

1 **STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 **ARTICLE I**

3 **INTRODUCTION**

4 This Stipulated Settlement Agreement and Release of Claims (hereafter "the Agreement") is
5 entered into by and between Plaintiffs Daniel Tapia and Michael Telles, Jr. ("Representative
6 Plaintiffs" or "Plaintiffs") individually and on behalf of the putative class, and Defendants
7 International Aluminum Corp., ("Defendant") to effectuate the settlement reached by the Parties after
8 a mediation session on August 27, 2018 with the Honorable James P. Gray of ADR Services, Inc.
9 Representative Plaintiffs and Defendant collectively are referred to herein as "the Parties."

10 Subject to the approval of the Court the Settlement of this Action shall be effectuated upon and
11 subject to the terms and conditions as set forth herein. The terms used herein shall have the meanings
12 set forth in the "Definitions" section or as defined elsewhere in the Agreement.

13 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
14 concluded by payment by Defendant of the Gross Settlement in an amount not to exceed Three
15 Hundred Twenty Seven Thousand and Seven Hundred Fifty Dollars (\$327,750.00) as provided in
16 Section 3.06.a below ("Gross Settlement Amount") and except as provided for herein, and upon the
17 terms and conditions of this Agreement in exchange for a release of all claims by Representative
18 Plaintiffs and the release of Class Claims by Class Members as set forth herein.

19 **ARTICLE II**

20 **DEFINITIONS**

21 As used in the Agreement, the following terms have the meanings specified below:

22 a. "Action" or "Complaint" mean both the civil action commenced on November 13,
23 2015, by Daniel Tapia and Michael Telles, Jr., in the Orange County Superior Court and captioned
24 *Daniel Tapia, et. al., individually and on behalf of all other others similarly situated, Plaintiffs, v.*
25 *International Aluminum Corp., et. al., and DOES 1-50, inclusive,* Defendant, Case No.30-2015-
26 00819914, and as amended in Plaintiff's Third Amended Complaint filed by stipulation on or about
27 October 31, 2018.

28 b. "Agreement" means this Stipulated Settlement Agreement and Release of Claims,

1 including the attached Exhibits.

2 c. "Settlement Administrator" means the third party administrator Phoenix Class Action
3 or other Court approved administrator that will administer the settlement as set forth below.

4 d. "Settlement Administration Costs" means all costs incurred by the Settlement
5 Administrator in administration of the Settlement including but not limited to address verification
6 measures, mailing of notice to the Class, calculation of Individual Settlement Payments, preparation
7 and issuance of Individual Settlement Payment checks, administration of unclaimed checks,
8 preparation and issuance of checks to Class Counsel for attorneys' fees and costs, preparation and
9 issuance of the check to Representative Plaintiff for his Enhancement, and submission of all tax related
10 documents and any other costs incidental to or associated with the administration of this settlement,
11 all pursuant to the terms of this Agreement. Settlement Administration costs are estimated at
12 \$20,000.00.

13 e. "Class Counsel" means James Hawkins APLC.

14 f. "Class Member(s)" or "Participating Class Member(s)" means all persons who are or
15 have been employed by Defendants to perform work in California during the Settlement Class Period
16 (November 13, 2011 through the date of Preliminary Approval of the Settlement) and are or were
17 classified by Defendants as non exempt employees, who do not timely and validly exclude themselves
18 from the Class in compliance with the exclusion procedures set forth in this Agreement. Defendant
19 represents there were approximately 300 Class Members as of the date of mediation.

20 g. "Class Settlement Notice" means the Notice of Proposed Class Action Settlement
21 attached hereto as Exhibit "A" or in substantially the same form as ultimately approved by the Court.

22 h. "Class Released Claims" means all claims arising from or related to the facts and
23 claims alleged in the Actions, or that could have been raised in the Action based on the facts and
24 claims alleged. The Class Released Claims include, all claims for unpaid wages, including, but not
25 limited to, failure to pay minimum wages; failure to pay overtime compensation, double-time
26 compensation, reporting time compensation, and/or interest; missed, late short, or interrupted meal
27 and rest periods, including any claim for any alleged failure to pay premiums for missed, late short
28 or interrupted meal or rest periods, including any claim for any alleged failure to pay premiums for

missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; reimbursement for business expenses or any other claim that Defendants allowed or required employees to bear any of the costs associated with the operation of Defendants' business; inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; unlawful deductions; unlawful payment instruments; any claim for unfair business practices arising out of or related to any or all of the aforementioned claims; any claim for penalties arising out of or related to any or all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties and attorneys' fees and costs. The PAGA Released Claims include PAGA Claims asserted during the PAGA Settlement Period of November 13, 2014 through the date of Preliminary Approval. In addition, Settlement Class Members who endorse their settlement Check that Participating Class Member will also be deemed to have released his/her claims under Fair Labor Standards Act ("FLSA") as related to the claims asserted in the operative Complaint.

i. "Class Released Claims" means the "Class Claims" as released by the Participating Class Members pursuant to the Agreement.

j. "Class Period" means the period from November 13, 2011, through the date of Preliminary Approval.

k. "Defendant" means Defendant International Aluminum Corp. dba International Window Company.

l. "Defense Counsel" means counsel for Defendant, James T. Jackson of Merhab, Robinson, Jackson & Clarkson.

m. "Enhancement" means a monetary amount not to exceed Five Thousand Dollars (\$5,000.00), or such other amount as approved by the Court, for the Representative Plaintiffs which, subject to Court approval, shall be paid pursuant to Section 3.06.e of this Agreement, as provided below.

n. "Final" means the date on which the Court grants final approval of this Agreement on substantially the terms provided herein.

o. "Final Approval Order" refers to the order of the Court granting final approval of this

1 Agreement and entering a judgment approving this Agreement on substantially the terms provided
2 herein or as the same may be modified by subsequent written agreement of the Parties.

3 p. "Final Effective Date" means twenty (20) days after the date on which the Court signs
4 the Final Approval Order granting final approval of the Agreement in the event that no objections are
5 made or filed to the Settlement. In the event that any such objections to the Settlement are made or
6 filed with either the Court or with the Settlement Administrator, the Final Effective Date shall be sixty
7 (60) days after the date of the Final Approval Order, unless any petition for writ of mandate or appeal
8 is filed, in which case the Final Effective Date is twenty (20) days after the remittitur issues on the
9 final ruling as to any petition for writ of mandate or appeal.

10 q. "Fairness Hearing" means the hearing at which Class Members who object to the
11 settlement may be heard on whether the Agreement settling the Action should be approved as fair,
12 reasonable, and adequate; whether the proposed plan of allocation of the Net Settlement Amount
13 should be approved; whether the proposal concerning Representative Plaintiffs' Enhancement should
14 be approved; and whether proposal concerning the application of Class Counsel for attorneys' fees
15 and costs should be approved.

16 r. "Final Approval Hearing" means the hearing following the Fairness Hearing at which
17 the Court determines finally whether the settlement herein is fair, reasonable and adequate and
18 otherwise in conformity with law and awards an Enhancement and reasonable attorneys' fees and costs
19 consistent with the Agreement and enters Judgment in conformity therewith.

20 s. "Judgment" refers to the judgment entered by the Court in conjunction with the Final
21 Approval Order.

22 t. "Individual Settlement Payments" means the amounts of money from the Net
23 Settlement Amount that shall be paid to the Class Members less employee's portion of required federal
24 and state withholdings. Individual Settlement Payments shall be each Participating Class Member's
25 *pro rata* share of the Net Settlement Amount (which share shall be determined by the calculations
26 provided in this Agreement at 3.06.h).

27 u. "Gross Settlement Amount" means an amount not to exceed the sum of Three Hundred
28 Twenty Seven Thousand and Seven Hundred Fifty Dollars (\$327,750.00) and includes all sums

1 required to be paid for settlement of this Action including all wages, damages, interest, penalties, Class
2 Counsel's attorneys' fees and costs, any Enhancement Payment to the Representative Plaintiffs as
3 awarded by the Court, and all costs of administration of this settlement, and the amount of the
4 employer's share of payroll taxes and PAGA penalties in the amount of ten thousand dollars
5 (\$10,000.00) of which seventy-five percent (75%) or Seven Thousand Five Hundred Dollars
6 (\$7,500.00) will be paid to the Labor Workforce Development Agency ("LWDA") and twenty-five
7 percent (25%) or Two Thousand Five Hundred Dollars (\$2,500.00) to Participating Class Members .

8 v. "Net Settlement Amount" means the amount paid to or on behalf of the Class Members
9 and is the Gross Settlement Amount of Three Hundred Twenty Seven Thousand and Seven Hundred
10 Fifty Dollars (\$327,750.00) less the following: (1) Class Counsel's attorney fees not to exceed One
11 Hundred and Nine Thousand and Two Hundred Fifty Dollars (\$109,250.00) of the Gross Settlement
12 Amount; (2) Class Counsel's reasonable costs according to proof not to exceed Thirty Thousand
13 Dollars (\$30,000.00); (3) an Enhancement to be paid to each of Representative Plaintiffs not to exceed
14 Five Thousand Dollars (\$5,000.00); (4) costs incurred by the Settlement Administrator of
15 approximately Twenty Thousand Dollars (\$20,000.00) Dollars; (5) Seven Thousand Five Hundred
16 Dollars (\$7,500.00) as PAGA penalties; and (6) employer and employee payroll taxes wherein a total
17 of thirty-three percent (33%) of each payout will be for wages and a total of sixty-seven percent (67%)
18 will be for penalties and any other non-taxable items. The Net Settlement Amount is anticipated to be
19 approximately One Hundred and Fifty One Thousand Dollars (\$151,000.00).

20 w. "Preliminary Approval Order" means the Order Preliminarily Approving Class Action
21 Settlement, Directing Distribution of the Class Settlement Notice, and Scheduling Fairness and Final
22 Approval Hearings.

23 x. "Preliminary Approval Date" means the date on which the Court enters the Order of
24 Preliminary Approval preliminarily approving the Settlement.

25 y. "Released Parties" means Defendant International Aluminum Corp. dba International
26 Window Company individually, and each of their past, present and future agents, employees,
27 servants, officers, directors, partners, trustees, representatives, shareholders, stockholders,
28 attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or

1 partnerships (defined as a company/corporation and/or partnership that is, directly or indirectly,
2 under common control with Defendants or any of their parents and/or affiliates), divisions ,
3 assigns, predecessors, successors, insurers, consultants, joint ventures, joint employers,
4 affiliates, and alter-egos, and all of their respective past, present and future employees,
5 directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and
6 assigns.

7 z. “Representative Plaintiffs” means Plaintiffs Daniel Tapia and Michael Telles, Jr.

8 aa. “Settlement” means the disposition of this Action and all claims released and settled
9 by this Agreement.

10 **ARTICLE III**

11 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

12 The Parties enter into this Agreement contingent upon the approval by the Court. If the Final
13 Effective Date does not occur, this Agreement shall be deemed null and void, shall be of no force or
14 effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

15 The Parties and their respective counsel shall take all steps that may be requested by the Court
16 relating to the approval and implementation of this Agreement and shall otherwise use their respective
17 best efforts to obtain Court approval and implement this Agreement. The procedure for obtaining
18 Court approval of and implementing this Agreement is as follows.

19 **Section 3.01: Motion for Preliminary Approval**

20 The Parties shall jointly bring a motion for an order granting preliminary approval of this
21 Agreement, including the Class Settlement Notice. The date that the Court grants preliminary
22 approval of this Agreement shall be the “Preliminary Approval Date.”

23 **Section 3.02: The Settlement Administrator**

24 The Parties have agreed that Phoenix Class Action will act as the third party administrator to
25 administer this Settlement and to act as the Settlement Administrator, and the Parties estimate that the
26 costs of the Settlement Administrator are estimated to be Twenty Thousand Dollars (\$20,000.00). The
27 Settlement Administrator will administer the settlement by establishing a Qualified Settlement Fund
28 for the settlement funds to be paid into, performing address verification for the Class Members,

1 distributing the Class Settlement Notice, performing skip traces, receiving Opt-Outs, providing Class
2 Counsel and counsel for Defendant with weekly updates on the status (including Class Member names
3 and percentages) of Opt-Outs, distributing settlement checks to Participating Class Members (along
4 with a cover letter explaining the date by which settlement checks must be negotiated); making the
5 payment to whatever taxing authorities as necessary and with respect to the payroll taxes withheld
6 from the class member checks, and making the payments of the amounts awarded to Class Counsel
7 for fees and costs and the Enhancement awarded to Representative Plaintiffs. The actions of the
8 Settlement Administrator shall be governed by the terms of the Agreement. The Parties, through their
9 counsel, may provide written information needed by the Settlement Administrator pursuant to the
10 Agreement.

11 All costs of administering the Settlement shall be paid out of the Gross Settlement Amount.

12 **Section 3.03: Notice to Class Members**

13 **a. Identification of Class Members:** Within ten (10) days following entry of the
14 Preliminary Approval Order, Defendant shall provide to the Settlement Administrator a confidential
15 list in Excel spreadsheet format containing the name and last known address, telephone number, and
16 social security number of each Class Member in addition to the start and end dates for each Class
17 Member. **This information shall be treated as confidential and shall not be disclosed to the**
18 **Representative Plaintiffs or to Class Counsel without prior written approval from Defendant's**
19 **Counsel.**

20 **b. Mailing of Class Settlement Notice:** Promptly upon receipt of the Class Member
21 information from Defendant, the Settlement Administrator shall attempt to obtain updated addresses
22 for Class Members from the U.S. Postal Service and Accurint. Within ten (10) days after receipt of
23 the Participating Class Member information from Defendant, or receipt of any updated addresses from
24 the U.S. Postal Service, whichever is later, the Settlement Administrator shall mail the Class
25 Settlement Notice to all Class Members via first-class mail using the updated address
26 information. With respect to each Class Notice that is returned as undeliverable within thirty (30)
27 days of initial mailing, the Settlement Administrator shall promptly attempt to determine a correct
28 address using Experian and shall re-send the Class Notice via first-class mail to any new address

1 thereby determined. If no address can be determined by the Settlement Administrator after these
2 efforts, no further efforts to determine an address shall be required. To the extent counsel become
3 aware of any new addresses, those shall be forwarded to the Settlement Administrator.

4 **c. Notification to Counsel:** No later than fifteen (15) days prior to the Fairness Hearing,
5 the Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
6 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
7 for and re-sending of any returned Class Settlement Notices. Compliance with the procedures
8 described in this Section shall constitute due and sufficient notice to Class Members of this proposed
9 Settlement and the Fairness Hearing, and shall satisfy the requirements of due process. Nothing else
10 shall be required of the Parties, Class Counsel, Defense Counsel, or the Settlement Administrator to
11 provide notice of the proposed Settlement and the Fairness Hearing.

12 **Section 3.04: Settlement Procedures**

13 **a. Claim Forms Not Required for Class Members to Receive Settlement Payment.**

14 The Parties to this Agreement agree that the entire Gross Settlement Amount will be paid out with
15 no residuals kept by or reversion to Defendant. In order to receive funds hereunder, Class Members
16 are not required to submit a claim form. Instead, a notice identifying the amount of each claim and a
17 check for payment thereof, or such modified amount as a result of any challenge made by the Class
18 Member, will be sent to them by first class mail as set forth herein.

19 **b. Objections to Settlement:** The Representative Plaintiffs may not object to this
20 Agreement. The Representative Plaintiffs cannot object to the settlement because they have already
21 approved the settlement and section 3.06.e below states the agreement remains in force if the Court
22 does not approve the amount of the enhancement, thus the named plaintiffs do not have the conflict
23 raised *Radcliffe v. Experian Information Solutions, Inc.* (9th Cir. May 2, 2013) 715 F.3d 1157, 1165.
24 For any other Class Member to object to this Agreement, or any term of it, the person making the
25 objection must be a Class Member, and must, by no later than sixty (60) days after the Class Settlement
26 Notice was initially mailed to the Class Members, submit to the Settlement Administrator, a written
27 statement of the grounds of objection, signed by the objecting Class Member or his or her attorney,
28 along with all supporting papers. The Settlement Administrator will provide to Class Counsel and

1 Defense Counsel notice of any objection within five (5) days of receipt. The Settlement Administrator
2 will submit any objection received to the Court with its Declaration in Support of Final Approval. For
3 Class Notices re-mailed by the Settlement Administrator pursuant to section 3.03.b, written statements
4 of the grounds for objection must be filed and served no later than sixty (60) days after the initial
5 mailing of the Class Notice or fifteen (15) days of the re-mailing, whichever is later. The date of
6 mailing or re-mailing of the Class Notice to the objecting Class Member shall be conclusively
7 determined according to the records of the Settlement Administrator. The Court retains final authority
8 with respect to the consideration and admissibility of any Class Member objections. Counsel for the
9 Parties may file any response to the objections submitted by objecting Class Members at least ten (10)
10 days before the date of the Fairness Hearing.

11 **c. Opt Out/Requests for Exclusion:** The Representative Plaintiff may not request
12 exclusion from the Class. For any other Class Member to validly exclude himself or herself from the
13 Class and this Settlement (*i.e.*, to validly opt-out), they must submit an Opt Out Form which must be
14 signed by the Class Member or his or her authorized representative, and must be sent to the Settlement
15 Administrator, postmarked by no later than sixty (60) days after the date the Settlement Administrator
16 initially mails the Class Notice to the Class Members. For Class Notice Forms re-mailed by the
17 Settlement Administrator pursuant to section 3.03.b, the Opt Out Form must be postmarked no later
18 than sixty (60) days after the date the Settlement Administrator initially mails the Class Notice to the
19 Class Members or fifteen (15) days of the re-mailing, whichever is later. The Class Notice packet
20 shall contain an Opt Out Form. The date of the initial mailing (or re-mailing for Class Notices re-
21 mailed) of the Class Notice and the date the signed request for exclusion was postmarked, shall be
22 conclusively determined according to the records of the Settlement Administrator. Any Class Member
23 who timely and validly requests exclusion from the Class and this Settlement shall become a Non-
24 Participating Class Member and shall not be entitled to nor receive any Individual Settlement Payment,
25 shall not be bound by the terms and conditions of this Agreement, and shall not have any right to
26 object, appeal, or comment thereon.

27 **d. Failure to Object:** Any Class Member who fails to timely file and serve a written
28 statement of his or her objection shall be foreclosed from making any objection to this settlement,

1 unless otherwise ordered by the Court.

2 **e. Failure to Submit Opt Out Form:** Any Class Member who fails to submit a timely
3 and valid request for exclusion from the Class in response to the class notice ordered by the Court in
4 its order granting Preliminary Approval shall automatically be deemed a Participating Class Member
5 for purposes of this Agreement whose rights and claims with respect to the Class Claims are
6 determined by the Court's Final Approval Order, and by the other rulings in the Action, regardless of
7 whether he or she negotiates/cashes the check for his or her Individual Settlement Payment, with the
8 exception of the Participating Class Members' claims under the FLSA which will only be released
9 when they cash or deposit the settlement check.

10 **Section 3.05: Fairness Hearing**

11 On a date set forth in the Preliminary Approval Order and Class Settlement Notice, which date
12 shall be at least ninety (90) days after the initial mailing of the Notice of Proposed Class Action
13 Settlement, a Fairness Hearing shall be held before the Court to consider any timely objections made
14 pursuant to Section 3.04.b above and all responses by the Parties to such objections. Following the
15 Fairness hearing, the Parties shall ask the Court to give final approval to the Agreement and shall
16 submit to the Court a proposed Final Approval Order and Judgment.

17 **a. Waiver of Right to Appeal:** Provided that the Final Approval Order is consistent with
18 the terms and conditions of this Agreement, all Class Members who do not submit timely objections
19 to the Settlement hereby waive any and all rights to appeal from the Final Approval Order and
20 Judgment, including all rights to any post-Final Approval Order proceeding and appellate proceeding,
21 such as a motion to vacate or set-aside the Final Approval Order and Judgment, a motion for new trial,
22 and any extraordinary writ, and the Final Approval Order and Judgment therefore shall become final
23 and non-appealable at the time it is entered. This waiver does not include any waiver of the right to
24 oppose any appeal, appellate proceedings, or post-Final Order proceedings.

25 **b. Vacation, Reversal, or Material Modification of Final Order and Judgment on**
26 **Appeal or Review:**

27 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition, or
28 application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such that

1 there is a material modification to the Settlement and that court's decision is not completely reversed,
2 and the Final Order and Judgment is not fully affirmed on review by a higher court, then
3 Representative Plaintiff and Defendant shall each have the right, but not the obligation, to void the
4 Settlement, which the Party must do by giving written notice to the other Party, the final reviewing
5 court, and the Court not later than thirty (30) days after the final reviewing court's decision vacating,
6 reversing, or materially modifying the Final Order becomes final and non-appealable. A vacation,
7 reversal, or modification of the Court's award of the Enhancement or Class Counsel's fees or costs
8 shall not constitute a vacation, reversal, or material modification of the Final Order and Judgment
9 within the meaning of this paragraph.

10 **Section 3.06: Settlement Payment Procedures**

11 **a. Settlement Sum.** In exchange for the releases set forth in this Agreement, Defendant
12 agrees to pay the Gross Settlement Amount. The Gross Settlement Amount includes Class Counsel's
13 attorneys' fees and costs, an Enhancement for Representative Plaintiffs, the Individual Settlement
14 Payments to Participating Class Members, and all costs incurred by the Settlement Administrator.
15 Under no circumstances shall Defendant be required to pay more than the Gross Settlement Amount
16 inclusive payroll taxes as provided for in section f, below.

17 **b. Allocation of Settlement Amount:** In full and complete settlement of the Action and
18 subject to this Settlement being approved by the Court, Defendant shall pay the Gross Settlement
19 Amount into the Qualified Settlement Fund established by the Settlement Administrator, in the
20 amounts specified and on or before the dates set forth in Section 3.06./ below, to be allocated as
21 follows:

22 **c. Reasonable attorneys' fees and litigation expenses:** Class Counsel has stated they
23 shall request that the Court award them attorneys' fees in an amount not to exceed (\$109,250.00).
24 Class Counsel will request that the Court award them actual costs, subject to Court approval not to
25 exceed \$30,000.00. Defendant has agreed to neither oppose nor comment on the fees and costs
26 request. In the event that the Court awards less than requested amounts in attorney fees and costs, the
27 difference between the amount actually awarded and the amounts requested shall be added to the Net
28 Settlement Amount and distributed to the Class Members in accordance with the procedures set forth

1 herein.

2 The award of reasonable attorneys' fees and costs granted by the Court shall be paid out of the
3 Gross Settlement Amount. Any award of attorneys' fees and costs shall include and satisfy all past
4 and future attorneys' fees and costs incurred to prosecute, settle, and participate in administering the
5 Settlement and the Agreement, including obtaining the Final Approval Order. Defendant shall have
6 no obligation to Class Counsel for any attorneys' fees and costs incurred in prosecuting this Action
7 other than as stated herein.

8 **d. Reasonable expenses of the Settlement Administrator:** The Settlement
9 Administrator shall be paid out of the Gross Settlement Amount and the Parties estimate that said costs
10 are Twenty Thousand Dollars (\$20,000.00) and such payment shall not constitute payment to any
11 Participating Class Member(s).

12 **e. Enhancement to Representative Plaintiffs:** Subject to Court approval,
13 Representative Plaintiffs shall each receive an enhancement not to exceed Five Thousand Dollars
14 (\$5,000.00) each. If the Court does not approve the amount of the enhancement, the Agreement
15 remains in full force and effect. The Enhancement shall be paid by check made payable to the
16 Representative Plaintiff, which shall be delivered by the Settlement Administrator to Class Counsel.
17 The Enhancement shall be paid out of the Gross Settlement Amount and shall not constitute payment
18 to any Participating Class Member(s). Any reduction to the Enhancement Awards to the
19 Representative Plaintiffs by the Court shall be included in the Net Settlement Amount.

20 Because it is the intent of the Parties that the Enhancement represents payment to
21 Representative Plaintiffs for their service to the Class Members, and not wages, the Settlement
22 Administrator shall not withhold any taxes from the Enhancement. The Enhancement shall be reported
23 on a Form 1099, which shall be provided to Representative Plaintiff and to the pertinent taxing
24 authorities as required by law. Although it is the contemplation of the Parties that the Enhancement
25 does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some
26 other taxing authority may take the position that some or all of the Enhancements constitute wages for
27 income tax and withholding purposes. Representative Plaintiffs agree to assume the responsibility of
28 remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant

1 taxing authority the amounts required by law, if any, to be withheld by Defendant from the
2 Enhancement paid under this Agreement. In addition, Representative Plaintiffs shall hold Defendant,
3 Released Parties and Class Counsel harmless and indemnify Defendant, Released Parties and Class
4 Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendant by reason
5 of any claims relating to the non-withholding of taxes from the Enhancement.

6 **f. Payroll Taxes.** Based on business records for each Participating Class Member
7 provided by Defendant to the Settlement Administrator, the Settlement Administrator shall calculate
8 the payroll taxes applicable to the wage portion of the Net Settlement Amount made to each Class
9 Member. The employee share shall be withheld by the Settlement Administrator and paid to the
10 appropriate governmental agencies. The employer share of payroll taxes will be paid out of the Gross
11 Settlement Amount. For purposes of calculating payroll taxes, the Parties agree, for purposes of this
12 Agreement only and for no other purpose that one-third of each Net Settlement Payment shall be
13 considered to be interest, one-third shall be considered wages, and one-third shall be considered other
14 payments.

15 **g. Allocation to Participating Class Members:** The amount remaining from the Gross
16 Settlement Amount after deducting the requested attorneys' fees and litigation costs, Enhancement
17 payment, and the costs incurred by the Settlement Administrator, (the "Net Settlement Amount") shall
18 be distributed to the Class Members as their "Individual Settlement Payments" in accordance with the
19 formula set forth below.

20 **h. Individual Settlement Payments:** The Individual Settlement Payments shall be
21 calculated as follows:

22 **1. Calculation:** The Parties have estimated One Hundred and Fifty One Thousand
23 Dollars (\$151,000.00) as the Net Settlement Amount to settle all Class Members claims covered by
24 the Release. The actual Net Settlement Amount shall be subject to adjustment based on the amount
25 of costs of the Settlement Administrator, the amount of the court approved Enhancement to be paid to
26 Representative Plaintiff, and the amount of the court approved attorneys' fees and costs to Class
27 Counsel. Participating Class Members' Individual Settlement Amount shall be based on a *pro rata*
28 value equal to the Net Settlement Amount multiplied by the ratio of (a) the number of Eligible

1 Workweeks (as defined below) by that Participating Class Member to (b) the total number of Eligible
2 Workweeks worked by all Participating Class Members. If a Class Member opts out of the Settlement,
3 his or her Individual Settlement Payment will be redistributed and paid out to the other Participating
4 Class Members based on the formula stated above.

- 5 i. **“Eligible Workweek”** means a workweek that occurred during the Class
6 Period and during which a Class Member worked at least one-day as an hourly
7 non-exempt worker for Defendant based on Defendant’s payroll records.

8 **2. Challenging Individual Settlement Payment Calculations.**

9 a. **Notice:** The notice from the Settlement Administrator advising the Class Members
10 that the Court has granted Preliminary Approval shall also notify the Class Members that he/she may
11 within sixty (60) days of the mailing of the notice challenge the data maintained by Defendant but not
12 upon the formula approved by the Parties and the Court. Such challenges shall be mailed to the
13 Settlement Administrator postmarked no later than the thirtieth day after the mailing of the notice and
14 the Settlement Administrator shall provide a copy of the challenge and any supporting documentation
15 to counsel for the Parties within ten (10) days thereafter.

16 b. **Dispute Resolution:** The Settlement Administrator shall have the initial
17 responsibility of resolving all disputes that arise during the settlement administration process,
18 including, without limitation, disputes, if any, regarding the calculation of each Class Member’s
19 settlement share, where the information submitted by Defendant based on its employment records
20 differs from the information submitted by the Class Member. In resolving such disputes, Defendant’s
21 employment records shall be presumed to be accurate and correct, and shall be final and binding,
22 unless the information submitted by the Class Member (e.g., pay stubs, employment records, etc.)
23 proves otherwise. In the event the Settlement Administrator cannot resolve a dispute based on a review
24 of the available information, the Settlement Administrator shall request a conference call between the
25 Settlement Administrator, Class Counsel, and Defense Counsel to discuss and resolve the dispute. In
26 advance of the conference call, the Settlement Administrator shall fax or email copies of all available
27 information to all counsel. The Parties will resolve all disputes jointly, which shall be final and binding
28 on any Class Member Disputes, and shall thereafter instruct the Settlement Administrator how to

1 proceed in processing the disputed claim. If the Parties cannot reach agreement, the Settlement
2 Administrator's decision shall be final and binding unless the Court makes a different determination,
3 in which case the Court's determination of the dispute shall be final and binding upon the Class
4 Member and the Parties.

5 **i. Distribution of Residual:** Each member of the Settlement Class who receives an
6 individual settlement payment must negotiate that check within one hundred eighty (180) days from
7 the date of issuance. Neither Plaintiffs nor Defendant shall bear any liability for lost or stolen checks,
8 forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts
9 of omission or commission, the same is true for the Settlement Administrator. Any funds payable to
10 Settlement Class Members whose checks were not cashed within one hundred eighty (180) days will
11 be disbursed as follows, pursuant to California Code of Civil Procedure § 384:

12 (a) Fifty percent (50%) to the State Treasury for deposit in the Trial Court Improvement
13 and Modernization Fund, established in Section 77209 of the Government Code, and
14 subject to appropriation in the annual Budget Act for the Judicial Council to provide
15 grants to trial courts for new or expanded collaborative courts or grants for Sargent
16 Shriver Civil Counsel.

17 (b) Fifty percent (50%) to the State Treasury for deposit into the Equal Access Fund of the
18 Judicial Branch, to be distributed in accordance with Sections 6216 to 6223, inclusive,
19 of the Business and Professions Code, except that administrative costs shall not be paid
20 to the State Bar or the Judicial Council from this sum.

21 **j. Fair Formula:** The Parties recognize and agree that the precise value of each
22 Individual Settlement Payment, is difficult to determine with certainty for any given person, year, or
23 at all, and is subject to differing calculations and formulas. The Parties hereby agree that the formula
24 for allocating payments to Class Members as provided herein is reasonable and designed to provide a
25 fair settlement to the Participating Class Members.

26 **k. Allocation of Net Settlement Amount Payments and Taxes:** All Individual
27 Settlement Payments made to Class Members under this Agreement shall be allocated as follows: one-
28 third to wages, one-third to interest, and one-third to other payments. The Settlement Administrator

1 shall deduct from each Individual Settlement Payment all employee portions of payroll taxes from the
2 amount allocated to wages. The employer share of payroll taxes shall be paid from the Gross
3 Settlement Amount. The amounts allocated to interest and other payments shall not be subject to tax
4 withholding but Class Members will receive a 1099 for those payments. Defendant shall not make as
5 part of this Agreement, nor be required to make, any deductions, nor pay any monthly contributions
6 for any insurance, retirement, 401(k) or profit sharing plans, or any benefit plans related to monies
7 paid as a result of this Agreement.

8 **l. Timing of Settlement Payments:** Defendant shall send by U.S. mail and/or wire
9 transfer to the Settlement Administrator one check in the amount of Three Hundred Twenty Seven
10 Thousand and Seven Hundred Fifty Dollars (\$327,750.00) and payable to the fund established by the
11 Settlement Administrator, to be held in trust by the Settlement Administrator, no later than 15 business
12 days (15) after the Final Effective Date. All of Defendant's obligations under this Agreement are
13 deemed to be satisfied upon Defendant's mailing and/or wiring of the entire Gross Settlement Amount
14 and acknowledgement of receipt of said funds and Defendant shall have no further obligations to the
15 Class including, without limitation, any further obligations to make any other payments of any kind
16 to, or on behalf of, the Class. Within five (5) business days after receipt and deposit of the Gross
17 Settlement Amount, the Settlement Administrator shall issue all of the checks for the Individual
18 Settlement Payments, wire transfer Counsel's fees and litigation costs to Class Counsel, and issue a
19 check to the Representative Plaintiffs for the Enhancement Payments.

20 **m. No Additional Contribution by Defendant**

21 Other than as set forth above, Defendant shall not be called upon or required to contribute
22 additional monies above the Gross Settlement Amount under any circumstances whatsoever except as
23 specifically set forth herein. All costs and expenses arising out of or in connection with the
24 performance of this Agreement shall be paid from the Gross Settlement Amount.

25 In the event that this Agreement is canceled, rescinded, terminated, voided, or nullified,
26 however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated,
27 or ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have any
28 obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this

1 Agreement and this action shall resume as though no Settlement had occurred with the action
2 proceeding in Orange County Superior Court.

3 **ARTICLE IV**

4 **LIMITATIONS ON USE OF THIS SETTLEMENT**

5 **Section 4.01: No Admission**

6 Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with
7 the law in any respect, that it has any liability to anyone under the claims asserted in the Action, and
8 that but for this Settlement a class should not be certified in this Action. This Agreement is entered
9 into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is
10 intended or shall be construed as an admission of liability or wrongdoing by Defendant.

11 **Section 4.02: Non-Evidentiary Use**

12 Whether or not the Final Effective Date occurs, neither this Agreement nor any of its terms nor
13 the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or
14 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties
15 including but not limited to evidence of a presumption, concession, indication, or admission by any of
16 the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b)
17 disclosed, referred to, or offered in evidence against any of the Released Parties in any further
18 proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except
19 for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish
20 that a Class Member has resolved any of his/her claims released through this Agreement.

21 **Section 4.03. Nullification of Settlement by Parties.**

22 Defendant shall retain the right, in the exercise of their sole discretion, to nullify the settlement
23 if Class Members possessing or representing more than an aggregate total of 10% of the Net Settlement
24 Amount, opt out of the Settlement. Defendant will have the right to void this settlement within
25 fourteen days of the expiration of the Opt-Out/Objection period. If Defendant exercises its right under
26 this paragraph, it shall be solely liable for administrative costs. Defendant agrees that it will not in
27 any manner take any actions to encourage settlement class members to opt out.

28 Plaintiffs shall retain the right, in the exercise of their sole discretion, to nullify the settlement

1 if the workweeks exceed 17,076 by more than 10%. The Settlement Administrator shall forward the
2 total number of workweeks calculated based upon the data provided by Defendant within one week of
3 the calculations. Plaintiffs will have the right to void this settlement within fourteen days of the
4 expiration of the Opt-Out/Objection period. If Plaintiffs exercise its right under this paragraph, it shall
5 be solely liable for administrative costs.

6 **Section 4.04: Nullification**

7 If the Court (a) should for any reason fail to approve this Settlement in the form agreed to by
8 the Parties (except for the amount of attorney fees and costs, Enhancement award, or allocation of the
9 Net Settlement Amount), or (b) the Court should for any reason fail to enter the Final Order, or (c) the
10 Final Order is reversed, modified, or declared or rendered void, or (d) the Defendant exercises its right
11 under Section 4.03 of this Agreement, then (i) this Agreement shall be considered null and void; (ii)
12 neither this Agreement nor any of the related negotiations or proceedings shall be of any force or
13 effect; (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the
14 Agreement had been neither entered into nor filed with the Court.

15 Invalidation of any material portion of this Agreement, except for the amount of attorneys'
16 fees, costs, Enhancement, and allocation of the Net Settlement Amount, shall invalidate this
17 Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining
18 provisions shall remain in full force and effect. In the event the Court invalidates any material portion
19 of this Agreement, said order does not preclude any Party from appealing the Court's order in that
20 regard.

21 **ARTICLE V**

22 **RELEASES**

23 **Section 5.01: Releases by Class Members**

24 On the Final Effective Date, all Class Members shall be bound by this Agreement.

25 **Section 5.02: Release of All Claims Relating To The Action**

26 **a. Representative Plaintiff's Individual General Release**

27 As of the date of Judgment, Plaintiffs fully and finally release
28

1 Defendants for themselves individually, and each of their past, present and future agents,
2 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
3 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations
4 and/or partnerships (defined as a company/corporation and/or partnership that is, directly or
5 indirectly, under common control with Defendants or any of their parents and/or affiliates),
6 divisions, assigns, predecessors, successors, insurers, consultants, joint ventures, joint
7 employers, affiliates, and alter-egos, and all of their respective past, present and future
8 employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents,
9 subsidiaries, and assigns (collectively, the "Released Parties"), from any and all claims,
10 known and unknown, under federal, state and/or local law, statute, ordinance, regulation,
11 common law, or other source of law, including but not limited to claims arising from or related
12 to their employment with Defendants and/or the termination of their employment ("Plaintiffs'
13 Released Claims"). Plaintiffs' Released Claims include, but are not limited to, all claims
14 asserted in, arising from or related in any way to the Actions, including without limitation any
15 and all claims that could have been asserted as part of the Actions based on the facts alleged.
16 Plaintiffs' Released Claims include all claims for unpaid wages, including, but not limited to,
17 failure to pay minimum wages; failure to pay straight time compensation, overtime
18 compensation, double- time compensation, reporting time compensation, and/or interest;
19 missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged
20 failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay
21 such premiums at the regular rate of compensation; reimbursement for business expenses or
22 any other claim that Defendants allowed or required employees to bear any of the costs
23 associated with the operation of Defendants' business; inaccurate or otherwise improper wage
24 statements and/or failure to keep or maintain accurate records; unlawful deductions; unlawful
25 payment instruments; any claim for unfair business practices arising out of or related to any or
26 all of the aforementioned claims; any claim for penalties arising out of or related to any or
27 all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage
28 statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees

1 and costs. Plaintiffs Released Claims include all claims arising under the California Labor
2 Code (including, but not limited to, sections 200, 201, 201.3, 201.5, 202,203,204,205.5,
3 210,212,216,218,218.5,218.6, 221,222,222.5, 223,224,225,225.5, 226,226.7, 226.8,
4 227.3, 450,510, 511,512,516,558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198,
5 1199, 2698 *et seq.*, 2800 and 2802); all claims arising under the Wage Orders of the
6 California Industrial Welfare Commission; California Business and Professions Code section
7 17200, *et seq.*; the California Civil Code, including but not limited to, sections 3287, 3289,
8 3336 and 3294; 12 CCR§ 11040; 8 CCR§ 11060; California Code of Civil Procedure§
9 1021.5; the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. §
10 201 *et seq.*; federal common law; and the Employee Retirement Income Security Act, 29
11 U.S.C. § 1001, *et seq.* Plaintiffs' Released Claims include any and all claims under the
12 private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.* ("PAGA"), of any kind,
13 including but not limited to the PAGA claims asserted in the Actions.

14 Plaintiffs' Released Claims also include all claims for lost wages and benefits,
15 emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under
16 federal, state, or local laws for discrimination, harassment, retaliation, and wrongful
17 termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title VII
18 of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination
19 in Employment Act, and the California Fair Employment and Housing Act; and the law of
20 contract and tort. This release excludes the release of claims not permitted by law.

21 Plaintiffs' Released Claims include all claims, whether known or unknown. Even if
22 Plaintiffs discover facts in addition to or different from those that they now know or believe to
23 be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will
24 remain released and forever barred. Thus, Plaintiffs expressly waive and relinquish the
25 provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

26 A general release does not extend to claims which the creditor does not
27 know or suspect to exist in his or her favor at the time of executing the
28 release, which if known by him or her must have materially affected his
or her settlement with the debtor.

1
2 Plaintiffs' Released Claims Apply only to Plaintiffs ' individually and not to
3 the Settlement Class.

4 **b. Settlement Class Members Release.** As of the date of the Judgment, all
5 Settlement Class Members fully and finally release the Released Parties from any and all
6 Class Released Claims during the Settlement Period. The Class Released Claims include, all
7 claims arising from or related to the facts and claims alleged in the Actions, or that could have
8 been raised in the Action based on the facts and claims alleged. The Class Released Claims
9 include, all claims for unpaid wages, including, but not limited to, failure to pay minimum
10 wages; failure to pay overtime compensation, double-time compensation, reporting time
11 compensation, and/or interest; missed, late, short or interrupted meal and or rest periods,
12 including any claim for any alleged failure to pay premiums for missed, late, short or
13 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;
14 reimbursement for business expenses or any other claim that Defendants allowed or required
15 employees to bear any of the costs associated with the operation of Defendants' business;
16 inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate
17 records; unlawful deductions; unlawful payment instruments; any claim for unfair business
18 practices arising out of or related to any or all of the aforementioned claims; any claim for
19 penalties arising out of or related to any or all of the aforementioned claims, including, but not
20 limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and
21 waiting-time penalties; and attorneys' fees and costs. The PAGA Released Claims include
22 PAGA Claims asserted during the PAGA Settlement Period of November 13, 2014 through
23 the date of Preliminary Approval. In addition, Settlement Class Members who endorse their
24 settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C.
25 § 201 *et seq.* ("FLSA") arising during the Settlement Class Period and reasonably related to
26 any or all of the aforementioned claims. This release excludes the release of claims not
27 permitted by law.

28 If a Participating Class Member cashes or deposits a Settlement Check, that Participating Class

1 Member will also be deemed to have released his/her claims under FLSA. The above release language
2 shall also be included in the Class Notice, and each settlement check distributed to Participating Class
3 Members shall include the following language, or words of similar import and effect, on the reverse
4 side immediately above the place designated for endorsement: “By endorsing this check I
5 acknowledge that I am bound, and so agree to be bound, by the release of Class Claims described in
6 the Class Settlement Notice, including claims under the Fair Labor Standards Act.” This language
7 will be in both English and Spanish.

8 **ARTICLE VI**

9 **MISCELLANEOUS PROVISIONS**

10 **Section 6.01: Amendments or Modifications**

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

14 **Section 6.02: Assignment**

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

20 **Section 6.03: Governing Law**

21 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
22 shall be determined, in accordance with the laws of the State of California.

23 **Section 6.04: Entire Agreement**

24 This Agreement, including the Exhibits referred to herein, which forms an integral part hereof,
25 contains the entire understanding of the Parties hereto with respect of the subject matter contained
26 herein. In case of any conflict between text contained in Articles I through VI of this Agreement and
27 text contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
28

1 controlling. There are no restrictions, promises, representations, warranties, covenants, or
2 undertakings governing the subject matter of this Agreement other than those expressly set forth or
3 referred to herein. This Agreement supersedes all prior agreements and understandings among the
4 Parties hereto with respect to the settlement of the Action including correspondence between Class
5 Counsel and Defense Counsel.

6 **Section 6.05: Counterparts and Fax Signatures**

7 This Agreement, and any amendments hereto, may be executed in any number of counterparts
8 and any Party and/or their respective counsel hereto may execute any such counterpart, each of which
9 when executed and delivered shall be deemed to be an original and all of which counterparts taken
10 together shall constitute one instrument. It shall not be necessary in making proof of this Agreement
11 or any counterpart hereof to produce or account for any of the other counterparts. A fax signature on
12 this Agreement shall be as valid as an original signature.

13 **Section 6.06: Meet and Confer Regarding Disputes**

14 Should any dispute arise among the Parties or their respective counsel regarding the
15 implementation or interpretation of this Agreement, a representative of Class Counsel and a
16 representative of Defense Counsel shall meet and confer in good faith in an attempt to resolve such
17 disputes prior to submitting such disputes to the Court.

18 **Section 6.07: Agreement Binding on Successors**

19 This Agreement shall be binding upon, and inure to the benefit of, the successors in interest of
20 each of the Parties.

21 **Section 6.08: Cooperation in Drafting**

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

25 **Section 6.09: Fair Settlement**

26 Representative Plaintiffs, Defendant, Class Counsel, and Defense Counsel believe that this
27 Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this
28 Agreement through arm's-length negotiation, taking into account all relevant factors, current and

1 potential, including Defendant's financial condition, and is consistent with public policy, and fully
2 complies with applicable provisions of law.

3 **Section 6.10: Headings**

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

7 **Section 6.11: Notice**

8 All notices, demands, or other communications given under this Agreement shall be in writing
9 and deemed to have been duly given as of the third business day after mailing by first-class United
10 States mail, addressed as follows:

11 *To Plaintiff and the Class:*

12 James Hawkins, Esq.
13 james@jameshawkinsaplc.com
14 Gregory Mauro, Esq.
15 greg@jameshawkinsaplc.com
16 **James Hawkins APLC**
17 9880 Research Drive, Suite 200
18 Irvine, CA 92618
19 (949) 387-7200

20 *To Defendant:*

21 James Jackson, Esq.
22 jjackson@mrjclaw.com
23 Jessica Crabbe, Esq.
24 jcrabbe@mrjclaw.com
25 Merhab Robinson Jackson & Clarkson
26 1551 N. Tustin Ave., Suite 1020
27 Santa Ana, CA 92705
28 Telephone: (714) 972-2333

23 **Section 6.12: Enforcement and Continuing Jurisdiction of the Court**

24 To the extent consistent with class action procedure, this Agreement shall be enforceable by
25 the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain
26 continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent
27 to enforce and effectuate the terms and intent of this Agreement, and to adjudicate any claimed
28

1 breaches of this Agreement. The Court may award attorneys' fees and costs to the prevailing party in
2 any motion or action taken and based on an alleged violation of any material term of the within
3 settlement agreement.

4 **Section 6.13: Mutual Full Cooperation**

5 The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement,
6 including but not limited to execution of any necessary documents, and to take such other action as
7 may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement
8 shall use their best efforts, including all efforts contemplated by this Agreement, to effectuate this
9 Agreement and the terms set forth herein. In the event the Parties are unable to reach agreement on
10 the form or content of any document needed to implement the Settlement, or on any supplemental
11 provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to
12 seek the assistance of the Court.

13 **Section 6.14: Authorization to Act**

14 Class Counsel warrants and represents that they are authorized by Representative Plaintiff, and
15 Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action required
16 to effectuate the terms of this Agreement, except for signing the documents, including but not limited
17 to this Agreement, that are required to be signed by the Parties.

18 **Section 6.15: No Reliance on Representations**

19 The Parties have made such investigation of the facts and the law pertaining to the matters
20 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
21 on any statement, promise, or representation of fact or law, made by any of the other Parties, or any
22 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
23 rights, or with regard to the advisability of making and executing this Agreement, or with respect to
24 any such matters that would alter or change the terms of this Agreement. No representations,
25 warranties, or inducements have been made to any party concerning this Agreement other than those
26 expressly set forth or referred to herein.

27 **Section 6.16: Stay As to All Proceedings Except for Approval of Settlement**

28 The Parties agree that for purposes of California Code of Civil Procedure § 583.310, the Parties

1 agree to a formal stay of all proceedings from the date of execution of this Agreement to the date the
2 Court issues an order on preliminary approval of the Settlement. If the Court grants preliminary
3 approval the stay shall remain in effect until such time as the Court issues an order on final approval.
4 If preliminary approval is denied, the stay expires upon the denial of preliminary approval. This stay
5 will not affect the Parties ability to present this settlement for approval to the Court.

6 **EXECUTION BY PARTIES AND COUNSEL**

7
8 Dated: _____, 2018

Michael Telles, Jr.

9 Dated: Nov 20, 2018

Daniel Tapia, Plaintiff

10
11
12 Dated: _____, 2018

By: _____

13 Its: _____

14 International Aluminum Corp.

15 **APPROVED AS TO FORM:**

16 Dated: _____, 2018

James Hawkins

17 Gregory Mauro

18 Attorneys for Plaintiffs

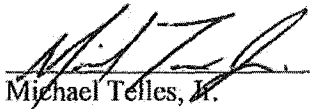
19
20 Dated: _____, 2018

James Jackson

21 Attorneys for Defendant International Aluminum Corp.
22
23
24
25
26
27
28

1 agree to a formal stay of all proceedings from the date of execution of this Agreement to the date the
2 Court issues an order on preliminary approval of the Settlement. If the Court grants preliminary
3 approval the stay shall remain in effect until such time as the Court issues an order on final approval.
4 If preliminary approval is denied, the stay expires upon the denial of preliminary approval. This stay
5 will not affect the Parties ability to present this settlement for approval to the Court.

6 **EXECUTION BY PARTIES AND COUNSEL**

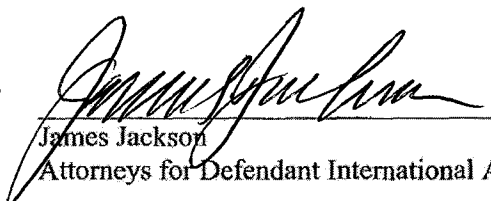
7
8 Dated: 11/28/, 2018 
Michael Telles, Jr.

9 Dated: _____, 2018 _____
Daniel Tapia, Plaintiff

10
11
12 Dated: 1/24, 2018⁹ 
13 By: Dominick Boiano
14 Its: Chairman
International Aluminum Corp.

15 **APPROVED AS TO FORM:**

16 Dated: November 28, 2018 
17 James Hawkins
18 Gregory Mauro
19 Attorneys for Plaintiffs

20 Dated: 1/24, 2018⁹ 
21 James Jackson
22 Attorneys for Defendant International Aluminum Corp.

1 **AMENDEMENT TO STIPULATED SETTLEMENT AGREEMENT**

2 **AND RELEASE OF CLAIMS**

3 **ARTICLE I**

4 Pursuant to Article Section 6.01 of the Stipulated Settlement Agreement and Release of Claims
5 ("Settlement Agreement"), the Parties hereby modify the following provisions of the Settlement
6 Agreement as follows:

7 **ARTICLE II**

8 **DEFINITIONS**

9 h. "Class Released Claims" means all claims arising from or related to the facts and
10 claims alleged in the Actions, or that could have been raised in the Action based on the facts and
11 claims alleged. The Class Released Claims include, all claims for unpaid wages, including, but not
12 limited to, failure to pay minimum wages; failure to pay overtime compensation, double-time
13 compensation, reporting time compensation, and/or interest; missed, late short, or interrupted meal
14 and rest periods, including any claim for any alleged failure to pay premiums for missed, late short
15 or interrupted meal or rest periods, including any claim for any alleged failure to pay premiums for
16 missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate
17 of compensation; inaccurate or otherwise improper wage statements and/or failure to keep or
18 maintain accurate records; unlawful deductions; unlawful payment instruments; any claim for
19 unfair business practices arising out of or related to any or all of the aforementioned claims; any
20 claim for penalties arising out of or related to any or all of the aforementioned claims, including,
21 but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties,
22 and waiting-time penalties and attorneys' fees and costs. The PAGA Released Claims include
23 PAGA Claims asserted during the PAGA Settlement Period of November 13, 2014 through the
24 date of Preliminary Approval. In addition, Participating Class Member will also be deemed to have
25 released his/her claims under Fair Labor Standards Act ("FLSA") as related to the claims asserted
26 in the operative Complaint.

27 i. Deleted and left blank

28 q. "Final Approval Hearing" means the hearing at which Class Members who object to

1 the settlement may be heard on whether the Agreement settling the Action should be approved as fair,
2 reasonable, and adequate; whether the proposed plan of allocation of the Net Settlement Amount
3 should be approved; whether the proposal concerning Representative Plaintiffs' Enhancement should
4 be approved; and whether proposal concerning the application of Class Counsel for attorneys' fees
5 and costs should be approved.

6 r. Deleted and left blank

7 **Section 3.06: Settlement Payment Procedures**

8 a. **Settlement Sum.** In exchange for the releases set forth in this Agreement, Defendant
9 agrees to pay the Gross Settlement Amount. The Gross Settlement Amount includes Class Counsel's
10 attorneys' fees and costs, an Enhancement for Representative Plaintiffs, the Individual Settlement
11 Payments to Participating Class Members, and all costs incurred by the Settlement Administrator.
12 Under no circumstances shall Defendant be required to pay more than the Gross Settlement Amount
13 inclusive payroll taxes as provided for in section f, below.

14 b. **Allocation of Settlement Amount:** In full and complete settlement of the Action and
15 subject to this Settlement being approved by the Court, Defendant shall pay the Gross Settlement
16 Amount into the Qualified Settlement Fund established by the Settlement Administrator, in the
17 amounts specified and on or before the dates set forth in Section 3.06./ below, to be allocated as
18 follows:

19 c. **Reasonable attorneys' fees and litigation expenses:** Class Counsel has stated they
20 shall request that the Court award them attorneys' fees in an amount not to exceed (\$109,250.00).
21 Class Counsel will request that the Court award them actual costs, subject to Court approval not to
22 exceed \$30,000.00. Defendant has agreed to neither oppose nor comment on the fees and costs
23 request. In the event that the Court awards less than requested amounts in attorney fees and costs, the
24 difference between the amount actually awarded and the amounts requested shall be added to the Net
25 Settlement Amount and distributed to the Class Members in accordance with the procedures set forth
26 herein.

27 The award of reasonable attorneys' fees and costs granted by the Court shall be paid out of the
28 Gross Settlement Amount. Any award of attorneys' fees and costs shall include and satisfy all past

1 and future attorneys' fees and costs incurred to prosecute, settle, and participate in administering the
2 Settlement and the Agreement, including obtaining the Final Approval Order. Defendant shall have
3 no obligation to Class Counsel for any attorneys' fees and costs incurred in prosecuting this Action
4 other than as stated herein.

5 **d. Reasonable expenses of the Settlement Administrator:** The Settlement
6 Administrator shall be paid out of the Gross Settlement Amount and said costs are not to exceed
7 Twenty Thousand Dollars (\$20,000.00) and such payment shall not constitute payment to any
8 Participating Class Member(s).

9 **e. Enhancement to Representative Plaintiffs:** Subject to Court approval,
10 Representative Plaintiffs shall each receive an enhancement not to exceed Five Thousand Dollars
11 (\$5,000.00) each. If the Court does not approve the amount of the enhancement, the Agreement
12 remains in full force and effect. The Enhancement shall be paid by check made payable to the
13 Representative Plaintiff, which shall be delivered by the Settlement Administrator to Class Counsel.
14 The Enhancement shall be paid out of the Gross Settlement Amount and shall not constitute payment
15 to any Participating Class Member(s). Any reduction to the Enhancement Awards to the
16 Representative Plaintiffs by the Court shall be included in the Net Settlement Amount.

17 Because it is the intent of the Parties that the Enhancement represents payment to
18 Representative Plaintiffs for their service to the Class Members, and not wages, the Settlement
19 Administrator shall not withhold any taxes from the Enhancement. The Enhancement shall be reported
20 on a Form 1099, which shall be provided to Representative Plaintiff and to the pertinent taxing
21 authorities as required by law. Although it is the contemplation of the Parties that the Enhancement
22 does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some
23 other taxing authority may take the position that some or all of the Enhancements constitute wages for
24 income tax and withholding purposes. Representative Plaintiffs agree to assume the responsibility of
25 remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant
26 taxing authority the amounts required by law, if any, to be withheld by Defendant from the
27 Enhancement paid under this Agreement. In addition, Representative Plaintiffs shall hold Defendant,
28 Released Parties and Class Counsel harmless and indemnify Defendant, Released Parties and Class

1 Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendant by reason
2 of any claims relating to the non-withholding of taxes from the Enhancement.

3 **f. Payroll Taxes.** Based on business records for each Participating Class Member
4 provided by Defendant to the Settlement Administrator, the Settlement Administrator shall calculate
5 the payroll taxes applicable to the wage portion of the Net Settlement Amount made to each Class
6 Member. The employee share shall be withheld by the Settlement Administrator and paid to the
7 appropriate governmental agencies. The employer share of payroll taxes will be paid by Defendant
8 separate and apart from the Gross Settlement Amount. For purposes of calculating payroll taxes, the
9 Parties agree, for purposes of this Agreement only and for no other purpose that one-third of each Net
10 Settlement Payment shall be considered to be interest, one-third shall be considered wages, and one-
11 third shall be considered other payments.

12 **g. Allocation to Participating Class Members:** The amount remaining from the Gross
13 Settlement Amount after deducting the requested attorneys' fees and litigation costs; Enhancement
14 payment, and the costs incurred by the Settlement Administrator, (the "Net Settlement Amount") shall
15 be distributed to the Class Members as their "Individual Settlement Payments" in accordance with the
16 formula set forth below.

17 **h. Individual Settlement Payments:** The Individual Settlement Payments shall be
18 calculated as follows:

19 **1. Calculation:** The Parties have estimated One Hundred and Fifty One Thousand
20 Dollars (\$151,000.00) as the Net Settlement Amount to settle all Class Members claims covered by
21 the Release. The actual Net Settlement Amount shall be subject to adjustment based on the amount
22 of costs of the Settlement Administrator, the amount of the court approved Enhancement to be paid to
23 Representative Plaintiff, and the amount of the court approved attorneys' fees and costs to Class
24 Counsel. Participating Class Members' Individual Settlement Amount shall be based on a *pro rata*
25 value equal to the Net Settlement Amount multiplied by the ratio of (a) the number of Eligible
26 Workweeks (as defined below) by that Participating Class Member to (b) the total number of Eligible
27 Workweeks worked by all Participating Class Members. If a Class Member opts out of the Settlement,
28 his or her Individual Settlement Payment will be redistributed and paid out to the other Participating

1 Class Members based on the formula stated above.

- 2 i. "Eligible Workweek" means a workweek that occurred during the Class
3 Period and during which a Class Member worked at least one-day as an hourly
4 non-exempt worker for Defendant based on Defendant's payroll records.

5 **2. Challenging Individual Settlement Payment Calculations.**

6 a. **Notice:** The notice from the Settlement Administrator advising the Class Members
7 that the Court has granted Preliminary Approval shall also notify the Class Members that he/she may
8 within sixty (60) days of the mailing of the notice challenge the data maintained by Defendant but not
9 upon the formula approved by the Parties and the Court. Such challenges shall be mailed to the
10 Settlement Administrator postmarked no later than the sixtieth (60th) day after the mailing of the notice
11 or fifteen (15) days from the date the notice is re mailed and the Settlement Administrator shall provide
12 a copy of the challenge and any supporting documentation to counsel for the Parties within ten (10)
13 days thereafter.

14 **Section 5.02: Release of All Claims Relating To The Action**

15 **a. Representative Plaintiff's Individual General Release**

16 As of the date of Judgment, Plaintiffs fully and finally release
17 Defendant for themselves individually, and each of their past, present and future agents,
18 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
19 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations
20 and/or partnerships (defined as a company/corporation and/or partnership that is, directly or
21 indirectly, under common control with Defendant or any of their parents and/or affiliates),
22 divisions, assigns, predecessors, successors, insurers, consultants, joint ventures, joint
23 employers, affiliates, and alter-egos, and all of their respective past, present and future
24 employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents,
25 subsidiaries, and assigns (collectively, the "Released Parties"), from any and all claims,
26 known and unknown, under federal, state and/or local law, statute, ordinance, regulation,
27 common law, or other source of law, including but not limited to claims arising from or related
28 to their employment with Defendant and/or the termination of their employment ("Plaintiffs'

1 Released Claims"). Plaintiffs' Released Claims include, but are not limited to, all claims
2 asserted in, arising from or related in any way to the Actions, including without limitation any
3 and all claims that could have been asserted as part of the Actions based on the facts alleged.
4 Plaintiffs' Released Claims include all claims for unpaid wages, including, but not limited to,
5 failure to pay minimum wages; failure to pay straight time compensation, overtime
6 compensation, double- time compensation, reporting time compensation, and/or interest;
7 missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged
8 failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay
9 such premiums at the regular rate of compensation; reimbursement for business expenses or
10 any other claim that Defendant allowed or required employees to bear any of the costs
11 associated with the operation of Defendant's' business; inaccurate or otherwise improper wage
12 statements and/or failure to keep or maintain accurate records; unlawful deductions; unlawful
13 payment instruments; any claim for unfair business practices arising out of or related to any or
14 all of the aforementioned claims; any claim for penalties arising out of or related to any or
15 all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage
16 statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees
17 and costs. Plaintiffs Released Claims include all claims arising under the California Labor
18 Code (including, but not limited to, sections 200, 201, 201.3, 201.5, 202,203,204,205.5,
19 210,212,216,218,218.5,218.6, 221,222,222.5, 223,224,225,225.5, 226,226.7, 226.8,
20 227.3, 450,510, 511,512,516,558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198,
21 1199, 2698 *et seq.*, 2800 and 2802); all claims arising under the Wage Orders of the
22 California Industrial Welfare Commission; California Business and Professions Code section
23 17200, *et seq.*; the California Civil Code, including but not limited to, sections 3287, 3289,
24 3336 and 3294; 12 CCR§ 11040; 8 CCR§ 11060; California Code of Civil Procedure§
25 1021.5; the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. §
26 201 *et seq.*; federal common law; and the Employee Retirement Income Security Act, 29
27 U.S.C. § 1001, *et seq.* Plaintiffs' Released Claims include any and all claims under the
28

1 private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.* ("PAGA"), of any kind,
2 including but not limited to the PAGA claims asserted in the Actions.

3 Plaintiffs' Released Claims also include all claims for lost wages and benefits,
4 emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under
5 federal, state, or local laws for discrimination, harassment, retaliation, and wrongful
6 termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title VII
7 of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination
8 in Employment Act, and the California Fair Employment and Housing Act; and the law of
9 contract and tort. This release excludes the release of claims not permitted by law.

10 Plaintiffs' Released Claims include all claims, whether known or unknown. Even if
11 Plaintiffs discover facts in addition to or different from those that they now know or believe to
12 be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will
13 remain released and forever barred. Thus, Plaintiffs expressly waive and relinquish the
14 provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

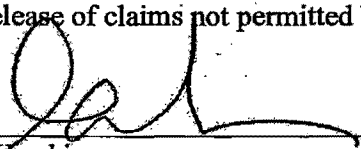
15 A general release does not extend to claims which the creditor does not
16 know or suspect to exist in his or her favor at the time of executing the
17 release, which if known by him or her must have materially affected his
or her settlement with the debtor.

18 Plaintiffs' Released Claims Apply only to Plaintiffs' individually and not to
19 the Settlement Class.

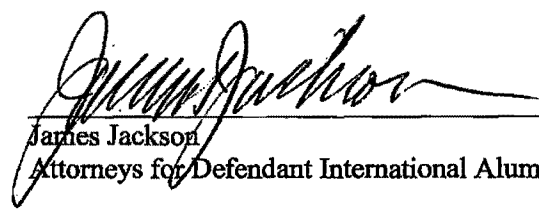
20 **b. Settlement Class Members Release.** As of the date of the Judgment, all
21 Settlement Class Members fully and finally release the Released Parties from any and all
22 Class Released Claims during the Settlement Period. The Class Released Claims include, all
23 claims arising from or related to the facts and claims alleged in the Actions, or that could have
24 been raised in the Action based on the facts and claims alleged. The Class Released Claims
25 include, all claims for unpaid wages, including, but not limited to, failure to pay minimum
26 wages; failure to pay overtime compensation, double-time compensation, reporting time
27 compensation, and/or interest; missed, late, short or interrupted meal and or rest periods,
28 including any claim for any alleged failure to pay premiums for missed, late, short or

1 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;
2 inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate
3 records; unlawful deductions; unlawful payment instruments; any claim for unfair business
4 practices arising out of or related to any or all of the aforementioned claims; any claim for
5 penalties arising out of or related to any or all of the aforementioned claims, including, but not
6 limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and
7 waiting-time penalties; and attorneys' fees and costs. The PAGA Released Claims include
8 PAGA Claims asserted during the PAGA Settlement Period of November 13, 2014 through
9 the date of Preliminary Approval. In addition, Settlement Class Members waive and release
10 any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") arising
11 during the Settlement Class Period and reasonably related to any or all of the aforementioned
12 claims. This release excludes the release of claims not permitted by law.

13
14 Dated: 3/18, 2019


James Hawkins
Gregory Mauro
Attorneys for Plaintiffs

15
16
17
18 Dated: 3/18, 2019


James Jackson
Attorneys for Defendant International Aluminum Corp.