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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PATRICK FORD, on behalf of himself and all others similarly situated, Plaintiff, v. HERAEUS PRECIOUS METALS NORTH AMERICA LLC, a Delaware Limited Liability Company; and DOES 1-50, inclusive. Defendants.	CASE NO.: 22STCV03063 *Assigned to Hon. Elaine Lu, Dept. 9* **DECLARATION OF MERHDAD BOKHOUR IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** Hearing: Date: July 24, 2025 Time: 10:00 a.m. Dept.: 9

DECLARATION OF MEHRDAD BOKHOUR

I, Mehrdad Bokhour, say and declare as follows:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California, and I am the principal of Bokhour Law Group, P.C., co-counsel with Joshua Falakassa of Falakassa Law, P.C., as attorney of record for Plaintiff Patrick Ford and the Settlement Class.

2. As such, I am familiar with the file in this matter, and if called as a witness, I could and would competently testify to the following facts of my own personal knowledge.

Class Counsel Are Experienced Class Litigators

3. I graduated with a Bachelor of Arts with a major in Political Science from the University of California, Berkeley, in 2007. I received my J.D. from Loyola Law School—Los Angeles in 2012 and became a member of the California State Bar in December 2012.

4. Before beginning my legal career, I served as a judicial extern for the Honorable Justice Fred Woods of the Second District Court of Appeal, Division Seven. I was also an appellate law clerk at Greines, Martin, Stein & Richland LLP.

5. I have been a member, in good standing, of the State Bar of California since 2012. I am admitted to practice before all California state courts, the U.S. Court of Appeals for the Ninth Circuit Court, the U.S. District Court for the Central District of California, Eastern District of California, and Southern District of California and have litigated class action and Private Attorneys General Act ("PAGA") representative action cases in various courts in California.

6. I have handled approximately 250employment litigation matters during my eleven years in practice. Over the last seven years, my practice has exclusively represented employees, most of which included class action and representative action wage and hour matters. Various courts have appointed me as class counsel and have received final court approval and judgment in numerous class actions. I anticipate receiving final approval for many more in the future.

7. As part of these settlements and judgments, I have recovered at least 50 million dollars in damages for my clients and the class members (who often work as essential workers,

nurses, technicians, warehouse workers, truck drivers, sales, and countless other trades).

8. I was selected as a “Super Lawyer Rising Star” in Employment Litigation from 2017 through 2022 and as a “Super Lawyer” from 2023-225. This distinction is reserved for the top 2.5% of lawyers in the practice area. I have also been recognized by TopVerdicts.com for achieving several of the top wage and hour class and PAGA action settlements in California.

9. I am an active member of the California Employment Lawyers Association (“CELA”) and have attended numerous Continuing Legal Education courses on employee advocacy.

10. My firm has the experience, resources, and means necessary to allow us to provide adequate representation to all Settlement Class Members in this Action.

11. Currently, my firm is acting as co-counsel in at least fifty wage-and-hour class actions.

12. Class Counsel are respected members of the California Bar with strong records of vigorous and effective advocacy of their clients, and they are experienced in handling complex class action litigation. Both Class Counsel and Plaintiff were prepared to litigate the claims in this action, but they strongly and unequivocally support the proposed Settlement as being in the best interest of the Settlement Class based on the circumstances referenced herein.

13. In the opinion of Class Counsel, the recovery for each Settlement Class Member is well within the acceptable range for this type of action. This Settlement is also favorable given that the Settlement Class will promptly receive compensation rather than facing uncertainties inherent in further litigation and waiting years for this action to be tried. It is also telling that the Settlement Class have overwhelmingly supported the Settlement on the terms set forth in the Settlement Agreement. No Settlement Class Member has objected to the class-wide Settlement obtained in this matter and no Settlement Class Member requested exclusion from the Settlement. Based on all considerations, this Settlement is highly favorable and is in the best interests of the Settlement Class.

14. In sum, all relevant factors support final approval of the Settlement. The parties negotiated at arm's length under the supervision of an experienced and well-respected mediator.

Class Counsel also investigated, discovered, and analyzed class claims extensively. Moreover, Class Counsel, experienced class action litigators, strongly believe that this Settlement provides an excellent result to the Settlement Class. Lastly, the fact that no objections were filed requesting denial of final approval and no requests for exclusion from the Settlement weigh strongly in favor of approving the Settlement. For these reasons, this Court should conclude that under the circumstances of this case, the proposed Settlement is fair, adequate, and well within the range of reasonableness.

The Proposed Enhancement Award to Plaintiff as Class Representative is Reasonable

15. Plaintiff and Class Counsel request that the Court finally approve a Class Representative Service Payment of $10,000 for the time, effort, and risks Mr. Ford undertook in participating in this Action. Because a named plaintiff is an essential ingredient of any class action, a service payment is appropriate to induce individuals to step forward and assume the burdens and obligations of representing the settlement class. In deciding the amount of service payment for a class representative, relevant factors include the actions the plaintiff has taken to protect the interests of the settlement class, the degree to which the settlement class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the action.

16. In the instant case, Plaintiff assisted Class Counsel on many occasions with investigating and prosecuting this action. Plaintiff provided many documents and relevant information to Class Counsel, spent numerous hours educating Class Counsel on the inner workings of Defendant's operations and timekeeping practices, and made himself available for mediation. The amount sought for the Class Representative aligns with the service payments in similar wage and hour class actions. In Class Counsel's experience, service payments in wage and hour actions typically range from $5,000 to $40,000. Further, Defendant supports the requested Class Representative Service Payment of $10,000 to Plaintiff.

17. As such, the service payment requested is intended to compensate Plaintiff for his critical role in this case and the substantial time, effort, and risks he undertook to help secure the result obtained on behalf of the Settlement Class. The Class Representative Service

Payment requested is well deserved and warranted.

The Requested Attorneys' Fees and Costs are Fair, Reasonable, and Appropriate

18. Class Counsel's application for an award of Attorneys' Fees in an amount of approximately 33.33% of the Settlement Amount on behalf of the Settlement Class is reasonable and fair. The requested fee falls on the lower end of the Ninth Circuit's historical benchmark for attorneys' fees of 20% to 40% of a common fund. It is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis.

19. For Class Counsel, the fees here were wholly contingent in nature, and the case presented far more risk than the usual contingent fee case. There was the prospect of the enormous cost inherent in class action litigation and a long battle with corporate Defendant. That prospect has become a reality in trial courts and the Court of Appeal in other wage and hour class litigations. Class Counsel risked not only a great deal of time but also a great deal of expense to ensure the successful litigation of this action on behalf of all Settlement Class Members. Based upon the foregoing, Class Counsel respectfully requests that the Court award Attorneys' Fees in the amount of $39,425.84 and costs incurred in the amount of $16.953.90.

20. Class Counsel will collectively work approximately 84 hours on this case. Class Counsel's hourly rate, in this case for Mehrdad Bokhour, is $700 per hour, and my co-counsel, Joshua Falakassa, worked approximately 88.5 hours on this case at an hourly rate of $675 per hour. Accordingly, this results in a total lodestar amount of $57,537.50, resulting in a negative multiplier, summarized in the following table and the declaration of Class Counsel. The hourly rates above are comparable to those of other attorneys with equal or similar experience.

Attorney	Experience	Hourly Rate	Hours	Total Lodestar
Mehrdad Bokhour	13 years	$700	45.5[1]	$66,850
Joshua Falakassa	21 years	$675	38.5	$59,737.50

[1] Includes an estimated 15 hours of additional work preparing for and attending the hearing (inclusive of finalizing and filing the motion, appearing at the hearing, addressing the Court's questions/concerns, submitting revised documents, responding to class members who are anxious to receive their check, and so on), as well as 20 hours in anticipated work to be performed after the final approval, working with counsel, administrator, and Class Members (which includes up to 1.5 years of case management relating to ensuring timely payment from Defendant, reviewing the calculations, checks are timely mailed, responding to class members questions about the timing of checks/missing checks/lost checks and remailings, working with the administrator regarding uncashed checks and remailings, assisting with the Administrator's declarations regarding payments and uncashed checks, potentially filing an amended judgment, appearing at the final disbursement hearing and/or submitting paperwork related thereto.

Total Lodestar	$57,837.50

21. The ultimate result was far from certain. When this case was taken on a contingency fee basis, the firm agreed to assume responsibility for all litigation costs. In the course of this Action, Class Counsel paid all costs, including filing fees, court costs, research fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

22. It has been my experience that the benchmark for an attorney fee award in California state cases is one-third of a common settlement fund, which the California Supreme Court recently upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class Counsel is seeking a fee of $39,425.84, which is one-third of the Settlement Amount.

23. The fee is warranted because of the results achieved for the Settlement Class Members, both in terms of the immediate cash settlement and that the Settlement Class Members resoundingly supported the Settlement. Defendant does not oppose this fee request.

24. The following are the itemized litigation costs (actually incurred) for the above-referenced matter:

(1)	Mediation	$9,000
(2)	Filing Fees	$1,911.38
(3)	Expert fees	$4,800
(4)	Service Process	$125
(5)	Case Anywhere	$1,117.50
	Total	$16,953.88

25. The LWDA's confirmation of receipt of this settlement is attached hereto as Exhibit "A."

26. A true and correct copy of the Settlement Agreement is attached as Exhibit "B."

27. Plaintiff and the Class Members are all current and former nonexempt hourly employees who worked for Defendant in California from January 26, 2018, until August 29, 2022, and did not sign an arbitration agreement or a prior release. The primary claims, which the Defendant disputes, involve allegations that the Class Members were not paid all wages owed due to Defendant's timekeeping practices. Additionally, Plaintiff alleges claims for failure to pay minimum wages and overtime, non-compliant meal and rest periods, wage statement violations, and waiting time penalties.

28. The proposed Settlement here was the product of arm's-length negotiation before a highly experienced and reputable class action mediator, Marc Feder, Esq., to reach a settlement.

29. Plaintiff and Class Counsel have diligently investigated the claims raised in this litigation and, after taking into account the disputed factual and legal issues involved in this action, the risks attending further prosecution, and the benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Settlement, concluded that the Settlement terms are fair, reasonable, and in the best interest of the Settlement Class.

30. As the Settlement Agreement reveals, there is no preferential treatment for any segment of the Settlement Class, as the Settlement is designed to fairly and adequately compensate all Settlement Class Members. Pursuant to California Rules of Court Rule 3.769(b), the parties have disclosed the agreed upon and proposed Attorneys' Fees, which are well within the range of reasonableness for matters of this nature.

31. As set forth at the time of preliminary approval, Class Counsels' investigation into the facts and merits of the wage and hour claims alleged included analyzing substantial amounts of information, correspondence, documents, timekeeping and pay data, policies and procedures, and evidence relating to the class size and the commonality of the claims. During this process, Plaintiff and Class Counsel investigated the potential claims of the similarly situated employees and researched and investigated Defendant's defenses. Finally, Class Counsel synthesized and analyzed information provided by Defendant as to the total Settlement Class Members, the number of current and former employees, and the number of employees who worked during various time periods and prepared comprehensive damages calculations regarding the wage and hour claims at issue.

32. In light of the uncertainties of protracted litigation, this negotiated Settlement reflects the best practicable recovery for the Settlement Class. While the total Settlement amount is, of course, a compromise figure, the potential risks and opportunities of both parties were effectively weighed and considered by the parties, resulting in a fair and equitable Settlement. Based upon detailed data obtained through discovery and information exchanges and factoring in claim certification and liability probabilities, Class Counsel formulated detailed damages models

to evaluate the claims in preparation for mediation and reach a realistic and reasonable resolution. Of course, Defendant denies that any damages should be assessed and denies all of the value assessed by Plaintiff.

33. Moreover, as further detailed in Plaintiff's Motion for Preliminary Approval of Class Action Settlement, Defendant strongly disputed the merits of the case and the damages on several grounds.

34. The Settlement should be approved, and judgment entered based on the determination that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

35. In compliance with California Rules of Professional Conduct section 1.5.1, Plaintiff signed a fee split agreement that provides fees will be allocated between Class Counsel as follows: fifty percent (50%) to the Bokhour Law Group, P.C. and fifty percent (50%) to the Falakassa Law, P.C.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct this 25th day of June 2025, at Los Angeles, California.

Mehrdad Bokhour

EXHIBIT "A"

EXHIBIT "B"

AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This Amended Class Action Settlement Agreement is entered into by and between Plaintiff Patrick Ford, individually and on behalf of all others similarly situated, and Defendant Heraeus Precious Metals North America LLC, and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers to the case entitled *Patrick Ford v. Heraeus Precious Metals North America LLC*, removed to the United States District Court of the Southern District of California, Case No. 22-cv-01498-JAK-KS, and remanded by stipulation to the Los Angeles Superior Court, Case No. 22STCV03063.

2. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean this Class Action Settlement Agreement.

3. "Class Claims" or "Released Class Claims" will include all claims that were pled in the operative Complaint based on the facts alleged therein, including claims for failure to pay minimum and overtime wages, meal and rest break violations, failure to provide accurate itemized wage statements, failure to timely pay all wages upon separation of employment, and unfair and unlawful business practices.

4. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C.

5. "Class Data" means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator: the Class Members' full names; last known addresses; telephone numbers; Social Security Numbers; and dates of employment and/or number of Workweeks Worked as non-exempt or hourly employees of Defendant during the Class Period for each Class Member.

6. "Class Period" and "Class Release Period" shall mean January 26, 2018, until August 29, 2022.

7. "Class Representative" or "Plaintiff" means and refers to Patrick Ford.

8. "Complaint" refers to the Complaint filed in the Los Angeles Superior Court

action entitled *Patrick Ford v. Heraeus Precious Metals North America LLC*.

9. "Court" means the California Superior Court, County of Los Angeles, or any Court of competent jurisdiction.

10. "Defendant" means and refers to Heraeus Precious Metals North America LLC.

11. "Defendant's Counsel" or "Defense Counsel" mean and refer to Jason Murtagh of Buchanan, Ingersoll & Rooney LLP and Joseph Centeno and Rachel King of Buchanan, Ingersoll & Rooney P.C.

12. "Effective Date" means ten (10) calendar days after the time for appeal has expired following the Court's entry of an order granting Final Approval of the Settlement, assuming no appeal is filed; or if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

13. "Final Approval" refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Settlement on substantially the same terms provided herein or as may be modified by subsequent agreement of the Parties or order of the Court.

14. "Individual Settlement Amount" shall have the meaning ascribed to it in Paragraph 41(d) below.

15. "Net Settlement Amount" shall have the meaning ascribed to it in Paragraph 41(c) below.

16. "Notice" means the notice of class action Settlement that will be sent to the Class Members by the Settlement Administrator as described by Paragraph 56.

17. "Notice Response Deadline" is 45 calendar days from the date the Notice is mailed to the Class Members.

18. "Objecting Participating Class Member" means a Participating Class Member, other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with respect to the Class Claims pursuant to Paragraph 61(c) below.

19. “Participating Class Member” means any and all Class Members who are deemed to participate and receive an Individual Settlement Amount for the Class Claims and who do not opt-out of the settlement of the Class Claims by submitting timely valid Requests for Exclusion.

20. “Parties” or “Settling Parties” mean Plaintiff, the Class Members, and Defendant, collectively.

21. “Preliminary Approval Date” means the date the Court preliminarily approves the Settlement Agreement and enters the Preliminary Approval Order.

22. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Class Members, an opportunity to opt out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs.

23. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Class, and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code Section 468.

24. “Release” shall mean the release and discharge of the Class Claims by Plaintiff and all of the Participating Class Members.

25. “Released Parties” shall refer to Defendant, together with its current and former officers, directors, members, managers, shareholders, agents, parents, subsidiaries, affiliates, operators, partners, attorneys, successors, and assignees.

26. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 61(a) below.

27. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to Class Representative in addition to his Individual Settlement Amount as a Participating Class Member.

28. “Settlement Administration Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not

limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount.

29. "Settlement Administrator" means and refers to a settlement administrator mutually agreed to by the Parties, that will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

30. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning ascribed to it in Paragraph 41(a) below.

31. "Class Member" refers to individual members of the Settlement Class.

32. "Class" and "Class Members" refers to all current and former nonexempt hourly employees who worked for Defendant in California from January 26, 2018, until August 29, 2022, and did not sign an arbitration agreement or a prior release.

33. "Workweeks Worked" for each Class Member means any workweek during the Class Period in which the Class Member was employed by Defendant as a non-exempt employee in California and worked at least one shift during the workweek for or on behalf of Defendant for which a prior release of claims has not been signed. Workweeks Worked will be calculated based on Defendant's business records.

B. <u>General Terms</u>

34. On or about January 26, 2022, Plaintiff filed a putative class action complaint in the Court against Defendant, including allegations of: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) meal period violations, (4) rest period violations, (5) waiting time penalties, (6) wage statement violations, and (7) unfair competition.

35. Defendant denies Plaintiff's claims and allegations and contend that the Action is not suitable for class certification and/or representative treatment.

36. Class Representative believes he can proceed with his class and representative claims, that the Action is meritorious, and that class certification is appropriate.

37. The Parties have conducted a thorough investigation into the facts of the Action.

This includes conducting extensive exchange of discovery, including Defendant's written policies and practices and the production of payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Class Members. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

38. On August 29, 2022, the Parties participated in mediation before Marc Feder, Esq., a highly experienced class action mediator. After a full-day mediation and the issuance of a mediator's proposal, the Parties reached a settlement.

39. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action, nor shall they be construed as an admission that this Action or any of the claims or allegations herein are appropriate for class or collective action.

40. <u>Stipulation for Class Certification</u>. For settlement purposes only, Defendant will stipulate that the Class Members described herein who do not Request Exclusion from the Class may be conditionally certified as a settlement class for purposes of settlement. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be admissible in connection with the issue of whether or not class

certification would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it will continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and representative treatment and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

41. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for One Hundred Five Thousand Dollars ($105,000) ("the Settlement Amount"). The Settlement Amount is the maximum amount that will be paid by Defendant, and includes Individual Settlement Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service Payment to Class Representative, and Settlement Administration Costs. Defendant shall separately pay the employer's share of applicable payroll taxes.

(b) The Settlement is based on Defendant's representation that there are approximately 5,320 workweeks during the Class Period. In the event that the actual number of Workweeks Worked by all Class Members during this period increases by 10% or more, then Defendant shall increase the QSF on a proportional basis in excess of 10 percent (i.e., if there were an eleven percent (11%) increase in the number of Workweeks Worked, then Defendant will increase the QSF by one percent (1%)).

(c) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less attorneys' fees and litigation costs as approved and awarded by the Court, the Service Payment to Class Representative as approved and awarded by the Court, and the Settlement Administration Costs, as approved and awarded by the Court. If the Court reduces the attorneys' fees and litigation costs, Service Awards, or Settlement Administration Costs, the Net Settlement Sum shall be increased or decreased accordingly.

(d) Individual Settlement Amounts for the Class: The Settlement Administrator will use the Class Data provided by Defendant to calculate each Participating Class Member's Individual Settlement Amounts based on the following formula:

Class Amount: The Net Settlement Amount shall be allocated to each Participating Class Member based on his/her/their proportionate Workweeks Worked during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's total Workweeks Worked during the Class Period, and the denominator of which is the total Workweeks Worked by all Participating Class Members during the Class Period. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts will be allocated for tax purposes based on the allegations in the Action as follows: thirty three percent (33%) will be paid as wages subject to withholding of all applicable local, state, and federal taxes; and sixty seven (67%) will be paid as interest and as civil penalties (pursuant to, *e.g.*, California Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the civil penalties and interest allocations.

(f) Service Payment to Class Representative: The amount awarded to Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed $10,000. Defendant agrees not to oppose this request. The Service Payment to Class Representative will be paid out of the Gross Settlement Amount. Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Plaintiff or Class Counsel to void this Agreement or file an appeal. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class

Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Settlement Amount, plus reasonable litigation costs not to exceed $15,000 ("Attorneys' Fees and Cost Award"). For purposes of this Settlement, Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorneys' Fee and Cost Award shall be paid from the Gross Settlement Amount and Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and administration of the portion of the attorneys' fees and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. After the exhaustion of any such appellate review, additional amounts not awarded to Class Counsel as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of the Attorneys' Fees and Costs Award. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

(h) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed $5,000 and subject to Court approval, unless approved by all Parties and the Court.

(i) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and the Class Members are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Individual Settlement Amounts described herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

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

42. <u>"Non-Reversionary" Settlement</u>. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendant. Class Members will not have to make a claim to receive an Individual Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to each Participating Class Member. The Settlement Administrator shall be responsible for accurately and timely reporting any remittance obligations with respect to unclaimed funds as a result of a Participating Class Member not cashing an Individual Settlement Amount by the check cashing deadline, as set forth herein.

43. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and adequate, and will so represent same to the Court.

D. <u>Release by Plaintiff and the Class</u>

44. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class Member, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Release Period.

45. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

46. After the Judgment is final and Defendant has fully funded the Gross Settlement Amount and separately paid all employer payroll taxes, Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on the claims directly in the operative complaint or based on the facts alleged in the operative complaint. The Class Members shall be so notified in the Notice. This paragraph does not apply to any Class Member who timely and validly opt out of the Settlement for purposes of Class Claims.

47. Class Representative, on behalf of himself and the Participating Class Members, acknowledges and agrees that the claims for unpaid wages and unreimbursed expenses in the Action, misclassification claims, and untimely payment of wages in the Action, are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representative, on behalf of himself and the Participating Class Members, acknowledge and agree that California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

> An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

E. <u>Release by Class Representative</u>

48. In addition to Class Representative's release of the Released Class Claims, as discussed in Paragraphs 44 through 47 above, and in exchange for payment to Class Representative of the Service Payment approved by the Court, Class Representative does hereby, for himself and for his respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, forever completely release and discharge the Released Parties from any and all charges, complaints, claims,

liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including for back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Stipulation, whether known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Defendant or the remuneration for or termination of such employment (collectively, the "Class Representative's Claims").

49. Without limiting the generality of the foregoing, Class Representative also expressly releases all claims or rights against Released Parties arising out of or relating to alleged violations of any contracts, express or implied (including but not limited to any contract of employment), any contract or covenant of good faith and fair dealing (express or implied), any tort, including but not limited to, negligence, fraud, misrepresentation and violation of California Labor Code section 970, negligent infliction of emotional distress, intentional infliction of emotional distress, defamation, "retaliation" claims and claims for violation of public policy, any claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and alleged "off the clock" work under federal and state law, including, but not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section 203, damages, or penalties pursuant to California Labor Code Section 226, meal period and rest break payments and penalties pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, failure to provide one day of rest in seven pursuant to California Labor Code Sections 551 and 552, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200 *et seq*., interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys' fees and costs, including those pursuant to California Labor

Code Section 1194 *et seq*., claims under the Private Attorneys General Act of 2004, Labor Code section 2699 *et seq*., and the alleged violation or breach of any other state or federal statute, rule, and or regulation, including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs, or attorneys' fees in connection with any of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any "wrongful discharge," "constructive discharge," and "retaliation" claims, any claims relating to any breach of public policy, any legal restrictions on Defendant's right to discharge employees, and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California Labor Code § 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government Code § 12900 *et seq*. (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), or age, including retaliation for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1 *et seq.* (family/medical leave); (8) California Labor Code, including Section 1720 *et seq.*, or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq*. (employee benefits); (14) the California Civil Code; (15) the California Labor Code; (16) the California Constitution; (17) the National Labor Relations Act; and (18) any other federal, state, or local statute or legislation.

50. Class Representative expressly waives and relinquishes all rights and benefits

afforded by Section 1542 of the Civil Code of the State of California and do so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

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

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Class Representative, and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representatives knew of, as well as all claims that they do not know or suspect to exist in their favor against the Released Parties, or any of them, for the time period from the beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such Class Representative's claims.

51. In addition to this Settlement, the Parties have also negotiated a separate settlement of any and all claims that Plaintiff may have against the Released Parties, for which Defendant shall pay Plaintiff an additional payment of $35,000, subject to Plaintiff executing and not revoking a separate general release agreement.

F. <u>Interim Stay of Proceedings</u>

52. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

G. <u>Notice Process</u>

53. <u>Appointment of Settlement Administrator</u>. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses,

independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities, due diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

54. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

55. Class Data. Within thirty (30) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will not be provided to Class Counsel and it will remain confidential. The Class Data shall be used solely to administer the Settlement and it will not be used or disclosed to anyone, except (1) as required by applicable tax authorities, (2) pursuant to Defendant's express written consent, or (3) by order of the Court.

56. Notice. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail, in English and Spanish, within seven (7)

calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Class Members if any envelopes are returned.

57. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

58. Disputes Regarding Class Data. Class Members are deemed to participate in the Settlement unless they opt-out. The Notice will inform Class Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks Worked during the Class Period. Class Members may dispute their Workweeks Worked if they feel they were employed more workweeks in the Class Period in California than Defendant's records show by timely submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks Worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members will have until the Notice Response Deadline to dispute Workweeks Worked, object, or opt out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Workweeks Worked for any Class Member, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Amounts; accordingly, in no

event will Defendant be required to increase the Gross Settlement Amount.

59. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) days prior to the Final Approval Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

60. Class Members' Rights. Each Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of the Settlement. The Notice will inform the Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Class Claims provisions of the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Class Members. Any Class Member, other than Plaintiff, may request to be excluded from the Participating Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state in words to this effect:

> "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *FORD V. HERAEUS* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT."

Any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement with respect to the Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Class Claims. The Settlement Administrator shall provide a list of all Class Members who timely return a Request for Exclusion, if any, to Class Counsel and Defense Counsel no later than ten (10) days after the Notice Response Deadline.

(b) Binding Effect on Settlement Class Members. Except for those Class Members who exclude themselves in compliance with the procedures set forth above, all Class Members will: (i) be deemed to be Participating Class Members for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement of Class Claims. Any Participating Class Member, other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims and may appear at the Final Approval Hearing and object whether or not they have filed a written objection as outlined herein. To object, a Participating Class Member shall inform the Settlement Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the full name, address, telephone number, dates of employment with Defendant of the Objecting Participating Class Member, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Participating Class Member is represented by counsel, the name and address of his/her/their counsel. If any Objecting Participating Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Participating Class Member's written submission should include a request to be heard, and the Court will determine whether Objecting Participating Class Members will be permitted to speak. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence it files with the Court prior to the Final Approval

Hearing. Any Participating Class Member who files an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his/her/their counsel related to any objections to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure section 663.

(d) Failure to Object. Any Settlement Class Member who desires to object with respect to the Class Claims but fails to timely submit a written objection waives any right to object will be foreclosed from making any objection to this Settlement. Any Settlement Class Member who does not timely and properly become a party of record by intervening or filing a motion to vacate the judgment waives any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California Code of Civil Procedure section 473, and extraordinary writs.

(e) Responses to Objections. Counsel for the Parties may file a response to any objections submitted by Objecting Settlement Class Members at least five (5) court days before the date of the Final Approval Hearing.

61. Class Members will have until the Notice Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

62. Funding of the Settlement Amount. Defendant shall make a one-time deposit into the QSF of the Settlement Amount, as described in Paragraph 41(a) that is necessary to make all payments required under this Settlement, within thirty (30) days after the Effective Date, plus Defendant shall separately pay its share of employer payroll taxes as calculated and directed by the Settlement Administrator.

63. Distribution of Funds. No later than seven (7) calendar days after deposit of the payment into the QSF, the Settlement Administrator will mail the payments to the Participating Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service Payment to the Class Representative, and will pay itself the Settlement Administration Costs.

64. Deadline for Cashing Settlement Checks. Participating Class Members shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Participating Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued. All unclaimed funds shall be sent to the California Unclaimed Property Fund in the name of the class member. The release will be binding upon all Participating Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member notifies the Settlement Administrator that he/she/they believe that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

65. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

66. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement

Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. <u>Duties of the Parties Prior to the Court's Approval</u>

67. Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members and a hearing on fees, costs, and the Service Payment;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the Class for purposes of this Settlement.

I. <u>Duties of the Parties Following Court's Final Approval</u>

68. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement, thereby permanently barring all Participating Class Members from prosecuting any Released Class Claims against any of the Released Parties.

J. <u>Voiding the Agreement</u>

69. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the

Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

70. If ten percent (10%) or more of the Class Members timely submit a Request for Exclusion, Defendant shall have the option of terminating or modifying this Agreement without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercises such option under this paragraph, it shall be relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiff's Counsel and the Settlement Administrator within twenty (20) days of the Notice Response Deadline. If Defendant exercises its option under this paragraph, Defendant shall be solely responsible for all Settlement Administration Costs incurred.

71. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

72. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

K. <u>Other Terms</u>

73. <u>Full and Complete Defense.</u> This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released Claim.

74. <u>Waiver</u>. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

75. <u>Parties' Authority</u>. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

76. <u>Mutual Full Cooperation</u>. The Parties agree to fully cooperate with each other to

accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement and the final entry of judgment.

77. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights released and discharged by this Settlement Agreement.

78. No Admission. Defendant denies any and all liability to Plaintiff and/or any Class Member in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise to avoid further substantial expense and the inconvenience and distraction of protracted litigation. Defendant has also taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff, has determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

79. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final

approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

80. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Settlement Class Members:

Mehrdad Bokhour *mehrdad@bokhourlaw.com* 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (310) 975-1493; Fax: (310) 675-0861	Joshua Falakassa *josh@falakassalaw.com* 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (818) 456-6168; Fax: (888) 505-0868

To Defendant:

Jason E. Murtagh *jason.murtagh@bipc.com* 600 West Broadway, Suite 1100 San Diego, California 92101 Tel: (619) 239-8700; Fax: (619) 702-3898	Joseph J. Centeno and Rachel E. King *joseph.centeno@bipc.com* *rachel.king@bipc.com* 50 S. 16th Street, Suite 3200 Philadelphia, PA 19102 Tel: (215) 665-5301; (215) 665-5309 Fax: (215) 665-8760

81. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

82. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

83. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

84. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

85. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this Agreement.

86. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in a court of law.

87. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

88. Integration Clause. Except as provided herein in Paragraphs 48 through 51 regarding the separate general release to be executed by Plaintiff in his individual capacity, this

Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

89. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

90. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Notice will advise all Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Participating Class Member.

91. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

APPROVAL AND EXECUTION BY PARTIES:

Dated: _______________, 2024 **CLASS REPRESENTATIVE:**

____
Patrick Ford

Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

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90. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Notice will advise all Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Participating Class Member.

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APPROVAL AND EXECUTION BY PARTIES:

Dated: 4/22/2024, 2024 **CLASS REPRESENTATIVE:**

DocuSigned by:
Patrick Ford
32C6B01CC99444B...

Patrick Ford

Dated: _______________, 2024

DEFENDANT:

HERAEUS PRECIOUS METALS NORTH AMERICA LLC

____

By
Its

APPROVED AS TO FORM:

Dated: 4/22/2024, 2024

CLASS COUNSEL

FALAKASSA LAW, P.C.

DocuSigned by:
Joshua Falakassa
15A628B2C5A149C...

Joshua Falakassa
Attorneys for Plaintiff

Dated: 4/22/2024, 2024

BOKHOUR LAW GROUP, P.C.

DocuSigned by:
Mehrdad Bokhour
D8D3643F271940F...

Mehrdad Bokhour
Attorneys for Plaintiff

Dated: _______________, 2024

DEFENDANT'S COUNSEL:

BUCHANAN INGERSOLL & ROONEY LLP

____

Jason E. Murtagh
Attorneys for Defendant,
Heraeus Precious Metals North America LLC

Dated: April 24, 2024

DEFENDANT:

HERAEUS PRECIOUS METALS NORTH AMERICA LLC

By

Its Yuri Rozenfeld, General Counsel

APPROVED AS TO FORM:

CLASS COUNSEL

Dated: ____________, 2024

FALAKASSA LAW, P.C.

____

Joshua Falakassa
Attorneys for Plaintiff

Dated: _____________, 2024

BOKHOUR LAW GROUP, P.C.

____

Mehrdad Bokhour
Attorneys for Plaintiff

Dated: April 25, 2024

DEFENDANT'S COUNSEL:

BUCHANAN INGERSOLL & ROONEY LLP

Jason E. Murtagh
Attorneys for Defendant,
Heraeus Precious Metals North America LLC