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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

FRANCISCO MARTINEZ, individually, and  
on behalf of other members of the general public  
similarly situated,

Plaintiff,

vs.

STATE ROOFING SYSTEMS, INC., a  
California Corporation and DOES 1-10,  
inclusive,

Defendants.

Case No.: 21CV002168

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

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

This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”) is made and entered into by and between Plaintiff Francisco Martinez (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, and Defendant State Roofing Systems, Inc. (“Defendant”) (individually, “Party” and collectively, the “Parties”).

### DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means the lawsuit captioned *Francisco Martinez v. State Roofing Systems, Inc.*, initiated in Alameda County Superior Court on November 8, 2021, Case No. 21CV002168. On March 19, 2022, Plaintiff filed a First Amended Complaint (“Operative Complaint”), which added a representative action for penalties pursuant to the Private Attorneys General Act of 2004, (Cal. Lab. Code, §§ 2698, *et seq.*) (“PAGA”).

2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited to expert/consultant fees, investigation costs, and costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Gross Settlement Amount, or One Hundred Sixty-Six Thousand Six Hundred Sixty-Seven Dollars (\$166,667). The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, up to Ten Thousand Dollars (\$10,000), subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set forth above.

3. “Class Counsel” means Capstone Law APC and Sullivan & Yaeckel Law Group, APC.

4. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within forty-five

(45) calendar days of the date of Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include, to the extent available to Defendant, each Class Member's: (1) full name; (2) last known recent mailing address; (3) last known telephone number; (4) Social Security number; (5) dates of employment (including all re-hire and subsequent separation dates during the Class Period); and (6) the respective number of Pay Periods that each Class Member worked during the Class Period and/or PAGA Period.

5. "Class Member" means an individual who worked for Defendant as an hourly and/or non-exempt employee in California at any time from November 8, 2017, through the earlier of January 6, 2023 or the date of Preliminary Approval, collectively "Class Members."

6. "Class Notice" means the Court-Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, substantially in the form attached as Exhibit A and incorporated by reference into this Agreement, which the Settlement Administrator shall mail to all Class Members in English and Spanish.

7. "Class Period" means the period from November 8, 2017, through the earlier of January 6, 2023 or the date of Preliminary Approval.

8. "Class Representative Enhancement Payment" means the amount to be paid to Plaintiff in recognition of his effort and work in prosecuting the Action on behalf of Class Members, and for his general release of claims. Subject to the Court granting Final Approval and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of a Class Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000).

9. "Class Settlement" means the portion of the Settlement that resolves the class claims Plaintiff alleged in the Action on behalf of Class Members.

10. "Court" means the Alameda County Superior Court.

11. "Defendant" means Defendant State Roofing Systems, Inc.

12. "Effective Date" means the later of: (a) if no timely objections are filed or, if all objections are withdrawn, the date of Final Approval; or (b) if a Class Member files an objection to the Settlement that is not withdrawn, the deadline for filing an appeal from the Judgment in connection with that objection, provided no appeal has already been initiated; or (c) if a timely appeal is initiated, then the

1 date of final resolution (or withdrawal) of that appeal that results in the Judgment approving the  
2 Settlement becoming final.

3 13. “Final Approval” means the Court entering an order granting final approval of the  
4 Settlement Agreement and entering judgment (“Judgment”).

5 14. “Gross Settlement Amount” means the gross settlement amount of Five Hundred  
6 Thousand Dollars (\$500,000), to be paid by Defendant in full satisfaction of all Released Class Claims  
7 and Released PAGA Claims, which includes all Individual Settlement Payments to Participating Class  
8 Members and PAGA Members, Attorneys’ Fees and Costs, the Class Representative Enhancement  
9 Payment, the California Labor and Workforce Development Agency (“LWDA”) Payment, and  
10 Settlement Administration Costs. This Gross Settlement Amount has been agreed to by Plaintiff and  
11 Defendant as the aggregate amount to settle all individual claims. In no event will Defendant be liable for  
12 more than the Gross Settlement Amount except as otherwise explicitly set forth herein. There will be no  
13 reversion of the Gross Settlement Amount to Defendant. Defendant will be separately responsible for  
14 any employer payroll taxes required by law, including employer FICA, FUTA, and SDI contributions,  
15 which shall not be paid from the Gross Settlement Amount.

16 15. “Individual Settlement Payment” means each Participating Class Member’s and/or  
17 PAGA Member’s individual share(s) of the Net Settlement Fund and/or PAGA Fund, respectively.

18 16. “Net Settlement Fund” means the portion of the Gross Settlement Amount remaining  
19 after deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the  
20 PAGA Settlement Amount, and Settlement Administration Costs. The Net Settlement Fund will be  
21 distributed to Participating Class Members. There will be no reversion of the Net Settlement Fund to  
22 Defendant.

23 17. “Notice of Objection” means a Class Member’s valid and timely written objection to the  
24 Settlement Agreement.

25 18. “PAGA Members” means all individuals who worked for Defendant as hourly and/or  
26 non-exempt employees in California at any time from September 3, 2020, through the earlier of January  
27 6, 2023 or the date of Preliminary Approval.  
28

1           19.     “PAGA Period” means the period from September 3, 2020, through the earlier of  
2     January 6, 2023 or the date of Preliminary Approval.

3           20.     “PAGA Pay Period Value” means the settlement value of each Pay Period worked by  
4     PAGA Members during the PAGA Period, calculated by dividing the PAGA Fund by the aggregate  
5     total number of Pay Periods.

6           21.     “PAGA Settlement” means the portion of the Settlement that resolves the PAGA claims  
7     Plaintiff alleged in the Action on behalf of PAGA Members.

8           22.     “PAGA Settlement Amount” means the total amount that the Parties have agreed to pay  
9     to the LWDA and PAGA Members in connection with Plaintiff’s claim under PAGA, which the Parties  
10    have agreed will be Forty Thousand Dollars (\$40,000). Pursuant to PAGA, Seventy-Five Percent  
11    (75%), or Thirty Thousand Dollars (\$30,000), of the PAGA Settlement Amount, will be paid to the  
12    LWDA (“LWDA Payment”), and Twenty-Five Percent (25%), or Ten Thousand Dollars (\$10,000), of  
13    the PAGA Settlement Amount will be disbursed to PAGA Members (“PAGA Fund”), regardless  
14    whether they request to be excluded from the Class Settlement. The PAGA Settlement Amount shall be  
15    paid from the Gross Settlement Amount.

16          23.     “Parties” means Plaintiff and Defendant, collectively.

17          24.     “Participating Class Members” means those Class Members who do not submit timely  
18    and valid Requests for Exclusion and, thus, who will be included in the Class Action Settlement.  
19    “Participating Class Members” shall also be referred to collectively as “the Settlement Class.”

20          25.     “Pay Period(s)” means the weekly pay periods, as designated by Defendant, during  
21    which each Class Member/PAGA Member worked (i.e., was employed by Defendant *and* actually  
22    performed worked) for Defendant in a non-exempt, hourly paid position during the applicable Class  
23    Period/PAGA Period.

24          26.     “Pay Period Value” (as opposed to “PAGA Pay Period Value”), means the settlement  
25    value of each Pay Period worked by Class Members during the Class Period, calculated by dividing the  
26    Net Settlement Fund by the aggregate total number of Pay Periods.

27          27.     “Plaintiff” means Plaintiff Francisco Martinez, who also is referred to herein as the  
28    “Class Representative.”

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28. “Preliminary Approval” means the Court entering an order granting preliminary approval of the Settlement.

29. “Qualified Settlement Account” means a separate bank account to be opened and maintained by the Settlement Administrator into which Defendant will deposit the Gross Settlement Amount and employer payroll taxes and from which the Settlement Administrator will have authority to distribute payments made in accordance with the terms of this Settlement Agreement

30. “Released Class Claims” means all claims, rights, demands, liabilities, and causes of action, set forth in the Operative Complaint or reasonably arising from the same set of operative facts as those set forth in the Operative Complaint, during the Class Period, including: (a) all claims for unpaid overtime; (b) all claims for meal and rest break violations; (c) all claims for unpaid minimum wages; (d) all claims for the failure to reimburse for necessary business expenses; (e) all claims for the failure to timely pay wages upon termination based on the preceding claims; (f) all claims for the failure to timely pay wages during employment based on the preceding claims; (g) all claims for wage statement violations, whether based on the preceding claims or otherwise (i.e., both derivative and non-derivative claims); and (h) all claims asserted through California Business & Professions Code §§ 17200, *et seq.*

31. “Released PAGA Claims” means all claims for civil penalties under California Labor Code §§ 2698, *et seq.* during the PAGA Period that were brought or could reasonably have been brought based on the facts alleged in Plaintiff’s November 9, 2021, letter to Defendant and the LWDA, providing notice pursuant to Labor Code section 2699.3, subd. (a) and the Operative Complaint.

32. “Released Parties” means Defendant, and each of its former, present and future owners, parents, and subsidiaries, and all of its current officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

33. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a request to be excluded from the Class Settlement.

34. “Response Deadline” means the deadline by which Class Members must postmark Requests for Exclusion, disputes concerning the calculation of Individual Settlement Payments, or Notices of Objection mailed to the Settlement Administrator. The Response Deadline will be forty-five

(45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or State or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant.

35. “Settlement” shall mean the disposition of the overall Action pursuant to this Agreement and refers to the Class Settlement and PAGA Settlement collectively.

36. “Settlement Administration Costs” means the costs for administering this Settlement, including, but not limited to, the costs of printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The costs will include, if necessary, any such costs in excess of the amount initially estimated by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of approximately one hundred (100) Class Members, the Settlement Administration Costs are currently estimated to be Ten Thousand Dollars (\$10,000). The Settlement Administration Costs will be paid from the Gross Settlement Amount.

37. “Settlement Administrator” means CPT Group, Inc., or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. Each Party represents it does not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

## TERMS OF AGREEMENT

The Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as follows:

38. Funding of the Gross Settlement Amount. Defendant will make a one-time deposit of the Gross Settlement Amount of Five Hundred Thousand Dollars (\$500,000) into a Qualified Settlement Account to be established by the Settlement Administrator. Defendant may deposit the employer’s share of payroll taxes into the Account separately. After the Effective Date, the Gross Settlement Amount will be used for: (a) Individual Settlement Payments; (b) the LWDA Payment; (c) the Class Representative Enhancement Payment; (d) Attorneys’ Fees and Costs; and (e) Settlement Administration Costs. Defendant will deposit the Gross Settlement Amount and the employer’s share of payroll taxes within

thirty (30) calendar days of the Effective Date (“Funding Date”), unless the Funding Date falls on a Saturday, Sunday, or State or Federal holiday, in which case the Funding Date will be extended to the next business day.

39. Attorneys’ Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Class Counsel for Attorneys’ Fees and Costs of not more than One Hundred Sixty-Six Thousand, Six Hundred Sixty-Seven Dollars (\$166,667), plus the reimbursement of all out-of-pocket costs and expenses associated with Class Counsel’s litigation and settlement of the Action (including expert/consultant fees, investigations costs, etc.), not to exceed Ten Thousand Dollars (\$10,000), both of which will be paid from the Gross Settlement Amount.

40. Class Representative Enhancement Payment. In exchange for a general release, and in recognition of Plaintiff’s effort and work in prosecuting the Action on behalf of Class Members, Defendant agrees not to oppose or impede any application or motion for a Class Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000), to Plaintiff. The Class Representative Enhancement Payment will be paid from the Gross Settlement Amount and will be in addition to Plaintiff’s Individual Settlement Payment paid pursuant to the Settlement. Plaintiff will be solely and legally responsible for paying any and all applicable taxes on the Class Representative Enhancement Payment. Plaintiff understands and agrees that this Settlement Agreement shall remain in full force and effect even if the full amount of Class Representative Enhancement Payment sought by Plaintiff is not ultimately awarded by the Court.

41. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Amount, which is currently estimated to be Ten Thousand Dollars (\$10,000). These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing the Class Notices, calculating and distributing the Individual Settlement Payment checks, and providing necessary reports and declarations.

42. PAGA Settlement Amount. Subject to Court approval, the Parties agree that Forty Thousand Dollars (\$40,000) of the Gross Settlement Amount will be designated for satisfaction of

1 Plaintiff's PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or Thirty Thousand Dollars  
2 (\$30,000), of this sum will be paid to the LWDA, and Twenty-Five Percent (25%), or Ten Thousand  
3 Dollars (\$10,000), will be paid to PAGA Members in proportion to the number of Pay Periods worked  
4 during the PAGA Period.

5 43. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating  
6 Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendant.

7 44. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Members. No  
8 portion of the PAGA Fund will revert to or be retained by Defendant.

9 45. Individual Settlement Payment Calculations. Individual Settlement Payments will be  
10 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of Pay  
11 Periods a Class Member worked during the Class Period and PAGA Period. Specific calculations of  
12 Individual Settlement Payments will be made as follows:

13 45(a) Payments from the Net Settlement Fund. Defendant will calculate the total  
14 number of Pay Periods worked by each Class Member during the Class Period and the aggregate total  
15 number of Pay Periods worked by all Class Members during the Class Period. To determine each Class  
16 Member's estimated Individual Settlement Payment from the Net Settlement Fund, the Settlement  
17 Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate  
18 total number of Pay Periods, resulting in the Pay Period Value. Each Class Member's Individual  
19 Settlement Payment will be calculated by multiplying each individual Class Member's total number of  
20 Pay Periods by the Pay Period Value. The Individual Settlement Payment will be reduced by any  
21 required deductions for each Participating Class Member as specifically set forth herein, including  
22 employee-side tax withholdings or deductions. The entire Net Settlement Fund will be disbursed to all  
23 Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and  
24 timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual  
25 Settlement Payment for each Participating Class Member according to the number of Pay Periods  
26 worked by all Class Members, so that the amount actually distributed to the Settlement Class equals  
27 100% of the Net Settlement Fund.

28 45(b) Payments from the PAGA Fund. Defendant will calculate the total number

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of Pay Periods worked by each PAGA Member during the PAGA Period and the aggregate total number of Pay Periods worked by all PAGA Members during the PAGA Period. To determine each PAGA Member's estimated Individual Settlement Payment, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of Pay Periods, resulting in the PAGA Pay Period Value. Each PAGA Member's Individual Settlement Payment will be calculated by multiplying each individual PAGA Member's total number of Pay Periods by the PAGA Pay Period Value. The entire PAGA Fund will be disbursed to all PAGA Members.

46. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members, as well as any other payments made pursuant to this Settlement, 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 Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plan.

47. Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

48. Delivery of the Class List. Within forty-five (45) days of the Preliminary Approval Date, Defendant will provide the Class List to the Settlement Administrator only, unless the forty-fifth (45th) calendar day falls on a Sunday or State or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Settlement Administrator will maintain the list in confidence and shall access and use the list solely to administer the Settlement in conformity with the Court's orders.

49. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail a Class Notice with Spanish translation to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

50. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement

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1 Administrator will perform a search based on the National Change of Address Database for information  
2 to update and correct for any known or identifiable address changes. Any Class Notice returned to the  
3 Settlement Administrator as non-deliverable on or before the Response Deadline will be promptly sent  
4 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement  
5 Administrator will indicate the date of such re-mailing of the Class Notice. If no forwarding address is  
6 provided, the Settlement Administrator will promptly attempt to determine the correct address using a  
7 skip-trace, or other search using the name, address and/or Social Security number of the Class Member  
8 involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed  
9 Class Notice, whether by skip-trace or by request, will have either (a) an additional fifteen (15) calendar  
10 days or (b) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an  
11 objection to the Settlement.

12 51. The Class Notice. All Class Members will be mailed an individualized Class Notice,  
13 which will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's  
14 principal terms; (c) the Settlement Class and PAGA Member definitions; (d) the total number of Pay  
15 Periods each respective Class Member and PAGA Member worked for Defendant during the Class  
16 Period and PAGA Period; (e) each Class Member's and PAGA Member's estimated Individual  
17 Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which  
18 comprise the Class Period and PAGA Period; (g) instructions on how to submit Requests for Exclusion  
19 or Notices of Objection; (h) the deadlines by which the Class Member must postmark Requests for  
20 Exclusion or Notices of Objection to the Settlement; and (i) the claims to be released.

21 52. Disputed Information on the Class Notice. Class Members will have an opportunity to  
22 dispute the information provided in their Class Notice. To the extent Class Members dispute the number  
23 of Pay Periods on record, Class Members may produce evidence to the Settlement Administrator  
24 showing that such information is inaccurate. The Settlement Administrator will field inquiries or disputes  
25 and attempt to resolve them with the information available to it, with Defendant's records being  
26 presumed correct. If the Settlement Administrator is unable to resolve a dispute based on Defendant's  
27 records, it shall contact the Parties regarding the dispute and the Parties will work in good faith to resolve  
28 it. All disputes must be submitted by the Response Deadline and will be decided within ten (10) business

1 days after the Response Deadline.

2 53. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the  
3 Settlement Class must sign and postmark a written Request for Exclusion to the Settlement  
4 Administrator by the Response Deadline. The postmark date will be the exclusive means to determine  
5 whether a Request for Exclusion has been timely submitted. To be effective, a Request for Exclusion  
6 must: (a) set forth the name, address, telephone number and last four digits of the Social Security  
7 Number of the Class Member requesting exclusion; (b) be signed and dated by the Class Member; (c)  
8 clearly state that the Class Member does not wish to be included in the Settlement Class, in words  
9 materially similar to the following: “I wish to exclude myself from the class settlement reached in the  
10 matter of *Francisco Martinez v. State Roofing Systems, Inc.* I understand that, by excluding myself, I  
11 will not receive an individual settlement payment consisting of payment for my release of class claims  
12 from the settlement in addition to any share of civil penalties to which I am entitled and will still receive  
13 for the PAGA settlement.”

14 54. Defective Request for Exclusion Submissions. If a Class Member’s Request for  
15 Exclusion is defective as to the requirements listed herein, that Class Member will be given an  
16 opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter  
17 within three (3) business days of receiving the defective submission to advise the Class Member that his  
18 or her submission is defective and that the defect must be cured to render the Request for Exclusion  
19 valid. The Class Member will have until (a) the Response Deadline or (b) fifteen (15) calendar days from  
20 the date of the cure letter, whichever date is later, to postmark a revised Request for Exclusion. If the  
21 revised Request for Exclusion is not postmarked within that period, it will be deemed untimely.

22 55. Escalator. This Settlement is based on Defendant’s estimate, based on its records, that  
23 there were approximately Eleven Thousand Two Hundred and Ninety-Four (11,294) Pay Periods  
24 worked by Class Members from November 8, 2017, through the date of mediation on October 6, 2022.  
25 If the number of Pay Periods worked by Class Members during the Class Period increases by more than  
26 Ten Percent (10%) (i.e., by more than 1,129, for a total of Twelve Thousand Four Hundred and Twenty-  
27 Three (12,423) Pay Periods), then Defendant will, in its sole discretion, have the option to either: (a) de-  
28 escalate the Settlement so that the Class Period ends on the date when the Pay Period count totals 12,423;

1 or (b) permit the Gross Settlement Amount to be increased proportionally by the number of Pay Periods  
2 worked *in excess of 12,423*, multiplied by the Pay Period Value. The Pay Period Value shall be  
3 calculated by dividing the originally agreed-upon Gross Settlement Amount (\$500,000) by 11,294 Pay  
4 Periods, which amounts to a Pay Period Value of \$44.27. Thus, for example, should there be 12,500 Pay  
5 Periods in the Class Period, the Gross Settlement Amount shall be increased by \$3,408.79 ((12,500 Pay  
6 Periods – 12,423 Pay Periods) × \$44.27/Pay Period).

7 56. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member  
8 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid  
9 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class  
10 Claims, as well as any Judgment that may be entered by the Court if it grants final approval of the  
11 Settlement.

12 57. Releases by Participating Class Members. Upon the Funding Date, and except as to such  
13 rights or claims as may be created by this Settlement Agreement, each Participating Class Member,  
14 together and individually, on their behalf and on behalf of their respective heirs, executors,  
15 administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released  
16 Parties, or any of them, from each of the Released Class Claims arising during the Class Period. The  
17 Released Class Claims, as defined above, are limited to all claims, rights, demands, liabilities, and causes  
18 of action, set forth in the Operative Complaint or reasonably arising from the same set of operative facts  
19 as those set forth in the Operative Complaint, during the Class Period. The Parties agree, for purposes of  
20 settlement only, that Plaintiff is typical and can adequately represent the class.

21  
22 58. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or  
23 claims as may be created by this Settlement Agreement, Plaintiff who is acting as agent and proxy of the  
24 LWDA, hereby releases the LWDA's right to pursue the Released PAGA Claims..

25 59. Defendant's Right to Rescind. Defendant in its sole discretion, will have the right to void  
26 and withdraw from the Settlement if, at any time prior to Final Approval, Ten Percent (10%) or more of  
27 Class Members opt out of the settlement. Defendant must notify Class Counsel and the Court, in writing,  
28 of its election to withdraw within twenty-one (21) days after the Settlement Administrator sends the

1 Exclusion List (defined in Paragraph 63) to Defense Counsel. If the option to rescind is exercised, then  
2 Defendant will be solely responsible for all Settlement Administration Costs incurred to the date of  
3 rescission.

4 60. Objection Procedures. To object to the Settlement Agreement, a Class Member may  
5 either postmark a valid Notice of Objection to the Settlement Administrator on or before the Response  
6 Deadline, or appear (or hire an attorney to appear on his/her behalf at his/her own cost), in person, by  
7 telephone or by using the Court's virtual appearance platform) at the final fairness hearing. For the  
8 Notice of Objection to be valid, it must include: (a) the objector's full name, signature, address, and  
9 telephone number, (b) a written statement of all grounds for the objection, accompanied by any legal  
10 support for such objection; (c) copies of any papers, briefs, or other documents upon which the objection  
11 is based; and (d) a statement whether the objector intends to appear at the final fairness hearing. Class  
12 Members who fail to object either by submitting a valid Notice of Objection or appearing at the final  
13 fairness hearing, as provided above, will be deemed to have waived all objections to the Settlement and  
14 will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement  
15 Agreement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage  
16 Class Members to submit written objections to the Settlement Agreement or appeal from the final  
17 approval order and judgment. Class Counsel will not represent any Class Members with respect to any  
18 such objections to this Settlement. If a Class Member timely submits both a Notice of Objection and a  
19 Request for Exclusion, the Request for Exclusion will be given effect and considered valid, the Notice of  
20 Objection shall be rejected, and the Class Member shall not participate in or be bound by the Settlement.

21 61. No Right to Exclusion or Objections to the PAGA Settlement. Because this Settlement  
22 resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private  
23 Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA  
24 Member has the right to exclude himself or herself from the PAGA Settlement, including the release of  
25 the Released PAGA Claims, and all PAGA Members will receive their shares of the PAGA Fund. The  
26 Parties also agree that no PAGA Member has the right to object to the PAGA Settlement Amount.

27 62. Weekly Reports. The Settlement Administrator must, on a weekly basis, provide written  
28 reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class

1 Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid  
2 or invalid) received (as provided above), objections received, challenges to individual Pay Period  
3 calculations received and/or resolved, and checks mailed for Individual Class Payments and Individual  
4 PAGA Payments (“Weekly Report”). Weekly Reports must provide the Settlement Administrator’s  
5 assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and  
6 objections received, with any social security numbers redacted.

7         63.     Requests for Exclusion (Opt-outs) and Exclusion List. The Settlement Administrator  
8 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than  
9 five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Settlement  
10 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and  
11 other identifying information, excluding social security numbers, of Class Members who have timely  
12 submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying  
13 information, excluding social security numbers, of Class Members who have submitted invalid Requests  
14 for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or  
15 invalid), with any social security numbers redacted.

16         64.     Timing of Distribution of Individual Settlement Payments. Within ten (10) calendar  
17 days of the Funding Date, the Settlement Administrator will issue payments to: (a) Participating Class  
18 Members and PAGA Members; (b) the LWDA; (c) Plaintiff; and (d) Class Counsel. The Settlement  
19 Administrator will also issue a payment to itself for Court-approved services performed in connection  
20 with the Settlement.

21         65.     Uncashed Settlement Checks. Individual Settlement Payment checks returned as  
22 undeliverable and Individual Settlement Payment checks remaining uncashed for more than one hundred  
23 and eighty (180) calendar days after issuance will be canceled and, thus, void. Pursuant to and in  
24 compliance with California Code of Civil Procedure Section 384, all funds associated with these  
25 canceled checks will be tendered to Legal Aid at Work (“the Cy Pres Recipient”), a non-profit  
26 organization or foundation within the meaning of subd. (b), thereby leaving no “unpaid residue” from the  
27 Net Settlement Fund. The Parties, Class Counsel, and Defense Counsel represent that they have no  
28 interest or relationship, financial or otherwise, with the Cy Pres Recipient and that they are aware of no

1 facts that could reasonably create the appearance of impropriety between the selection of the Cy Pres  
2 Recipient and the interests of the Class.

3 66. Certification of Completion. Upon completion of administration of the Settlement, the  
4 Settlement Administrator will provide a written declaration under oath to certify such completion to the  
5 Court and counsel for all Parties.

6 67. Treatment of Individual Settlement Payments. All Individual Settlement Payments paid  
7 to Participating Class Members from the Net Settlement Fund will be allocated as follows: (a) One-Third  
8 (1/3) of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will  
9 be issued; and (b) Two-Thirds (2/3) will be allocated as non-wages for which IRS Forms 1099-MISC  
10 will be issued. All Individual Settlement Payments paid to PAGA Members from the PAGA Fund will  
11 be allocated in their entirety as penalties/non-wages for which IRS Forms 1099-MISC will be issued.  
12 The Class Representative Enhancement Payment will be allocated in its entirety as non-wages for which  
13 an IRS Form 1099-MISC will be issued.

14 68. Administration of Taxes by the Settlement Administrator. The Settlement Administrator  
15 will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Members, and Class  
16 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to  
17 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes  
18 and penalties to the appropriate government authorities.

19 69. Tax Liability. Plaintiff assumes full responsibility and liability for employee taxes owed  
20 on his Class Representative Enhancement Payment. Defendant makes no representation as to the tax  
21 treatment or legal effect of any of the other payments called for hereunder, and Plaintiff and Participating  
22 Class Members are not relying on any statement, representation, or calculation by Defendant or by the  
23 Settlement Administrator in this regard.

24 70. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES  
25 OF THIS SECTION, THE “ACKNOWLEDGING PARTY,” AND EACH PARTY TO THIS  
26 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)  
27 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND  
28 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES

1 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR  
2 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED  
3 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES  
4 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE  
5 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS  
6 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX  
7 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS  
8 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY  
9 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY  
10 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO  
11 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
12 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER  
13 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF  
14 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER  
15 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE  
16 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY  
17 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
18 AGREEMENT.

19 71. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant  
20 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
21 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of  
22 action or right herein released and discharged.

23 72. Nullification of Settlement Agreement. In the event that: (a) the Court does not finally  
24 approve the Settlement as provided herein; or (b) the Settlement does not become final for any other  
25 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null  
26 and void and any order or judgment entered by the Court in furtherance of this Settlement Agreement  
27 will likewise be treated as void from the beginning.  
28

73. Motion for Preliminary Approval/Hearing. The Parties agree to jointly participate in the preparation and filing of a motion for preliminary approval (“Motion for Preliminary Approval”), as follows:

73(a) Plaintiff’s Responsibilities. Class Counsel shall be primarily responsible for preparing the Motion for Preliminary Approval and all supporting documents and for obtaining a hearing before the Court to request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval order for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) preliminary approval of the proposed Settlement Agreement, and (c) setting a date for a final fairness hearing. At least five (5) Court days before filing the Motion for Preliminary Approval, Class Counsel shall deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice and memorandum in support of the Motion for Preliminary Approval that includes an analysis of the Settlement under *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*”) and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); and (ii) a draft proposed Order Granting Preliminary Approval and Approval of the PAGA Settlement. Plaintiff shall file the Motion for Preliminary Approval and all supporting documents by no later than January 26, 2023.

73(b) Responsibilities of Defendant. Upon receipt of Plaintiff’s proposed Motion for Preliminary Approval documents, provided above in Paragraph 73(a), Defense Counsel shall work in good faith to expeditiously provide their comments/proposed revisions to the documents referenced in (i)-(iii), to afford Class Counsel sufficient time to address Defendant’s comments/proposed revisions, to meet and confer with Defense Counsel as necessary, and to make any agreed-upon revisions to the documents in advance of the motion filing deadline.

73(c) Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting documents, Class Counsel and Defense Counsel will work together on behalf of the Parties by meeting and conferring in good faith to expeditiously resolve the disagreement. If the Court does not grant Preliminary Approval, or conditions Preliminary Approval on any change to this Agreement, Class Counsel and Defense Counsel will work together on

1     behalf of the Parties by meeting and conferring in good faith to expeditiously modify the Agreement and  
2     otherwise satisfy the Court's concerns.

3                     73(d)     Final Settlement Approval Hearing and Entry of Judgment. Upon expiration  
4     of the deadlines to postmark Requests for Exclusion or Notices of Objection to the Settlement  
5     Agreement, and with the Court's permission, a final fairness hearing will be conducted to determine the  
6     Final Approval of the Settlement Agreement along with the amounts properly payable for: (a) Attorneys'  
7     Fees and Costs; (b) the Class Representative Enhancement Payment; (c) Individual Settlement  
8     Payments; (d) the LWDA Payment; and (e) all Settlement Administration Costs. The final fairness  
9     hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel  
10    will be responsible for drafting all documents necessary to obtain Final Approval. Class Counsel shall  
11    provide a draft of the Final Approval motion and supporting documents to Defense Counsel at least five  
12    (5) business days before the motion filing deadline. Defense Counsel shall work in good faith to  
13    expeditiously provide their comments/proposed revisions to the documents to afford Class Counsel  
14    sufficient time to address them, to meet and confer with Defense Counsel as necessary, and to make any  
15    agreed-upon revisions to the documents in advance of the motion filing deadline. Class Counsel will  
16    also be responsible for drafting the attorneys' fees and costs application to be heard at the final fairness  
17    hearing.

18                    74.     Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the  
19    Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its  
20    approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of  
21    addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement  
22    administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as  
23    set forth in this Settlement Agreement.

24                    75.     Release by Plaintiff. Upon the Funding Date, in addition to the claims being released by  
25    all Participating Class Members, Plaintiff will release and forever discharge the Released Parties, to the  
26    fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not  
27    asserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this  
28    Settlement Agreement, including Plaintiff's individual PAGA claims. To the extent the foregoing release

1 is a release to which Section 1542 of the California Civil Code or similar provisions of other applicable  
2 law may apply, Plaintiff expressly waives any and all rights and benefits conferred upon him by the  
3 provisions of Section 1542 of the California Civil Code or similar provisions of applicable law which are  
4 as follows:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
6 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
7 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
8 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
9 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
10 PARTY.

11 76. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the  
12 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth  
13 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

14 77. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the  
15 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements  
16 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section  
17 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is  
18 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and  
19 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or  
20 contradict the terms of this Settlement Agreement.

21 78. Amendment or Modification. No amendment, change, or modification to this Settlement  
22 Agreement will be valid unless in writing and signed, either by the Parties or their counsel, and approved  
23 by the Court.

24 79. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and  
25 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement  
26 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant  
27 to this Settlement Agreement to effectuate its terms and to execute any other documents required to  
28 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each

1 other and use their best efforts to implement the Settlement. If the Parties are unable to reach agreement  
2 on the form or content of any document needed to implement the Settlement, or on any supplemental  
3 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the  
4 assistance of the Court to resolve such disagreement.

5 80. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,  
6 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

7 81. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto  
8 will be governed by and interpreted according to the laws of the State of California.

9 82. Execution and Counterparts. This Settlement Agreement is subject only to the execution  
10 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All  
11 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned  
12 copies of the signature page, will be deemed to be one and the same instrument.

13 83. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this  
14 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this  
15 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account  
16 all relevant factors, present and potential. The Parties further acknowledge that they are each represented  
17 by competent counsel and that they have had an opportunity to consult with their counsel regarding the  
18 fairness and reasonableness of this Settlement.

19 84. Invalidity of Any Provision. Before declaring any provision of this Settlement  
20 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent  
21 possible, consistent with applicable precedents. so as to define all provisions of this Settlement  
22 Agreement valid and enforceable.

23 85. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that  
24 Plaintiff or Class Counsel may appeal any reduction of the Attorneys' Fees and Costs below the amount  
25 they request from the Court, and either party may appeal any Court order that materially alters the  
26 Settlement Agreement's terms.

27 86. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to  
28 class action certification for purposes of this Settlement only. If, for any reason, the Settlement is not

1 approved, the stipulation to certification will be void. The Parties further agree that certification for  
2 purposes of the Settlement is not an admission that class action certification is proper under the standards  
3 applied to contested certification motions and that this Settlement Agreement will not be admissible in  
4 this or any other proceeding as evidence that either (a) a class action should be certified or (b) as  
5 provided further below, that Defendant is liable to Plaintiff or any Class Member, other than according to  
6 the Settlement's terms.

7 87. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute  
8 that has arisen between them and to avoid the burden, expense and risk of continued litigation. By  
9 entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any  
10 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or  
11 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached  
12 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with  
13 respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any  
14 of the negotiations connected with it, will be construed as an admission or concession by Defendant of  
15 any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to  
16 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be  
17 offered or received as evidence in any action or proceeding to establish any liability or admission on the  
18 part of Defendant or to establish the existence of any condition constituting a violation of, or a non-  
19 compliance with, federal, state, local or other applicable law.

20 88. No Findings of Wrongdoing. Plaintiff acknowledges and admits that the Court has not  
21 made any findings regarding the truth of any of Plaintiff's factual allegations, the merit of any of  
22 Plaintiff's legal claims, or the appropriateness of class certification. Plaintiff likewise acknowledges and  
23 admits that making any statement to any third party, including, but not limited to, any Class/PAGA  
24 member or any other current or former employee of Defendant, that represents that any finding has or  
25 was going to be made by the Court against Defendant is false and would likely cause harm to  
26 Defendant's business, including, but not limited to, harm to its reputation, current financial well-being,  
27 and future business dealings and, therefore, Plaintiff represents that he will not, either orally or in writing,  
28 make any such statements. This provision is a material, essential and indispensable condition of this

1 Agreement.

2 89. Non-Disparagement. Plaintiff further represents that he will not, either orally or in  
3 writing, make defamatory or otherwise injurious statements concerning Defendant (including  
4 Defendant's employees) or any of the Released Parties. This provision is a material, essential and  
5 indispensable condition of this Agreement.

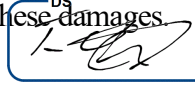
6 90. No Public Comment. The Parties and their counsel agree that they will not issue any  
7 press releases, initiate any contact with the press, respond to any press inquiry, or have any  
8 communication with the press about the fact, amount, or terms of the Settlement at any time. Until the  
9 completion of the hearing on the Parties' motion for preliminary approval from the Court,  
10 Plaintiff and Class Counsel will keep the terms of this Agreement confidential. Prior to final  
11 approval of this Settlement, Plaintiff and Class Counsel will not discuss this Action or the  
12 Settlement or otherwise disclose the terms of this Agreement with third parties other than  
13 Class Members and the Settlement Administrator, except (1) as required by the PAGA statute,  
14 (2) as necessary to effectuate this Agreement, and (3) to the Parties' tax advisors. After final  
15 approval of this Settlement, Plaintiff, Defendant, and their respective counsel shall not issue  
16 any public statements with respect to the Action or Settlement, except as required by law. The  
17 Parties and their counsel shall not engage in any publicity, including website or social media  
18 postings, of any type related to the Action, Settlement, or litigation against Defendant.

19 Notwithstanding the specific limitations to public disclosure identified herein, Class Counsel  
20 shall not be precluded from disclosing the Parties to the lawsuit and the fact that the matter  
21 settled to a Court or other tribunal. Furthermore, nothing herein limits Plaintiff's or any Class  
22 Member's ability to communicate with any government agency or otherwise cooperate in any  
23 investigation or proceeding that may be conducted by any government agency. This provision  
24 is a material, essential and indispensable condition of this Agreement.

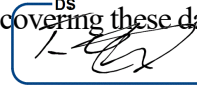
25 91. Liquidated Damages. Plaintiff's Counsel has explained to Plaintiff and Plaintiff  
26 understands that Paragraphs 88-90, above, are essential to this Agreement and, in the event of a breach of  
27 any of these provisions, damages would be difficult if not impossible, to quantify. Therefore, Plaintiff  
28 understands and agrees that, in the event of a breach by Plaintiff, of Paragraph 88, 89, or 90, Defendant

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1 will be awarded Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) per violation as  
2 damages and not as a penalty. The prevailing party shall be entitled to all reasonable attorney's fees and  
3 costs incurred in recovering these damages.

4 **Plaintiff's Initials** 

5 92. Other Damages. Plaintiff's Counsel has explained to Plaintiff and Plaintiff further  
6 understands that any breach of this Agreement by him also could subject him to damages for breach of  
7 contract, defamation, and other applicable legal claims, as well as to reasonable attorney's fees and costs  
8 incurred by Defendant in recovering these damages.

9 **Plaintiff's Initials** 

10 93. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement  
11 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or  
12 constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

13 94. Enforcement Actions. In the event that one or more of the Parties institutes any legal  
14 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement  
15 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be  
16 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including  
17 expert witness fees incurred in connection with any enforcement actions.

18 95. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
19 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed  
20 more strictly against one party than another merely by virtue of the fact that it may have been prepared  
21 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations  
22 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

23 96. Representation By Counsel. The Parties acknowledge that they have been represented  
24 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and  
25 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,  
26 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

27 97. All Terms Subject to Final Court Approval. All amounts and procedures described in  
28 this Settlement Agreement herein will be subject to final Court approval.

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1           98.     Cooperation and Execution of Necessary Documents. All Parties will cooperate in good  
2 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this  
3 Settlement Agreement.

4           99.     Binding Agreement. The Parties warrant that they understand and have full authority to  
5 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully  
6 enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in  
7 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that  
8 otherwise might apply under federal or state law.

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**READ CAREFULLY BEFORE SIGNING**

**PLAINTIFF**

DocuSigned by:



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Francisco Martinez

4/4/2023  
Dated: \_\_\_\_\_, 2023

**DEFENDANT**

Dated: \_\_\_\_\_, 2023

Paul Zampierin, Controller  
State Roofing Systems, Inc.

**APPROVED AS TO FORM**

**CAPSTONE LAW APC**

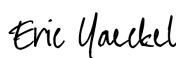
Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Raul Perez

Attorneys for Plaintiff Francisco Martinez

**SULLIVAN & YAECKEL LAW GROUP, APC**

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Eric K. Yaeckel

4/5/2023  
Dated: \_\_\_\_\_, 2023

Attorneys for Plaintiff Francisco Martinez

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Ann H. Qushair

Attorneys for Defendant State Roofing Systems, Inc.

1 **READ CAREFULLY BEFORE SIGNING**

2 **PLAINTIFF**

3  
4 Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Francisco Martinez

6 **DEFENDANT**

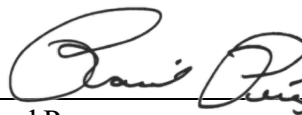
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\_\_\_\_\_  
Paul Zampierin, Controller  
State Roofing Systems, Inc.

10 **APPROVED AS TO FORM**

11 **CAPSTONE LAW APC**

12  
13  
14 Dated: April 5, 2023  
15 \_\_\_\_\_, 2023

By:   
\_\_\_\_\_  
Raul Perez

Attorneys for Plaintiff Francisco Martinez

17  
18 **SULLIVAN & YAECKEL LAW GROUP, APC**

19  
20 Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Eric K. Yaeckel

Attorneys for Plaintiff Francisco Martinez

22  
23 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

24  
25 Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Ann H. Qushair

Attorneys for Defendant State Roofing Systems, Inc.

1 **READ CAREFULLY BEFORE SIGNING**

2 **PLAINTIFF**

3  
4 Dated: \_\_\_\_\_, 2023

Francisco Martinez

6 **DEFENDANT**

7  
8 Dated: April 5, 2023

  
Paul Zampierin, Controller  
State Roofing Systems, Inc.

11 **APPROVED AS TO FORM**

12 **CAPSTONE LAW APC**

13  
14  
15 Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Raul Perez

Attorneys for Plaintiff Francisco Martinez

18 **SULLIVAN & YAECKEL LAW GROUP, APC**

19  
20 Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Eric K. Yaeckel

Attorneys for Plaintiff Francisco Martinez

23 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

24  
25 Dated: April 5, 2023

  
By: \_\_\_\_\_  
Ann H. Qushair

Attorneys for Defendant State Roofing Systems, Inc.