. No later than three (3) business days after receipt of the Class Data, the
6 Administrator shall notify Class Counsel that the list has been received and state the number
7 of Class Members, PAGA Members, Workweeks and Pay Periods in the Class Data.

8 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 7
9 days after receiving the Class Data, the Administrator will send to all Class Members
10 identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the
11 form attached to this Agreement as Exhibit A. The first page of the Class Notice shall
12 prominently estimate the dollar amounts of any Individual Class Payment and/or Individual
13 PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA
14 Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the
15 Administrator shall update Class Member addresses using the National Change of Address
16 database.

17 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class
18 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
19 using any forwarding address provided by the USPS. If the USPS does not provide a
20 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-
21 mail the Class Notice to the most current address obtained. The Administrator has no
22 obligation to make further attempts to locate or send Class Notice to Class Members whose
23 Class Notice is returned by the USPS a second time.

24 7.4.4. The deadlines for Class Members’ written objections, Challenges to
25 Workweeks and/or Pay Periods and Requests for Exclusion will be extended an additional 14
26 days beyond the 30 days otherwise provided in the Class Notice for all Class Members
27 whose notice is re-mailed. The Administrator will inform the Class Member of the extended
28 deadline with the re-mailed Class Notice.

1 7.4.5. If the Administrator, East & West or Class Counsel is contacted by or
2 otherwise discovers any persons who believe they should have been included in the Class
3 Data and should have received Class Notice, the Parties will expeditiously meet and confer in
4 person or by telephone, and in good faith, in an effort to agree on whether to include them as
5 Class Members. If the Parties agree, such persons will be Class Members entitled to the same
6 rights as other Class Members, and the Administrator will send, via email or overnight
7 delivery, a Class Notice requiring them to exercise options under this Agreement not later
8 than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which
9 ever are later.

10 7.5. Requests for Exclusion (Opt-Outs).

11 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class
12 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
13 Exclusion not later than 30 days after the Administrator mails the Class Notice (plus an
14 additional 14 days for Class Members whose Class Notice is re-mailed). A Request for
15 Exclusion is a letter from a Class Member or his/her/their representative that reasonably
16 communicates the Class Member's election to be excluded from the Settlement and includes
17 the Class Member's name, address and email address or telephone number. To be valid, a
18 Request for Exclusion must be timely faxed, emailed, or postmarked by the Response
19 Deadline.

20 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because
21 it fails to contain all the information specified in the Class Notice. The Administrator shall
22 accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
23 identity of the person as a Class Member and the Class Member's desire to be excluded. The
24 Administrator's determination shall be final and not appealable or otherwise susceptible to
25 challenge. If the Administrator has reason to question the authenticity of a Request for
26 Exclusion, the Administrator may demand additional proof of the Class Member's identity.
27 The Administrator's determination of authenticity shall be final and not appealable or
28 otherwise susceptible to challenge.

1 7.5.3. Every Class Member who does not submit a timely and valid Request for
2 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
3 benefits and bound by all terms and conditions of the Settlement, including the Participating
4 Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of
5 whether the Participating Class Member actually receives the Class Notice or objects to the
6 Settlement.

7 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is
8 a Non-Participating Class Member and shall not receive an Individual Class Payment or have
9 the right to object to the class action components of the Settlement. Because future PAGA
10 claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class
11 Members who are Aggrieved Employees are deemed to release the claims identified in
12 Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

13 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 30 days
14 after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose
15 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if
16 any) allocated to the Class Member in the Class Notice. The Class Member may challenge the
17 allocation by communicating with the Administrator via fax, email or mail. The Administrator must
18 encourage the challenging Class Member to submit supporting documentation. In the absence of any
19 contrary documentation, the Administrator is entitled to presume that the Workweeks contained in
20 the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's
21 determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final
22 and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
23 copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and
24 Class Counsel and the Administrator's determination the challenges.

25 7.7. Objections to Settlement.

26 7.7.1. Only Participating Class Members may object to the class action components
27 of the Settlement and/or this Agreement, including contesting the fairness of the Settlement,
28

1 and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation
2 Expenses Payment and/or Class Representative Service Payment.

3 7.7.2. Participating Class Members may send written objections to the
4 Administrator, by fax, email or mail. In the alternative, Participating Class Members may
5 appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final
6 Approval Hearing. A Participating Class Member who elects to send a written objection to
7 the Administrator must do so not later than 30 days after the Administrator's mailing of the
8 Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-
9 mailed).

10 7.7.3. Non-Participating Class Members have no right to object to any of the class
11 action components of the Settlement.

12 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to
13 be performed or observed by the Administrator contained in this Agreement or otherwise.

14 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will
15 establish and maintain and use an internet website to post information of interest to Class
16 Members including the date, time and location for the Final Approval Hearing and copies of
17 the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the
18 Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
19 Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the
20 Final Approval and the Judgment. The Administrator will also maintain and monitor an email
21 address and a toll-free telephone number to receive Class Member calls, faxes and emails.

22 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
23 promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
24 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion,
25 the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the
26 names and other identifying information of Class Members who have timely submitted valid
27 Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information
28

1 of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all
2 Requests for Exclusion from Settlement submitted (whether valid or invalid).

3 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
4 reports to Class Counsel and Defense Counsel that, among other things, tally the number of:
5 Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
6 Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks
7 and/or Pay Periods received and/or resolved, and checks mailed for Individual Class
8 Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must
9 include provide the Administrator’s assessment of the validity of Requests for Exclusion and
10 attach copies of all Requests for Exclusion and objections received.

11 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority
12 to address and make final decisions consistent with the terms of this Agreement on all Class
13 Member challenges over the calculation of Workweeks and/or Pay Periods. The
14 Administrator’s decision shall be final and not appealable or otherwise susceptible to
15 challenge.

16 7.8.5. Administrator’s Declaration. Not later than 5 days before the date by which
17 Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator
18 will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in
19 Court attesting to its due diligence and compliance with all of its obligations under this
20 Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
21 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members,
22 the total number of Requests for Exclusion from Settlement it received (both valid or
23 invalid), the number of written objections and attach the Exclusion List. The Administrator
24 will supplement its declaration as needed or requested by the Parties and/or the Court. Class
25 Counsel is responsible for filing the Administrator’s declaration(s) in Court.

26 7.8.6. Final Report by Settlement Administrator. Within 10 days after the
27 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will
28 provide Class Counsel and Defense Counsel with a final report detailing its disbursements by

employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES.

Based on its records, East & West estimates, and Plaintiff agrees, that, as of the date of this Settlement Agreement, (1) there are 87 Class Members and who collectively worked approximately 4,046 Total Workweeks during the Class period and (2) there were 42 Aggrieved Employees who collectively worked approximately 1,689 Pay Periods during the PAGA Period. If at the time of Preliminary or Final Approval, the number of employees or pay periods at issue significantly changes (excluding new hires between now and the Effective Date of this Agreement), this will be considered a material breach of the agreement and Plaintiff has the right to rescind the agreement.

9. EAST & WEST'S RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, East & West may elect, but is not obligated, to withdraw from the Settlement. The Parties agree that, if East & West withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, East & West will remain responsible for paying all Settlement Administration Expenses incurred to that point. East & West must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL.

Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 3 court days prior to filing the Motion for Final

1 Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by
2 telephone, and in good faith, to resolve any disagreements concerning the Motion for Final
3 Approval.

4 10.1. Response to Objections. Each Party retains the right to respond to any objection
5 raised by a Participating Class Member, including the right to file responsive documents in Court no
6 later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by
7 the Court.

8 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
9 Approval on any material change to the Settlement (including, but not limited to, the scope of release
10 to be granted by Class Members), the Parties will expeditiously work together in good faith to
11 address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The
12 Court's decision to award less than the amounts requested for the Class Representative Service
13 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or
14 Administrator Expenses Payment shall not constitute a material modification to the Agreement
15 within the meaning of this paragraph.

16 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment,
17 the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
18 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and
19 (iii) addressing such post-Judgment matters as are permitted by law.

20 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
21 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
22 Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective
23 counsel and all Participating Class Members who did not object to the Settlement as provided in this
24 Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and
25 appellate proceedings, the right to file motions to vacate judgment, motions for new trial,
26 extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to
27 oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations
28 to perform under this Agreement will be suspended until such time as the appeal is finally resolved

1 and the Judgment becomes final, except as to matters that do not affect the amount of the Net
2 Settlement Amount.

3 10.5. Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the
4 reviewing Court vacates, reverses or modifies the Judgment in a manner that requires a material
5 modification of this Agreement (including, but not limited to, the scope of release to be granted by
6 Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously
7 work together in good faith to address the appellate court's concerns and to obtain Final Approval
8 and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses
9 reasonably incurred after remittitur. An appellate decision to vacate, reverse or modify the Court's
10 award of the Class Representative Service Payment or any payments to Class Counsel shall not
11 constitute a material modification of the Judgment within the meaning of this paragraph, as long as
12 the Gross Settlement Amount remains unchanged.

13 **11. AMENDED JUDGMENT.**

14 If any amended judgment is required under Code of Civil Procedure section 384, the Parties
15 will work together in good faith to jointly submit a proposed amended judgment.

16 **12. ADDITIONAL PROVISIONS.**

17 12.1. No Admission of Liability, Class Certification or Representative Manageability for
18 Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
19 Nothing in this Agreement is intended or should be construed as an admission by East & West that
20 any of the allegations in the Operative Complaint have merit or that East & West has any liability for
21 any claims asserted; nor should it be intended or construed as an admission by Plaintiff that East &
22 West's defenses in the Action have merit. The Parties agree that class certification and representative
23 treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary
24 Approval, Final Approval or enter Judgment, East & West reserves the right to contest certification
25 of any class for any reasons, and East & West reserves all available defenses to the claims in the
26 Action, and Plaintiff reserves the right to move for class certification on any grounds available and
27 to contest East & West's defenses. The Settlement, this Agreement and Parties' willingness to settle

28 ///

1 the Action will have no bearing on, and will not be admissible in connection with, any litigation
2 (except for proceedings to enforce or effectuate the Settlement and this Agreement).

3 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, East & West
4 and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
5 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
6 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or
7 indirectly, specifically or generally, to any person, corporation, association, government agency or
8 other entity except: (1) to the Parties' attorneys, accountants or spouses, all of whom will be
9 instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent
10 necessary to report income to appropriate taxing authorities; (4) in response to a court order or
11 subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government
12 agency. Each Party agrees to immediately notify each other Party of any judicial or agency order,
13 inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, East & West and Defense
14 Counsel separately agree not to, directly or indirectly, initiate any conversation or other
15 communication, before the filing of the Motion for Preliminary Approval, any with third party
16 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
17 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
18 communications with Class Members in accordance with Class Counsel's ethical obligations owed
19 to Class Members.

20 12.3. No Solicitation. The Parties separately agree that they and their respective counsel
21 and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
22 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to
23 communicate with Class Members in accordance with Class Counsel's ethical obligations owed to
24 Class Members.

25 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this
26 Agreement together with its attached exhibits shall constitute the entire agreement between the
27 Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants
28 or inducements made to or by any Party.

1 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
2 represent that they are authorized by Plaintiff and East & West, respectively, to take all appropriate
3 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
4 terms, and to execute any other documents reasonably required to effectuate the terms of this
5 Agreement including any amendments to this Agreement.

6 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use
7 their best efforts, in good faith, to implement the Settlement by, among other things, modifying the
8 Settlement Agreement, submitting supplemental evidence and supplementing points and authorities
9 as requested by the Court. In the event the Parties are unable to agree upon the form or content of
10 any document necessary to implement the Settlement, or on any modification of the Agreement that
11 may become necessary to implement the Settlement, the Parties will seek the assistance of a
12 mediator and/or the Court for resolution.

13 12.7. No Prior Assignments. The Parties separately represent and warrant that they have
14 not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or
15 encumber to any person or entity and portion of any liability, claim, demand, action, cause of action
16 or right released and discharged by the Party in this Settlement.

17 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, East & West nor Defense Counsel
18 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
19 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part
20 10, as amended) or otherwise.

21 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
22 modified, changed or waived only by an express written instrument signed by all Parties or their
23 representatives and approved by the Court.

24 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure
25 to the benefit of, the successors of each of the Parties.

26 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
27 governed by and interpreted according to the internal laws of the State of California, without regard
28 to conflict of law principles.

1 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
2 of this Agreement. This Agreement will not be construed against any Party on the basis that the
3 Party was the drafter or participated in the drafting.

4 12.13. Confidentiality. To the extent permitted by law, all agreements made and orders
5 entered during Action and in this Agreement relating to the confidentiality of information shall
6 survive the execution of this Agreement.

7 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to
8 Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class
9 Counsel by East & West in connection with the mediation, other settlement negotiations, or in
10 connection with the Settlement, may be used only with respect to this Settlement, and no other
11 purpose, and may not be used in any way that violates any existing contractual agreement, statute or
12 California Rules of Court rule. Not later than 90 days after the date when the Court discharges the
13 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
14 funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from East &
15 West unless, prior to the Court's discharge of the Administrator's obligation, East & West makes a
16 written request to Class Counsel for the return, rather than the destruction, of Class Data.

17 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
18 inserted for convenience of reference only and does not constitute a part of this Agreement.

19 12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
20 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
21 weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

22 12.17. Notice. All notices, demands or other communications between the Parties in
23 connection with this Agreement will be in writing and deemed to have been duly given as of the
24 third business day after mailing by United States mail, or the day sent by email or messenger,
25 addressed as follows:

26 ///

27 ///

28 ///

To Plaintiff:

CARLOS HERNANDEZ

To Defendant:

EAST & WEST ALUM CRAFT, INC.

c/o Wilson Turner Kosmo LLP

Daniel C. Gunning

402 West Broadway, Suite 1600

San Diego, CA 92101

dgunning@wilsonturnerkosmo.com

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

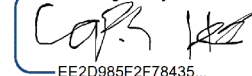
12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

PLAINTIFF CARLOS HERNANDEZ

10/3/2023

Date: _____

DocuSigned by:

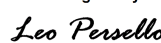


EE2D985F2F78435...

Carlos Hernandez

DEFENDANT EAST & WEST ALUM
CRAFT, INC

DocuSigned by:



451D916878BE442...

By: _____

Leo Persello

Its: Project Manager

SULLIVAN & YAECKEL LAW GROUP,
APC

Date: 10/3/23

By: Ryan Kuhn
William B. Sullivan
Eric K. Yaeckel
Ryan Kuhn

Attorneys for Plaintiff
CARLOS HERNANDEZ

Dated: 10/4/2023

WILSON TURNER KOSMO LLP

By: DocuSigned by:
Daniel C. Gunning
BC6BC64E2E954FA...
Daniel C. Gunning
Michaela P. Delacruz
Attorney for Defendant
EAST & WEST ALUM CRAFT, INC.