

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement is entered into by and between plaintiff Anthony Sjomeling ("Plaintiff"), individually and on behalf of all others similarly situated, and defendant Cummings Industries, Inc. ("Defendant"), 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" means the case entitled *Anthony Sjomeling v. Cummings Industries, Inc.*, San Bernardino County Superior Court Case No. CIVSB2213873.

2. "Aggrieved Employees" means all current and former non-exempt hourly employees who worked for Defendant within California from May 10, 2022, through December 31, 2023.

3. "Agreement," "Settlement Agreement," or "Settlement" means this Class Action and PAGA Settlement Agreement, including Exhibit A.

4. "Class" or "Class Members" means all of Defendant's current and former non-exempt hourly employees within the State of California from July 6, 2018, through December 31, 2023.

5. "Released Class Claims" means the claims being released as described in Paragraph 55, below.

6. "Class Counsel" means Mehrdad Bokhour of Bokhour Law Group, P.C., and Joshua Falakassa of Falakassa Law, P.C.

7. "Class Data" means a complete list of Class Member identifying information in Defendant's possession, including each Class Member's full name, last known mailing address, telephone number, Social Security Number, and number of Workweeks Worked as non-exempt or hourly employees of Defendant during the Class Period and the PAGA Period for each Settlement Class Member.

8. "Class Period" shall mean July 6, 2018, through December 31, 2023.

9. "Class Representative" means the named Plaintiff in the Action, Anthony Sjomeling, who is seeking Court approval to serve as a Class Representative.

10. "Complaint" means the operative complaint filed in the Action on or about July 6, 2022, and any amendments thereto.

- 1 11. “Court” means the Superior Court of California, County of San Bernardino.
- 2 12. “Defendant” means Cummings Industries, Inc.
- 3 13. “Defendant’s Counsel” or “Defense Counsel” means Carol A. Gefis and April L.
- 4 Szabo of Atkinson, Andelson, Loya, Ruud & Romo.
- 5 14. “Effective Date” means the latter of (a) the Court’s final approval of the settlement if
- 6 no objections by or on behalf of Class Members have been filed and not withdrawn; (b) the time for
- 7 appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c)
- 8 the final resolution of any appeal that has been filed. “Final” means that the Settlement has been
- 9 granted “Final Approval” by the Court and the “Effective Date” has occurred.
- 10 15. “Final Approval” means the Court’s order granting final approval of the Settlement
- 11 and entering judgment.
- 12 16. “Final Settlement Class” means, collectively, all Participating Class Members and
- 13 Aggrieved Employees.
- 14 17. “Gross Settlement Amount” means the total amount that Defendant shall pay in
- 15 connection with this Settlement in exchange for the release of claims described in Paragraph 5 of this
- 16 Agreement. The Gross Settlement Amount is the gross sum of Three Hundred Twenty Five Thousand
- 17 Dollars (\$325,000.00) (the “Gross Settlement Amount”). The Gross Settlement Amount is the
- 18 maximum amount that will be paid by Defendant under the terms of the Settlement and includes
- 19 Individual Settlement Amounts (including PAGA payments to the Aggrieved Employees), attorneys’
- 20 fees of Class Counsel, costs and expenses, the Service Payment to Class Representative, all
- 21 Settlement Administration Costs, and payment to the Labor Workforce Development Agency
- 22 (LWDA) for PAGA penalties. Defendant shall separately pay the employers’ share of applicable
- 23 payroll taxes. The Settlement is based on Defendant’s representation that there are approximately
- 24 5,000 workweeks. If the actual number of total workweeks exceeds 10% (Ten Percent), then the
- 25 Settlement Amount shall increase on a proportional basis (*e.g.*, if there was a 15% increase in the
- 26 number of workweeks, Defendant will increase the maximum settlement amount by 5%).
- 27 18. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
- 28 50(b) below.

1 19. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 50(a)
2 below.

3 20. “Notice” means the Court approved Notice of Class Action and PAGA Settlement to
4 be mailed to Class Members in the form, without material variation, attached as **Exhibit A** to this
5 Agreement and incorporated by reference into this Agreement.

6 21. “Notice Response Deadline” is forty-five (45) calendar days from the date the Notice
7 is mailed to the Settlement Class Members.

8 22. “Objecting Settlement Class Member” means a Settlement Class Member, other than
9 Plaintiff, who submits a valid and timely objection to the terms of this Agreement with respect to the
10 Class Claims pursuant to Paragraph 70(c) below.

11 23. “PAGA” shall refer to the California Private Attorneys General Act of 2004,
12 California Labor Code §§ 2698, *et seq.*

13 24. “Released PAGA Claims” shall mean the PAGA claims being released as described
14 in Paragraph 56, below.

15 25. “PAGA Notice” shall refer to the notices sent by Plaintiff, by and through counsel, to
16 the LWDA and to Defendant, alleging that Defendant engaged in violations of the California Labor
17 Code and California Wage Order(s).

18 26. “PAGA Penalties” means the total amount of \$5,000 in PAGA penalties to be paid
19 from the Gross Settlement Amount, 25% of which, or \$1,250, shall be paid out to Aggrieved
20 Employees in settlement of the Released PAGA Claims.

21 27. “PAGA Period” shall mean May 10, 2022, through December 31, 2023.

22 28. “Participating Class Member” means a Class Member who does not opt out of the
23 Settlement by submitting a valid and timely Request for Exclusion.

24 29. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the
25 Aggrieved Employees, and Defendant, collectively.

26 30. “Preliminary Approval Date” means the date the Court preliminarily approves the
27 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

28 31. “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 Settlement 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.

32. "QSF" means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Final Settlement Class, and from which the settlement and individual PAGA payments shall be made, and which is intended to be a fund that qualifies under US Treasury Regulation Section 468B-1.

33. "Release" shall mean the release and discharge of the Class Claims by Plaintiff and all of the Participating Class Members and the release and discharge of the PAGA Claims by Plaintiff, the State of California, and all of the Aggrieved Employees.

34. "Released Parties" shall refer to Defendant, together with its current and former officers, employees, and directors.

35. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 71(a) below.

36. "Service Payment" or "Service Award" means the amount approved by the Court to be paid to Class Representative, not to exceed Ten Thousand Dollars (\$10,000), in addition to his Individual Settlement Amount as a Participating Class Member.

37. "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.

38. "Settlement Administrator" means and refers to ILYM Group, Inc., which the Parties have mutually agreed will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

39. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning ascribed to it in Paragraph 50(a) below.

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

41. "Settlement Class" and "Settlement Class Members" refers to all persons who are or were previously employed by Defendant in California classified as a non-exempt employee during the Class Period.

42. "Workweek" means any week during which a Class Member worked at least one shift for Defendant during the Class Period, as applicable. Workweeks shall not include weeks where a Class Member only had sick time, vacation time, was on leave, or otherwise did not perform any actual work for Defendant. Workweeks will be calculated based on Defendant's business records.

B. GENERAL TERMS

43. On or about July 6, 2022, Plaintiff filed the Complaint against Defendant, including allegations of: (1) failure to pay all minimum wages, (2) failure to pay all overtime wages, (3) failure to provide meal periods and pay missed meal period premiums, (4) failure to provide rest periods and pay missed meal period premiums, (5) failure to furnish accurate itemized wage statements, (6) waiting time penalties, (7) failure to reimburse necessary business expenses, (8) unfair competition, and (9) PAGA penalties. On March 1, 2024, the Class Representative was substituted as the named Plaintiff via stipulation of the Parties.

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

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

46. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting extensive exchange of informal discovery, including Defendant's written policies and practices and the production of payroll and timekeeping records for Settlement Class Members and Aggrieved Employees. 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 Settlement Class Members and Aggrieved Employees. Class Counsel has diligently pursued an

1 investigation of the Class Members' claims against Defendant. Based on the foregoing data and on
2 their own independent investigation and evaluation, Class Counsel is of the opinion that the
3 settlement with Defendant for the consideration and on the terms set forth in this Settlement
4 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class
5 Members and Aggrieved Employees in light of all known facts and circumstances, including the risk
6 of significant delay and uncertainty associated with litigation, various defenses asserted by
7 Defendant, and numerous potential appellate issues.

8 47. On October 30, 2023, the Parties participated in mediation before David Phillips, Esq.,
9 a highly experienced class action mediator, and reached a settlement.

10 48. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to
11 be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement, shall
12 be construed as an admission by Defendant of any wrongdoing or as a violation of any statute or law
13 or liability on the claims or allegations in the Action.

14 49. Stipulation for Class Certification and Representative Treatment. For settlement
15 purposes only, Defendant will stipulate that the Settlement Class Members described herein who do
16 not Request Exclusion from the Settlement Class may be conditionally certified as a settlement class
17 and that the Aggrieved Employees are appropriate for representative treatment for purposes of
18 settlement. This stipulation to certification and representative treatment is in no way an admission
19 that class action certification and/or representative treatment is proper and shall not be admissible in
20 this or in any other action except for the sole purposes of enforcing this Agreement. Should, for
21 whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification
22 and representative treatment and Memorandum of Understanding that was executed as part of the
23 Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be
24 admissible in connection with, the issue of whether or not class certification and/or representative
25 treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights
26 and declares that it will continue to oppose class certification, representative treatment, and the
27 substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly
28 reserves his rights and declares that he will continue to pursue class certification and representative

1 treatment and a trial should the Court fail to issue Final Approval.

2 **C. TERMS OF SETTLEMENT**

3 50. The financial terms of the Settlement are as follows: the Settlement Administrator will
4 make and deduct the following payments from the Gross Settlement Amount, in the amounts
5 specified by the Court in the Final Approval.

6 (a) Net Settlement Amount: The "Net Settlement Amount" is defined as the Gross
7 Settlement Amount less the Attorneys' Fees and Costs as approved and awarded by the Court, the
8 Service Payment to Class Representative as approved and awarded by the Court, the Settlement
9 Administration Costs, as approved and awarded by the Court, and Five Thousand Dollars (\$5,000.00)
10 allocated to payment for PAGA penalties as described in paragraph 50(b)(i) below. In the event that
11 the Court reduces the attorneys' fees and litigation costs, Service Awards, or Settlement
12 Administration Costs, or either increases or decreases the amount allocated to PAGA penalties, the
13 Net Settlement Sum shall be increased or decreased accordingly.

14 (b) Individual Settlement Amounts for the Settlement Class: The Settlement
15 Administrator will use the Class Data provided by Defendant to calculate each Participating Class
16 Member's and Aggrieved Employee's Individual Settlement Amounts based on the following
17 formulas:

18 i. PAGA Amount: \$5,000 of the Gross Settlement Amount has been
19 designated to PAGA Penalties. Twenty-five percent (25%), or \$1,250, shall be paid out to Aggrieved
20 Employees, while seventy-five percent (75%), or \$3,750, will be paid to the LWDA. Each Aggrieved
21 Employee shall receive a portion of the \$1,250 proportionate to the number of pay periods worked
22 by the Aggrieved Employees during the PAGA Period compared to the total number of PAGA Pay
23 periods worked by all Aggrieved Employees during the PAGA Period. Aggrieved Employees shall
24 have their settlement amount for the Released PAGA claims paid one hundred percent (100%) as
25 civil penalties for which no taxes will be withheld and for which the Settlement Administrator will
26 issue a Form 1099.

27 ii. Class Amount: The Net Settlement Amount shall be allocated to each
28 Participating Class Member based on his/her/their proportionate Workweeks Worked during the

1 Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the
2 numerator of which is the Participating Class Member's total Workweeks Worked during the Class
3 Period, and the denominator of which is the total Workweeks Worked by all Participating Class
4 Members during the Class Period. If there are any timely submitted Requests for Exclusion, the
5 Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each
6 Participating Class Member so that the amount actually distributed to Participating Class Members
7 equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

8 (c) Allocation of Individual Settlement Amounts: The Individual Settlement
9 Amounts will be allocated for tax purposes based on the allegations in the Action as follows: twenty
10 percent (20%) will be paid as wages subject to withholding of all applicable local, state, and federal
11 taxes; and eighty percent (80%) will be paid as settlement of claims for interest and non-statutory
12 damages (pursuant to, *e.g.*, California Labor Code §§ 203, 226) from which no taxes will be withheld.
13 The Settlement Administrator will issue to each Participating Class Member an Internal Revenue
14 Service ("IRS") Form W-2 and comparable state forms with respect to the wage allocation and a
15 Form 1099 with respect to the civil penalties and interest allocations.

16 (d) Service Payment to Class Representative: The amount awarded to Class
17 Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$10,000.
18 Defendant agrees not to oppose this request. The Service Payment to Class Representative will be
19 paid out of the Gross Settlement Amount. Class Representative will be issued an IRS Form 1099 in
20 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
21 applicable taxes on this payment. The Parties agree that any amount awarded by the Court as the
22 Service Payment to Plaintiff less than the requested amount shall not be a basis for Plaintiff or Class
23 Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service
24 Payment, the difference shall be added to the Net Settlement Amount to be distributed to the
25 Participating Class Members. In the event of any appeal of the amount of the Service Awards (if any)
26 approved by the Court, if, after the exhaustion of any such appellate review, additional amounts not
27 awarded to Class Representative shall be added to the Net Settlement Amount to be distributed to the
28 Participating Class Members.

(e) 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 (approximately \$108,333.33), plus reasonable litigation costs not to exceed \$20,000 ("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' Fees and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, 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. If, after the exhaustion of any such appellate review, additional amounts not awarded to as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or Aggrieved Employees. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees and costs 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.

(f) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$7,500 subject to Court approval, unless approved by all Parties and the Court.

(g) 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 Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Final Settlement Class Members understand and agree that they will be solely responsible for the payment of any taxes and

1 penalties assessed on their respective Settlement Amounts described herein. Income tax withholding
2 will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations.
3 The Settlement Administrator will distribute Forms W-2 and/or Forms 1099 at times and in the
4 manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this
5 Agreement.

6 51. No Credit Towards Benefit Plans. The Individual Settlement Payments and Individual
7 PAGA Payments made to Participating Class Members and/or Aggrieved Employees under this
8 Settlement, as well as any other payment or other consideration made pursuant to this Settlement,
9 will not be utilized to calculate any additional benefits under any benefit plans to which any Class
10 Members and/or Aggrieved Employees may be eligible, including, but not limited to, profit-sharing
11 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans,
12 and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
13 affect the rights, contributions, or amounts to which any Class Member and/or Aggrieved Employee
14 may be entitled under benefit plans.

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

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

24 **D. RELEASE OF CLAIMS**

25 54. Upon the Effective Date of this Settlement, Plaintiff, each Participating Class
26 Member, and each Aggrieved Employee shall have forever completely released and discharged all
27 Released Parties as follows:
28

1 55. Release By Participating Class Members. Each Participating Class Member, on behalf
2 of themselves, their respective spouses, domestic partners, marital community, children, estates,
3 trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators,
4 trustees, conservators, guardians, assigns, and representatives (whether current or former), shall be
5 deemed to have forever completely released and discharged the Released Parties from any and all
6 causes of action, claims, rights, damages, punitive or statutory damages, penalties of any kind,
7 liabilities, expenses, and losses including, but not limited to, the causes of action described in the
8 pleadings or LWDA notice, any violation of any other statute, ordinance, rule, or regulation, whether
9 federal, state, or administrative, or any other causes of action that any Class Member has or might
10 have, known or unknown, contingent or vested, in law or in equity, of any kind whatsoever, arising
11 at any time during the Class Period that was alleged in this case or that could have been alleged based
12 on the factual allegations in this case, along with all related claims and all associated penalties
13 (“Released Class Claims”).

14 Class Representative, on behalf of himself and the Participating Settlement Class Members,
15 acknowledges and agrees that the Released Class Claims are disputed in good faith and that the
16 payments set forth herein constitute payment of all sums allegedly due to him. Class Representative,
17 on behalf of himself and the Participating Settlement Class Members, acknowledges and agrees that
18 California Labor Code § 206.5 is not applicable to the Parties hereto.

19 56. Release by Aggrieved Employees. Plaintiff, the State of California, and each
20 Aggrieved Employee, on behalf of themselves and their respective spouses, domestic partners,
21 marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees,
22 legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives
23 (whether current or former), shall be deemed to have forever completely released and discharged the
24 Released Parties from any and all claims for civil penalties pursuant to PAGA arising at any time
25 during the PAGA period and alleged in the pleadings, alleged in the LWDA notice, prosecuted in this
26 lawsuit, as well as claims for civil penalties arising at any time during the PAGA period that could
27 have been alleged based on the facts alleged in the pleadings, stated in the LWDA notice, or raised
28 in this case.

57. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit (including any and all pending lawsuits), administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Settlement Class Members, Aggrieved Employees, and the State of California to obtain a recovery based on, arising out of, and/or related to any and all of the respective Released Class Claims and the Released PAGA Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opts out of the Settlement for purposes of Class Claims.

58. Release by Class Representative. In addition to Class Representative's release of the Released Class Claims and Released PAGA Claims, as discussed in Paragraphs 51 through 57 above, Class Representative does hereby, for himself and for his spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives (whether current or former), 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, but not limited to, 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 Settlement Agreement, 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").

59. 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 § 970, negligent infliction of emotional distress, intentional infliction of emotional distress, defamation,

1 “retaliation” claims and claims for violation of public policy, any claim for improper or unauthorized
2 wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits,
3 penalties, liquidated damages, other damages, overtime, and alleged “off the clock” work under
4 federal and state law, including, but not limited to, California Labor Code §§ 204 and 558, waiting
5 time penalties pursuant to California Labor § 203, damages, or penalties pursuant to California Labor
6 Code § 226, meal period and rest break payments and penalties pursuant to California Labor Code
7 §§ 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code §
8 226, statutory or civil penalties pursuant to California Labor Code § 210, failure to indemnify for
9 business expenses pursuant to Labor Code § 2802, failure to provide one day of rest in seven pursuant
10 to California Labor Code §§ 551 and 552, unfair competition and unfair business practices pursuant
11 to Business and Professions Code §§ 17200 *et seq.*, interest and costs pursuant to California Civil
12 Code § 3287 and California Labor Code § 218.6, any right or claims pursuant to the NLRA, statutory
13 or common law rights to attorneys’ fees and costs, including those pursuant to California Labor Code
14 §§ 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et*
15 *seq.*, and the alleged violation or breach of any other state or federal statute, rule, and or regulation;
16 including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action,
17 including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs, or
18 attorneys’ fees in connection with any of the foregoing, negligent infliction of emotional distress,
19 intentional infliction of emotional distress, and defamation; any “wrongful discharge,” “constructive
20 discharge,” and “retaliation” claims; any claims relating to any breach of public policy; any legal
21 restrictions on Defendant’s right to discharge employees; and any federal, state, or other
22 governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the
23 Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment,
24 including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981
25 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California Labor Code § 1197.5 (equal
26 pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (5)
27 Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (6) California Fair
28 Employment and Housing Act, Cal. Government Code § 12900 *et seq.* (discrimination or harassment

1 in employment and/or housing, including but not limited to discrimination or harassment based on
2 race, religious creed, color, national origin, ancestry, disability, marital status, sex (including
3 pregnancy), or age, including retaliation for reporting discrimination or harassment); (7) California
4 Family Rights Act, Cal. Government Code § 12945.1 *et seq.* (family/medical leave); (8) California
5 Labor Code, including Section 1720 *et seq.* or any Industrial Welfare Commission Wage Order; (9)
6 Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment);
7 (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation
8 Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement
9 Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits); (14) the California Civil Code;
10 (15) the California Labor Code; (16) the California Constitution; (17) the National Labor Relations
11 Act; (18) the Age Discrimination in Employment Act; and (18) any other federal, state, or local
12 statute or legislation.

13 60. Class Representative expressly waives and relinquishes all rights and benefits afforded
14 by Section 1542 of the Civil Code of the State of California and does so understanding and
15 acknowledging the significance of the waiver of Section 1542 of the California Civil Code, which
16 states:

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

23 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full
24 and complete release and discharge of all parties, Class Representative and Class Counsel expressly
25 acknowledge that this Settlement Agreement is intended to include in its effect, without limitation,
26 all claims that Class Representative knew of, as well as all claims that he does not know or suspect
27 to exist in his favor against the Released Parties, or any of them, for the time period from the
28 beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement

1 contemplates the extinguishment of any such Class Representative's claims.

2 **E. INTERIM STAY OF PROCEEDINGS**

3 61. Pending completion of all prerequisites necessary to effectuate this Settlement,
4 including amending the Complaint and seeking approval, the Parties agree, subject to Court approval,
5 to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

6 **F. NOTICE PROCESS**

7 62. Appointment of Settlement Administrator. The Parties have agreed to the appointment
8 of the Settlement Administrator to perform the duties of a settlement administrator, including mailing
9 the Notice, using standard devices to obtain forwarding addresses, independently reviewing and
10 verifying documentation associated with any claims or opt-out requests, resolving any disputes
11 regarding the calculation or application of the formula for determining the Individual Settlement
12 Amounts, calculating employer-side taxes, drafting and mailing the settlement checks to Final
13 Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities, due
14 diligence, reporting and remittance obligations, and performing such other tasks as set forth herein,
15 as the Parties mutually agree, or that the Court orders.

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

27 64. Class Data. Within fifteen (15) days after service on Defendant of the Preliminary
28 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The

1 Settlement Administrator will check the Class Members' addresses against those on file with the U.S.
2 Postal Service's National Change of Address List. The Class Data provided to the Settlement
3 Administrator will not be provided to Class Counsel, and it will remain confidential; it shall be used
4 solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required
5 by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the
6 Court.

7 65. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
8 Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within
9 seven (7) calendar days following the Settlement Administrator's receipt of the Class Data. The
10 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
11 addresses of Settlement Class Members if any envelopes are returned.

12 66. Returned Notices. The Settlement Administrator will take steps to ensure that the
13 Notice is received by all Settlement Class Members, including utilization of the National Change of
14 Address Database maintained by the United States Postal Service to review the accuracy of and, if
15 possible, update a mailing address. If no forwarding address is provided, the Settlement Administrator
16 will promptly attempt to determine the correct address using a skip trace or other search using the
17 name, address, and/or Social Security number of the Class Member involved and will then perform a
18 single re-mailing. In the event the procedures in this Paragraph are followed and the intended recipient
19 of a Notice Packet still does not receive the Notice Packet, the Class Member shall be bound by all
20 terms of the Settlement and any Judgment entered by the Court if the Settlement is approved by the
21 Court. Notices will be re-mailed to any Settlement Class Member for whom an updated address is
22 located within ten (10) calendar days following the Settlement Administrator's learning of the failed
23 mailing and its receipt of the updated address. The Notice shall be identical to the original Notice,
24 except that it shall notify the Settlement Class Member that the exclusion (opt out) request or
25 objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the
26 re-mailing of the Notice.

27 67. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if an
28 envelope has not been returned within thirty (30) days of the mailing the Settlement Class Member

1 received the Notice.

2 68. Disputes Regarding Class Data. Settlement Class Members are deemed to participate
3 in the Settlement unless they opt out. The Notice will inform Settlement Class Members of
4 his/her/their estimated Individual Settlement Amount and the number of Workweeks Worked during
5 the Class Period and pay periods worked during the PAGA Period. Settlement Class Members may
6 dispute their Workweeks Worked if they feel they were employed more workweeks in the Class
7 Period in California than the Defendant's records show by timely submitting evidence to the
8 Settlement Administrator. Defendant's records will be presumed determinative absent reliable
9 evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence
10 submitted by the Settlement Class Member and provide the evidence submitted to Class Counsel and
11 Defense Counsel who agree to meet and confer in good faith about the evidence to determine the
12 Class Member's actual number of Workweeks Worked and estimated Individual Settlement Amount.
13 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
14 Settlement Administrator to render a final, non-appealable decision. All disputes will be decided
15 within ten (10) business days of the Notice Response Deadline. Settlement Class Members will have
16 until the Notice Response Deadline to dispute Workweeks Worked, object, or opt out, unless
17 extended by the Court. In the event that the Settlement Administrator increases the number of
18 Workweeks Worked for any Settlement Class Member, then the Settlement Administrator will
19 recalculate the Participating Class Members' Individual Settlement Amounts; accordingly, in no
20 event will Defendant be required to increase the Gross Settlement Amount.

21 69. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for
22 the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
23 diligence and proof of mailing with regard to the mailing of the Notice.

24 70. Settlement Class Members' Rights. The Notice shall fully advise each Settlement
25 Class Member of the Settlement, the ability to object to the provisions in the Settlement related to the
26 Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of the
27 Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines
28 for filing objections or requesting exclusion from the Class Claims provisions of the Settlement in

1 accordance with the following guidelines:

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

7 I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE
8 CUMMINGS INDUSTRIES CLASS ACTION LAWSUIT. I UNDERSTAND
9 THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
10 WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE
11 CLASS CLAIMS IN THIS LAWSUIT.

12 Any Request for Exclusion must include the full name, address, telephone number, last four
13 digits of the social security number or date of birth, and signature of the Settlement Class Member
14 requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement
15 Administrator at the specified address. Any such Request must be made in accordance with the terms
16 set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice
17 Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class Member who
18 timely requests exclusion in compliance with these requirements: (i) will not have any rights under
19 this Agreement with respect to the Class Claims, including the right to object, appeal, or comment on
20 the Settlement; (ii) will not be entitled to receive any payments under this Agreement with respect to
21 Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the
22 Class Claims. However, all such Class Members shall still be bound by the PAGA Claims release.

23 (b) Binding Effect on Final Settlement Class Members. Except for those
24 Settlement Class Members who timely exclude themselves in compliance with the procedures set
25 forth above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
26 for all purposes under this Agreement; (ii) be bound by the terms and conditions of this Agreement,
27 the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, be
28 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 Settlement 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 Settlement 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 Settlement 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 Settlement Class Member is represented by counsel, the name and address of his/her/their counsel. If any Objecting Settlement Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Settlement Class Member's written submission should include a request to be heard, and the Court will determine whether Objecting Settlement 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 only by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure § 663. Settlement Class Members and Aggrieved Employees may not object to, or opt out of, the Settlement with respect to the PAGA Claims. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or appeal from the Judgment. To the extent a timely Notice of Objection is withdrawn before final approval, such an objection shall be treated as though no objection has been made.

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

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

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

16 72. Funding of the Settlement Amount. Defendant shall make a one-time deposit into the
17 QSF of the Settlement Amount, as described in Paragraph 32, that is necessary to make all payments
18 required under this Settlement within seven (7) days after the Effective Date; plus Defendant shall
19 separately pay its share of employer payroll taxes as calculated and directed by the Settlement
20 Administrator.

21 73. Distribution of Funds. No later than seven (7) calendar days after deposit of the
22 payment into the QSF, the Settlement Administrator will mail the payments to the Participating Class
23 Members, the payment for the attorneys' fees and costs to Class Counsel, any Service Payment to the
24 Class Representatives, the payment to the LWDA for PAGA penalties, and will pay itself the
25 Settlement Administration Costs. Notwithstanding the foregoing, the Settlement Administrator will
26 not release the amount designated for the Service Payment to the Class Representatives if Plaintiff
27 provides notice of revocation within the Revocation Period set forth in Paragraph 60 above. In the
28 event Plaintiff provides timely notice of revocation, the amount designated for the Service Payment

1 to the Class Representative shall be allocated to the payments to the Participating Class Members.

2 74. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall have
3 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If
4 any Final Settlement Class Member's check is not cashed within that period, the check will be void,
5 and a stop-payment will be issued. All unclaimed funds shall be sent to the Alliance for Children's
6 Rights in the name of the class member. The Release will be binding upon all Final Settlement Class
7 Members including those who do not cash their checks within the 180-day period. In the event that
8 any settlement check is returned to the Settlement Administrator within 180 days of mailing, the
9 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
10 check, perform a skip trace to locate the individual. If a new address is located by these means, the
11 Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel
12 and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class
13 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement
14 checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks.
15 Without limiting the foregoing, in the event a Final Settlement Class Member notifies the Settlement
16 Administrator that he/she/they believe that a settlement check has been lost or stolen, the Settlement
17 Administrator shall immediately stop payment on such check. If the check in question has not been
18 negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement
19 check.

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

24 76. Without prejudice to any other remedies, the Settlement Administrator shall agree to
25 be responsible for any breach of its obligations (whether committed by the Settlement Administrator
26 or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all
27 liabilities, claims, causes of action, costs, and expenses (including legal fees and expenses) arising
28 out of any breach committed by the Settlement Administrator or its agents.

G. DUTIES OF THE PARTIES PRIOR TO THE COURT'S APPROVAL

77. 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 Settlement Class Members;

(d) Preliminarily approving this Settlement; and

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

78. In conjunction with the Preliminary Approval Hearing, Plaintiff will submit this Settlement Agreement and will include the proposed Notice Packet, which will include the Notice of Class Action Settlement document and proposed Mailing Envelope.

79. In accordance with Section 2699(1)(2) of the California Labor Code, Plaintiff shall provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiff files his motion for Preliminary Approval of this Settlement with the Court.

80. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, to try to achieve Final Approval of the Agreement upon any subsequent Court hearings (with no further payment by Defendant being required).

H. DUTIES OF THE PARTIES FOLLOWING COURT'S FINAL APPROVAL

81. 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 and permanently barring all Aggrieved Employees and the LWDA from prosecuting any Released PAGA Claims against any of the Released Parties.

I. VOIDING THE AGREEMENT

82. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement that 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.

83. 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.

84. 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.

J. OTHER TERMS

85. Full and Complete Defense. 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 and/or an affirmative defense against, any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released Claim.

86. Waiver. 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.

87. Parties' Authority. 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.

88. Mutual Full Cooperation. 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 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.

89. 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 right released and discharged by this Settlement Agreement. This is a material term of this Agreement.

90. No Admission. Defendant denies any and all liability to Plaintiff and/or any Settlement 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 considered the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that Defendant has asserted or could assert against Plaintiff, 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.

91. 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 § 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 to interpret or enforce this Settlement Agreement and the rights and benefits hereunder. 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.

92. 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 and Aggrieved Employees:

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:

Carol A. Gefis
April L. Szabo
Atkinson, Andelson, Loya, Ruud & Romo
20 Pacifica # 1100
Irvine, CA 92618
Tel: (949) 453-4260

93. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's 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.

94. 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.

95. 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.

96. Defendant's Right to Withdraw. If the number of valid Requests for Exclusion is 10% or more of the total of all Class Members, Defendant may elect, but is not obligated, to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and neither Party will have any further obligation to perform under this Agreement; however, Defendant will remain responsible for paying the reasonable Settlement Administration expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 10 business days after the Settlement Administrator sends the final Exclusion List to Defense Counsel.

97. 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.

98. Press Release. Plaintiff and Class Counsel agree that they will not issue any press release, social media post, internet or website announcement or otherwise initiate any contact with the press regarding the existence or terms of this settlement, unless court ordered.

99. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, pursuant to Code of Civil Procedure § 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.

100. Enforceability. Pursuant to California Evidence Code § 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.

101. 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.

102. Integration Clause. 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.

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

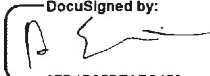
104. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Final Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding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

105. 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: March __, 2024
3/19/2024

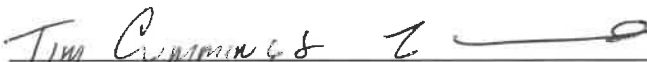
CLASS REPRESENTATIVE:

DocuSigned by:

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ANTHONY SJOMELING

Dated: March 27, 2024

DEFENDANT:
CUMMINGS INDUSTRIES, INC.



_____, on behalf of and an authorized
representative of Cummings Industries, Inc.

1 **APPROVED AS TO FORM:**

2 3/19/2024

3 Dated: March __, 2024

CLASS COUNSEL

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

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Mehrdad Bokhour

Attorneys for Plaintiff and the Putative Class

7 3/19/2024

8 Dated: March __, 2024

FALAKASSA LAW, P.C.

DocuSigned by:

Joshua Falakassa

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Joshua Falakassa

Attorneys for Plaintiff and the Putative Class

13 Dated: March 27, 2024

DEFENDANT'S COUNSEL:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Carol A. Gefis

April L. Szabo

Attorneys for Defendant,
Cummings Industries, Inc.