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17 *Attorneys for Plaintiff, and all others similarly*
18 *situated*

19 {Additional Counsel on Following Page}

20
21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **COUNTY OF SAN BERNARDINO**

23 FRANCISCO RAMIREZ ORDAZ,
24 individually, and on behalf of all others
25 similarly situated,

26 Plaintiff,

27 v.

28 BURLINGAME INDUSTRIES, INC., a
California corporation, d/b/a Eagle Roofing
Products; and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 19STCV42733

CLASS SETTLEMENT AGREEMENT

MITCHELL SILBERBERG & KNUPP LLP

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[illegible]

1. RECITALS

1.2 The Settlement Class Representative believes that the Settled Claims have merit and that the evidence developed to date supports his claims. However, the Settlement Class Representative and Settlement Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the claims through trial, appeals, and ancillary actions. The Settlement Class Representative and Settlement Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, as well as the difficulties, complexities, and delays inherent in such litigation. The Settlement Class Representative and Settlement Class Counsel also are mindful of the inherent problems of proof in establishing, and possible defenses to, the claims asserted in this Action. The Settlement Class Representative and Settlement Class Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon the Settlement Class. Based upon their evaluation, the Settlement Class Representative and Settlement Class Counsel have determined that the Settlement set forth in this Agreement is in the best interest of the Settlement Class and is fair, adequate, and reasonable.

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conditions embodied in this Agreement is based on, among other things: (i) the time and expense associated with litigating the Settled Claims through trials and any appeals; (ii) the benefits of resolving the Settled Claims, including limiting further expense, inconvenience and distraction, disposing of burdensome and protracted litigation, and permitting Defendant to conduct its business unhampered by the distractions of continued litigation; and (iii) the uncertainty and risks inherent in any litigation.

1.4 The Parties to this Agreement recognize that the claims against Defendant are strongly disputed, and the Parties wish to resolve completely and totally all Settled Claims against Defendant and the other Released Parties.

1.5 **NOW THEREFORE**, subject to Court approval, as hereinafter provided, it is hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement, and upon the entry by the Court of a final order approving the Settlement and directing the implementation of the terms and conditions of the Settlement as set forth in this Agreement, this Action shall be settled and compromised upon the terms and conditions contained herein.

2. DEFINITIONS

As used in this Agreement, in addition to any definitions elsewhere in this Agreement, the following terms shall have the meanings set forth below:

2.1 “**Action**” means and refers to *Francisco Ramirez Ordaz et al. v. Burlingame Industries, Inc.*, San Bernardino County Superior Court Case No. CIVSB2303162.

2.2 “**Agreement**” means and refers to this Settlement Agreement.

2.3 “**Class Notice**” means and refers to a mutually-agreeable class notice approved by the Court. A copy of the Class Notice is attached hereto as Exhibit 1.

2.4 “**Class Period**” means and refers to the period between January 23, 2019 and January 31, 2024, inclusive of those dates.

2.5 “**Compensable Pay Periods**” means and refers to each payroll period during which a Settlement Class member worked for Defendant at any time during the

Class Period.

2.6 “**Complaint**” means and refers to the operative complaint in the Action.

2.7 “**Court**” means and refers to the Superior Court of California, County of San Bernardino.

2.8 “**Defendant**” means and refers to Burlingame Industries, Inc.

2.9 “**Final Approval Order**” means and refers to the Court’s judgment and order granting final approval of the class settlement following the motion as set forth in Section 5.3. This Final Approval Order shall constitute approval pursuant to California Rules of Court 3.769(a) and a judgment pursuant to California Rules of Court 3.769(h).

2.10 “**Final Effective Date**” means and refers to (a) if no appeal is filed, the expiration date of the time for the filing for any such appeal (i.e., presently, sixty-five (65) days after service of notice of entry of the Final Approval Order); and (b) if any appeal is timely filed, when that appeal is finally denied or dismissed and the time to take a further appeal has expired with no further valid notice of appeal timely filed.

2.11 “**Gross Settlement Amount**” means the maximum cumulative total which Defendant has paid or will pay under this Settlement Agreement, which is Four Hundred and Fifteen Thousand Dollars (\$415,000.00). As described more fully in Section 9, Defendant shall receive a credit for Seventy-Four Thousand and Eight Hundred and Eighty-Nine Dollars (\$74,889.00) previously paid to Settlement Class members who signed releases, making Defendant’s remaining obligation Three Hundred Forty Thousand One Hundred Eleven Dollars and No Cents (\$340,111.00). No portion of the Gross Settlement Amount will revert to Defendant under any circumstances. Payments of any appropriate and lawfully-required employer’s share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the Gross Settlement Amount by Defendant at the time the Gross Settlement Amount is funded.

2.12 “LWDA” means and refers to the California Labor & Workforce Development Agency.

2.13 “Notice Program” means and refers to the notice procedures set forth in Section 6.

2.14 “Opt Out Period” means and refers to the period of time between the commencement of the Notice Program and an agreed date certain forty-five (45) calendar days later during which members of the Settlement Class may exercise the right to opt out of the Settlement Class pursuant to the provisions of Section 7.

2.15 “PAGA Allocation Amount” means and refers to the amount to be allocated to individual PAGA Covered Employees as calculated pursuant to the provisions of Section 10.2.2.

2.16 “PAGA Covered Employee” means and refers to those members of the Settlement Class who worked for Defendant at any time during the PAGA Covered Period.

2.17 “PAGA Compensable Pay Periods” means and refers to each payroll period during which a PAGA Covered Employee worked for Defendant at any time during the PAGA Covered Period.

2.18 “PAGA Covered Period” means and refers to the period between September 23, 2021 and January 31, 2024, inclusive of those dates.

2.19 “**PAGA Notices**” means and refers to the Settlement Class Representative’s letters to the LWDA dated September 23, 2022 and January 20, 2023.

2.20 **“Participating Class Member”** means and refers to a Settlement Class member who does not timely and validly opt-out of the Settlement Class pursuant to the provisions of Section 7.

2.21 “Participating Class Member Allocation Amount” means and refers to the amount to be allocated to individual Participating Class Members as calculated pursuant to the provisions of Section 10.3.1.

2.22 “Parties” means and refers to the Settlement Class Representative, for himself and on behalf of the Settlement Class, and Defendant.

2.23 “Person” means and refers to any individual, proprietorship, corporation, personal

1 loan-out corporation, partnership, association, trustee, unincorporated association,
2 or any other type of legal entity, except a governmental entity.

3 **2.24 “Preliminary Approval Order”** means and refers to the Court’s order granting
4 preliminary approval of this Agreement and approval of the Notice Program
5 following the motion as set forth in Section 5.1. This Preliminary Approval Order
6 shall constitute an order for and setting a final approval hearing pursuant to
7 California Rules of Court 3.769(d) and 3.769(e).

8 **2.25 “Released Party” and “Released Parties”** means and refers to (a) Defendant and
9 each and all of Defendant’s past or present partners, parents, subsidiaries, or related
10 entities (regardless of whether such partners, parents, subsidiaries, or related entities
11 are individuals, corporations, partnerships, limited partnerships, limited liability
12 companies, or other forms of entity); (b) each and all of the predecessor or successor
13 entities of any of those entities identified in subparagraph (a); (c) any other
14 individuals or entities of any kind which have been or could be alleged to be in any
15 manner responsible (whether on an alter ego, joint employer, statutory employer,
16 integrated enterprise, or any other theory) for any actual or alleged violations
17 described in Section 2.27; and (d) all past and present directors, officers,
18 representatives, insurers, agents, shareholders, partners, members, lawyers, and
19 employees of any of the individuals or entities identified in subparagraphs (a), (b), or
20 (c).

21 **2.26 “Releasing Party” and “Releasing Parties”** means and refers to the Settlement
22 Class and its members, agents, partners, joint venturers, affiliates, predecessors,
23 successors, spouses, heirs, assigns, insurers, and any other Persons or entities
24 claiming by or through the Settlement Class, in their capacities as such. The
25 LWDA shall also be considered a Releasing Party with respect to claims arising
26 under the Private Attorneys General Act, Labor Code 2698 *et seq.* (“PAGA”).

27 **2.27 “Settled Claims”** means and refers to any claims, liabilities, rights, demands, suits,
28 matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and

causes of action, of every kind and/or nature whatsoever, regardless of legal theory or type or amount of relief or damages claimed, which any Releasing Party now has or at any time ever had against any Released Party that arises out of or is based on the facts alleged in the operative Complaint or the Settlement Class Representative's PAGA Notices, including, without limitation, all claims under Labor Code sections 201, 202, 203, 204, 210, 226.2, 226, 226(a) and (e), 226.7, 510, 511, 512, 1174, 1194, 1194.2, 1197, 1198, FLSA claims based on the same unpaid wage and overtime claims, any claims under Sections 3, 6, 7, 11 and 12 of IWC Wage Order No. 1 and/or any other comparable provisions of any other applicable Wage Order(s), and/or California Business and Professions Code Section 17200 *et seq.*, as well as any civil penalty claims predicated on the claims alleged in the operative Complaint under PAGA. Without in any way limiting the foregoing, Settled Claims shall include all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action under the statutes and regulations set forth in this Section 2.27, whether enforced directly or pursuant to PAGA, California Business and Professions Code Section 17200 *et seq.*, or any other mechanism.

2.28 "Settlement" means and refers to the settlement reflected in and to be effectuated through this Agreement.

2.29 "Settlement Administrator" means and refers to Phoenix Settlement Administrators, which will administer the Settlement Fund as described in this Agreement.

2.30 "Settlement Class" means and refers to all non-exempt employees who were employed by Defendant in the State of California and worked in Defendant's manufacturing facilities during the Class Period.

2.31 "Settlement Class Counsel" means and refers to The Law Office of Scott Wheeler and The Wand Law Firm, P.C.

2.32 "Settlement Class Counsel's Fees, Costs, and Expenses" means and refers to the

amount awarded by the Court to Settlement Class Counsel for reasonable attorneys' fees, costs, and expenses associated with this Action and the resolution thereof, as described in Section 11.1.

2.33 "Settlement Class Representative" means and refers to Francisco Ramirez Ordaz.

2.34 "Settlement Fund" means and refers to the financial institution account established by the Settlement Administrator to hold the Settlement Amount.

2.35 "Settlement Termination Date" means and refers to the date, if any, that Defendant exercises its right to terminate this Agreement.

3. SETTLEMENT PURPOSES ONLY

3.1 General. This Agreement is for settlement purposes only.

3.2 Class Certification. For settlement purposes only, Defendant will stipulate that the Settlement Class Members described herein who do not request exclusion from the Settlement Class may be conditionally certified as a settlement class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should the Settlement fail to achieve the Final Effective Date for any reason, the Parties' stipulation to class certification as part of the Settlement Agreement shall become null and void *ab initio* and shall have no bearing on, but remains protected by California Evidence Code Section 1152 and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context. Defendant expressly reserves its right and declares that Defendant will continue to oppose class certification and contest the substantive merits of the case should the Settlement fail to achieve the Final Effective Date. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and a trial should the Settlement fail to achieve the Final Effective Date.

3.3 Settlement Class Only. Any certification of a preliminary or final Settlement Class pursuant to the terms of this Agreement shall not constitute nor be construed

1 as an admission, and shall not be admissible in any proceeding as an admission, on
2 the part of Defendant or any other Person, that this Action or any other action is
3 appropriate for class or representative treatment at trial pursuant to Rule 23 of the
4 Federal Rules of Civil Procedure, California Code of Civil Procedure Section 382,
5 or any similar class and/or representative action statute or rule, or as a PAGA
6 action. This Agreement shall not prejudice Defendant's rights or any other
7 Person's rights to oppose certification of a litigated class or other representative
8 treatment, or as a PAGA action, in this Action or in any other action or proceeding.
9 Settlement Class Counsel shall not refer to this Agreement or make any argument
10 concerning this Agreement in any contested proceeding to certify a litigated class
11 or obtain other representative treatment or in pursuing a PAGA action.

12 **3.4 Admissibility.** This Agreement, any negotiations or proceedings related hereto, the
13 implementation hereof, and any papers submitted in support of the motions for
14 approval hereof (collectively, the "Settlement Proceedings") shall not be construed
15 as, nor be deemed to be evidence of, any admission or concession by any of the
16 Parties or any other Person regarding liability or the appropriateness of class
17 treatment, and shall not be offered or received in evidence in any action or
18 proceeding for any purpose whatsoever; provided, however, that this Agreement
19 and the Settlement Proceedings may be presented to the Court in connection with
20 the implementation or enforcement of this Agreement.

21 **3.5 Denial of Liability.** By entering into this Agreement, it is understood that
22 Defendant does not admit and, in fact, expressly denies that: (i) it has breached any
23 duty, obligation, or agreement; (ii) it has engaged in any illegal, tortious, or
24 wrongful activity; (iii) it is liable to members of the Settlement Class or the
25 LWDA; or (iv) any damages have been sustained by any member of the Settlement
26 Class or by any other Person.

27 **4. JURISDICTION**

28 **4.1 Continuing Jurisdiction.** The Court has, and shall continue to have, jurisdiction to

1 make any orders as may be appropriate to effectuate, consummate, and enforce the
2 terms of this Agreement, to approve the award of attorneys' fees and costs pursuant
3 hereto, and to supervise the administration and distribution of money from the
4 Settlement Fund pursuant to California Code of Civil Procedure Section 664.6. Any
5 dispute or question relating to or concerning the interpretation, enforcement, or
6 application of this Agreement shall be presented to the Court for resolution.

7 **5. COURT APPROVAL OF THE SETTLEMENT**

8 **5.1 Preliminary Approval and Notice Approval.** After the execution of this
9 Agreement, Settlement Class Counsel shall move the Court for an order granting
10 preliminary approval of this Agreement and approval of the proposed Notice
11 Program and, in connection therewith, submit to the Court a mutually-acceptable
12 proposed Preliminary Approval Order, substantially in the form of the attached
13 Exhibit 2.

14 **5.2 Objections.** The Preliminary Approval Order shall specify that members of the
15 Settlement Class shall have until an agreed date certain, which shall be forty-five
16 (45) calendar days from the commencement of the Notice Program pursuant to
17 Section 6, to file and serve objections or comments to the class settlement portion
18 of this Agreement. Settlement Class members who opt out of the Settlement may
19 not object, as they are not affected by the Settlement. The procedure for submitting
20 an objection or other comment shall be specified in the Notice.

21 **5.3 Final Approval.** Within thirty (30) calendar days following the expiration of the
22 Opt Out Period, if the Agreement has not been terminated in accordance with
23 Section 8, Settlement Class Counsel shall file a motion for final approval and, in
24 connection therewith, submit to the Court a mutually-acceptable proposed Final
25 Approval Order, substantially in the form of the attached Exhibit 3.

26 **6. CLASS NOTICE**

27 **6.1 Mailed Notice.** Within fifteen (15) calendar days after entry of the Preliminary
28 Approval Order, Defendant shall submit to the Settlement Administrator, in

1 electronic form, a list of all Settlement Class members, including whether the
2 Settlement Class member is also a PAGA Covered Employee. The list shall include
3 each Settlement Class member's name, last known address, social security number,
4 Compensable Pay Periods and PAGA Compensable Pay Periods (if applicable),
5 which the Settlement Administrator shall use to calculate the total number of
6 Compensable Pay Periods for all Settlement Class members and the total number of
7 PAGA Compensable Pay Periods for all PAGA Covered Employee. Defendant shall
8 simultaneously provide to the Settlement Administrator the identities of those
9 Settlement Class Members who previously signed a release of the claims in this
10 Action pursuant to Defendant's Pick Up Stix program and the amount of the net
11 payment received by the Settlement Class Member. Within fifteen (15) calendar
12 days after receipt of the foregoing list, the Settlement Administrator and/or its
13 designee shall run a national change of address update and send by first class postage
14 prepaid U.S. mail a copy of the Class Notice approved by the Court to each
15 Settlement Class member on the final list. Such Class Notice to each Settlement
16 Class member shall contain the Settlement Class member's Compensable Pay
17 Periods calculated from Defendant's records and the estimated Participating Class
18 Member Allocation Amount (assuming no Settlement Class Members opt out).

19 6.1.1. Undeliverable Notices. Any Class Notice returned to the Settlement
20 Administrator as non-delivered on or before the expiration of the Opt Out
21 Period shall be re-mailed to the forwarding address affixed thereto within ten
22 (10) calendar days. For any undeliverable Class Notice returned for which no
23 forwarding address is affixed, the Settlement Administrator will conduct its
24 investigation for an updated address of the Settlement Class Member and re-
25 mail the Class Notice. If an updated address is found, the Settlement
26 Administrator shall have seven (7) days to re-mail the Class Notice from
27 receipt of the undelivered envelope. The Settlement Administrator will
28 provide a cover letter notifying the Class Member of the extended expiration

1 of the Opt-Out Period. Any Settlement Class Member who receives a re-
2 mailed Class Notice shall have forty-five (45) days after the postmark date of
3 the re-mailed Class Notice to: (a) submit a request to Opt-Out; (b) submit an
4 objection to the Settlement; or (c) submit a workweek dispute.

5 **6.2 Cost of Notice and Administration.** The notice administration fees and costs for
6 this Settlement shall be paid from the Settlement Fund. Settlement Class Counsel
7 preliminarily estimates that such fees and costs will be approximately Nine
8 Thousand and Two Hundred and Fifty Dollars and Zero Cents (\$9,250.00). If the
9 actual fees and costs exceed \$9,250.00, the amounts payable to Settlement Class
10 members under Section 10.3 shall be reduced *pro rata* to cover any excess notice
11 and administration costs.

12 **6.3 Records of Notice.** The Settlement Administrator shall keep records of all notices,
13 and the cost thereof. Promptly upon request, the Settlement Administrator shall
14 provide a sworn proof of mailing.

15 **7. RIGHT OF EXCLUSION**

16 **7.1 Procedure.** Settlement Class members may elect to opt out of the Settlement Class
17 and thus exclude themselves from the Action and the Settlement Class at any time
18 during the Opt Out Period. To exercise the opt out right set forth in this Section 7.1,
19 a Settlement Class member must submit a written request to exclude the Settlement
20 Class member from this Agreement, which request shall contain the Settlement Class
21 member's name, address, telephone number, and last four digits of the Settlement
22 Class member's social security number. Such requests for exclusion must be sent to
23 the Settlement Administrator and must be postmarked (or submitted online with a
24 confirmation of submission received) on or before the expiration of the Opt Out
25 Period. All Settlement Class members who do not opt out in accordance with this
26 Agreement during the Opt Out Period will be deemed to have forever waived their
27 right to opt out of the Settlement Class and will be deemed Settlement Class
28 members for all purposes under this Agreement and will be irrevocably bound by

1 this Agreement. Any individual who timely and properly opts out shall not be
2 entitled to any individual relief under this Agreement. The Settlement Administrator
3 shall provide regular updates to Settlement Class Counsel and Mitchell Silberberg &
4 Knupp LLP as to any individuals who opt out of the Settlement Class. For the
5 avoidance of doubt, Settlement Class members who are also PAGA Covered
6 Employees may only opt out of the class action settlement portion of this Settlement;
7 the PAGA aspects of this Settlement cannot be opted out of and shall remain
8 binding on all PAGA Covered Employees regardless of any opt out.

9 **7.2 Withdrawal of Election to Opt Out.** Prior to the entry of the Final Approval
10 Order, any Person who has elected to opt out may withdraw that election by
11 notifying the Settlement Administrator in writing that the Settlement Class Member
12 wishes to be a Settlement Class member. The Settlement Administrator shall
13 maintain records of all withdrawn opt outs, and shall provide such information to
14 Settlement Class Counsel and Mitchell Silberberg & Knupp LLP. At any time after
15 the entry of the Final Approval Order, any Person who has elected to opt out of this
16 Agreement may withdraw that election only upon receiving the written consent of
17 Defendant and Court approval.

18 **8. SETTLEMENT TERMINATION**

19 **8.1 Termination if Court Approval Is Not Obtained.** This Agreement is expressly
20 conditioned upon: (i) Court approval of this Agreement; (ii) entry of the
21 Preliminary Approval Order in a mutually-agreeable form; and (iii) entry of the
22 Final Approval Order in a mutually-agreeable form. If the Court declines to enter
23 either of these “Orders,” or modifies (in what Defendant reasonably determines to
24 be a material way) any aspect of this Agreement or of such Orders, Defendant shall
25 have the independent right to terminate this Agreement as set forth in Section 8.5.
26 For purposes of this Section 8, a “material” modification shall include, but is not
27 limited to, any modification in the releases to be provided, or any modification that
28 would increase the Settlement Amount (defined below).

1 **8.2 Termination if Opt Out Limit Is Exceeded.** If more than five percent (5%) of
2 Settlement Class members opt out of the Settlement Class, Defendant shall have the
3 right (but not the obligation) to terminate this Agreement as set forth in Section 8.5.

4 **8.3 Termination if Settlement Class Members Limit Is Exceeded.** If the total
5 number of employees in the Settlement Class exceeds 425, Defendant shall have
6 the right (but not the obligation) to terminate this Agreement as set forth in Section
7 8.5, or increase the Settlement Amount proportionately for each Settlement Class
8 member over 367.

9 **8.4 Termination After Appeal.** If a court of appeal on review of this Agreement
10 and/or the Final Approval Order declares unenforceable, reverses, vacates, or
11 modifies (in what Defendant reasonably determines to be a material way) any
12 aspect of this Agreement or the Final Approval Order, Defendant shall have the
13 independent right to terminate this Agreement as set forth in Section 8.5.

14 **8.5 Termination Procedure and Effect.** If Defendant elects to terminate this
15 Agreement pursuant to Sections 8.1, 8.2, 8.3, and/or 8.4, Defendant may do so by
16 giving written notice to Settlement Class Counsel. Notice of termination pursuant to
17 Section 8.1 must be given within thirty (30) days of the act or order declining to
18 enter the Order or modifying this Agreement, unless subject to further appeal, in
19 which case the notice must be given prior to the Final Effective Date. Notice of
20 termination pursuant to Section 8.2 or 8.3 must be given prior to Final Approval.
21 Notice of termination pursuant to Section 8.4 must be given prior to the Final
22 Effective Date. If Defendant terminates this Agreement pursuant to Section 8, the
23 termination shall void all of the rights, obligations, and releases under this
24 Agreement, except for those provisions that are necessary to effectuate the
25 termination. Within fifteen (15) calendar days after notice of termination, the
26 Settlement Administrator shall return all settlement payments made by Defendant
27 prior to such termination (inclusive of interest and exclusive of notice and
28 administration costs already incurred). The Settlement Administrator shall then

1 allocate such previously expended/incurred notice and administration costs equally
2 between Plaintiff and Defendant and invoice Plaintiff and Defendant for half of such
3 costs (with a credit or refund to Defendant, as appropriate, for previously paid costs).
4 All payments to the Settlement Administrator shall be due thirty (30) calendar days
5 after receipt of the Settlement Administrator's invoice. The Settlement
6 Administrator shall issue any refund due to Defendant within thirty (30) calendar
7 days after the notice of termination.

8 **9. SETTLEMENT PAYMENTS**

9 **9.1 Funding Commitment.** The maximum cumulative total Defendant has paid or
10 will pay pursuant to this Agreement shall be Four Hundred Fifteen Thousand
11 Dollars and No Cents (\$415,000.00); provided, however, that Defendant shall
12 receive a credit for the \$74,889.00 previously paid to Settlement Class members
13 who signed releases. Thus, Defendant shall fund the remaining obligation of this
14 Agreement (*i.e.*, Three Hundred Forty Thousand One Hundred Eleven Dollars and
15 No Cents (\$340,111.00)) ("Settlement Amount") in accordance with the procedures
16 set forth herein. The Settlement Amount shall be used to pay all of Settlement
17 Class Counsel's Fees, Costs, and Expenses, all costs of claims administration, the
18 incentive payment to the Settlement Class Representative, the payment to the
19 LWDA, and all settlement payments to Participating Class Members and PAGA
20 Covered Employees. The afore-referenced \$74,889.00 having previously been
21 paid, no Released Party shall be required to pay anything above or beyond the
22 Settlement Amount as a result of this Agreement, other than that Defendant shall
23 separately pay the employer's share of employment taxes and the employer's
24 portion of FICA, Medicare taxes, and California and State Disability Insurance as
25 described in Section 10.6.2.

26 **9.2 Funding Upon Preliminary Approval.** Within ten (10) calendar days after the
27 entry of the Preliminary Approval Order, Defendant shall mail or wire to the
28 Settlement Administrator the sum of Nine Thousand and Two Hundred and Fifty

1 Dollars and No Cents (\$9,250.00) to pay for the anticipated notice program and
2 administrative expenses. The time to make such payment may be extended by
3 mutual consent of the Parties.

4 **9.3 Final Funding Upon Final Approval.** Within fifteen (15) business days after the
5 Final Effective Date, Defendant shall mail a check for or wire to the Settlement
6 Administrator the Settlement Amount less the amount previously paid pursuant to
7 Section 9.2. The time to make such payment may be extended by mutual consent of
8 the Parties.

9 **9.4 Payment of Settlement Class Counsel's Fees, Costs, and Expenses.** Within
10 fifteen (15) calendar days after the Settlement Administrator receives the payment
11 required by Section 9.2, the Settlement Administrator shall wire the amount of
12 Settlement Class Counsel's Fees, Costs, and Expenses to Settlement Class Counsel
13 from the Settlement Fund, unless the amount of such award remains subject to
14 appeal. Within fifteen (15) calendar days after the Settlement Administrator
15 receives the payment required by Section 9.2, the Settlement Administrator shall
16 wire the amount of the Settlement Class Representative's incentive award to
17 Settlement Class Counsel from the Settlement Fund, unless the amount of such
18 award remains subject to appeal.

19 **9.5 Interest on the Settlement Fund.** Any interest generated by the monies in the
20 Settlement Fund shall accumulate and become part of the Settlement Fund.

21 **10. PROTOCOL FOR PAYMENTS TO SETTLEMENT CLASS MEMBERS**

22 **10.1 Settlement Administrator.** Subject to Court approval, Phoenix shall be the
23 Settlement Administrator. The Settlement Administrator shall have the sole
24 authority to administer the Settlement Fund, and to disburse sums from the
25 Settlement Fund. The Settlement Administrator shall carry out its duties in strict
26 accordance with the procedures set forth in this Agreement, and any Party may
27 move the Court to compel such compliance. The Settlement Administrator shall
28 submit monthly invoices to the Parties. With or without good cause, the Parties

1 may jointly move the Court to replace the Settlement Administrator. With good
2 cause, any Party may, of its own accord, move the Court to replace the Settlement
3 Administrator. The Court may on its own motion replace the Settlement
4 Administrator at any time with or without cause. Except for the specific funding
5 obligations set forth in Sections 8.5 and 9, the Parties shall have no responsibility to
6 members of the Settlement Class for the administration of claims or the distribution
7 of the cash benefits under this Agreement.

8 **10.2 PAGA Penalty Payments.** The Settlement Class Representative, as an allegedly
9 aggrieved employee, filed this lawsuit on behalf of other current or former
10 employees under PAGA. From the Settlement Amount, Forty Thousand Dollars
11 and No Cents (\$40,000.00) is allocated to and designated as penalties pursuant to
12 PAGA, seventy-five percent (75%) of which shall be paid to the LWDA. The
13 remaining twenty-five percent (25%) shall be paid to PAGA Covered Employees as
14 set forth below in Section 10.2.2.

15 **10.2.1 Payment to LWDA.** Within twenty (20) calendar days after payment to
16 the Settlement Administration is received pursuant to Section 9.3, the
17 Settlement Administrator shall pay Thirty Thousand Dollars and No Cents
18 (\$30,000.00) to the LWDA from the Settlement Fund. This payment shall
19 constitute full satisfaction of the obligation, if any, to pay civil penalties to
20 the LWDA pursuant to California Labor Code Section 2699(i).

21 **10.2.2 Calculation of PAGA Allocation Amounts.** Each PAGA Covered
22 Employee shall be allocated a PAGA Allocation Amount. The PAGA
23 Allocation Amount shall be calculated as follows: (a) the number of PAGA
24 Compensable Pay Periods that the PAGA Covered Employee worked;
25 divided by (b) the aggregate number of PAGA Compensable Pay Periods
26 worked by all PAGA Covered Employees; multiplied by (c) \$10,000.00.
27 This calculation shall be based on the information provided by Defendant to
28 the Settlement Administrator. If any PAGA Covered Employee disputes

1 the number of PAGA Compensable Pay Periods attributed to him or her as
2 indicated in the Class Notice, the PAGA Covered Employee may state the
3 basis for the PAGA Covered Employee's disagreement and submit
4 documentation supporting that position to the Settlement Administrator, by
5 no later than 45 days after the Notice is issued. The Settlement
6 Administrator shall consult with the Parties, as needed, regarding the merits
7 of the dispute (including any additional information needed to assess the
8 claim) and then render a decision. The Settlement Administrator's decision
9 as to the appropriate number of PAGA Compensable Pay Periods to be
10 allocated to the challenging PAGA Covered Employee shall be final.

11 **10.3 Determination of Non-PAGA Penalty Benefits.** After the Settlement Class
12 Counsel's Fees, Costs, and Expenses, all costs of claims administration (including a
13 reasonable reserve for reasonably anticipated future expenses), the incentive
14 payment to the Settlement Class Representative, payment to the LWDA as set forth
15 in Section 10.2.1, and payments to PAGA Covered Employees as set forth in
16 Section 10.2.2 have been satisfied from the Settlement Fund, the remainder (the
17 "Remainder") shall be available to pay Participating Class Members. For the
18 avoidance of doubt, if the amount of any of these payments is unresolved by the
19 Court or pending appeal as of the Final Effective Date, then distribution of the
20 payments to the Participating Class Members shall be deferred until a definitive
21 amount to deduct to calculate the Remainder is determined which is not subject to
22 further appeal.

23 **10.3.1 Calculation of Participating Class Member Allocation Amounts.** Each
24 Participating Class Member shall be allocated a Participating Class Member
25 Allocation Amount. The Participating Class Member Allocation Amount for
26 each Participating Class Member shall be calculated as follows: (a) the
27 number of Compensable Pay Periods the Participating Class Member
28 worked; divided by (b) the aggregate number of Compensable Pay Periods

1 worked by all Participating Class Members; multiplied by (c) the Remainder
2 plus \$74,889.00; (d) less the net amount of any payment previously received
3 in connection with signing a release covering the claims at issue in this
4 Action. This calculation shall be based on the information provided by
5 Defendant to the Settlement Administrator. If the amount described in
6 subpart (d) equals or exceeds the amount calculated pursuant to subparts (a)
7 through (c), then the Participating Class Member shall not be entitled to any
8 further payment. If the amount of the Participating Class Member Allocation
9 Amounts, in the aggregate, exceeds the amount of Remainder funds available
10 to distribute for those payments as a result of (d) credits, the payments will
11 be ratably reduced.

12 **10.3.2 Disputes of Compensable Pay Periods.** If any Settlement Class member
13 disputes the number of Compensable Pay Periods attributed to him or her as
14 indicated in the Class Notice, the Settlement Class member may state the
15 basis for the Settlement Class member's disagreement and submit
16 documentation supporting that position to the Settlement Administrator, by
17 no later than 45 days after the Notice is issued. The Settlement
18 Administrator shall consult with the Parties, as needed, regarding the merits
19 of the dispute (including any additional information needed to assess the
20 claim) and then render a decision. The Settlement Administrator's decision
21 as to the appropriate number of Compensable Pay Periods to be allocated to
22 the challenging Settlement Class member shall be final.

23 **10.4 Notification of Proposed Benefits.** Within ten (10) calendar days after the
24 determination of proposed benefits pursuant to Sections 10.2.2 and 10.3.1, the
25 Settlement Administrator shall send a report to Settlement Class Counsel and
26 Mitchell Silberberg & Knupp LLP showing the proposed PAGA Allocation
27 Amount for each PAGA Covered Employee and Participating Class Member
28 Allocation Amount for each Participating Class Member. Neither this report nor

1 any other document provided to Settlement Class Counsel shall include any
2 identifying information for members of the Settlement Class.

3 **10.5 Corrections to the Proposed Benefits.** Settlement Class Counsel and Defendant
4 shall have ten (10) calendar days from the mailing of the report of proposed
5 benefits referenced in Section 10.4 to notify the Settlement Administrator in
6 writing of any errors in the calculation of the Participating Class Member
7 Allocation Amount.

8 **10.6 Taxes.**

9 **10.6.1 Payments to PAGA Covered Employees.** Based upon an analysis of the
10 facts of this Action, Settlement Class Counsel determined all payments
11 made to PAGA Covered Employees pursuant to Section 10.2.2 will be
12 treated as penalties and shall not be subject to employment taxes or any W2
13 allocation. To the extent legally required, the Settlement Administrator
14 shall issue to each PAGA Covered Employee an IRS Form 1099 in
15 connection with such payment.

16 **10.6.2 Payments to Participating Class Members Allocated to Wages.** Based
17 upon an analysis of the facts of this Action, Settlement Class Counsel
18 determined that one-fourth (1/4th) of all payments to the Participating Class
19 Members pursuant to Section 10.3.1 will be treated as wages. The
20 Settlement Administrator shall withhold (and remit to the appropriate taxing
21 authorities) all required employee side payroll taxes and deductions from
22 1/4th of all such payments. (If the allocated payment is subject to a credit,
23 as referenced in Section 10.3.1(d), only ¼ of the net amount shall be treated
24 as W2 income.) The Settlement Administrator shall issue to each
25 Participating Class Member an IRS Form W-2 with respect to this payment.
26 Defendant's share of employment taxes (*i.e.*, the tax payments made as a
27 consequence of paying wages to an employee) and the employer's portion
28 of FICA, Medicare taxes, and California and State Disability Insurance

1 shall not be satisfied from the Settlement Fund, and shall be paid separately
2 by Defendant. The Settlement Administrator shall calculate the amount of
3 such employer side payroll taxes and submit an invoice to Defendant, which
4 Defendant shall pay within fifteen (15) days of presentment. The
5 Settlement Administrator shall then remit such payments to the appropriate
6 government authorities on Defendant's behalf. For the avoidance of doubt,
7 Defendant has already paid and is not required to pay any further
8 employment taxes in connection with the \$74,889.00 previously paid to
9 Settlement Class members who signed releases.

10 **10.6.3 Payments to Participating Class Members Allocated to Non-Wage**

11 **Income.** Based upon an analysis of the facts of this Action, Settlement
12 Class Counsel determined that three-fourths (3/4ths) of all payments to the
13 Participating Class Members pursuant to Section 10.3.1 will be treated as
14 penalties and interest and shall not be subject to employment taxes. (If the
15 allocated payment is subject to a credit, as referenced in Section 10.3.1(d),
16 only 3/4 of the net amount shall be treated as 1099 income.) The Settlement
17 Administrator shall issue to each Participating Class Member an IRS Form
18 1099 in connection with such payment.

19 **10.7 Notice and Payment to Settlement Class Members.** Within forty (40) calendar
20 days of the Final Effective Date, or such later deadline is required pursuant to
21 Section 10.3, the Settlement Administrator shall distribute to each PAGA Covered
22 Employee and each Participating Class Member a check in the amount equal to the
23 total cash payment(s) such member is entitled to receive pursuant to this
24 Agreement. (The Settlement Administrator may combine checks to be issued to the
25 same person in its discretion to reduce administration costs.) All settlement checks
26 sent to PAGA Covered Employees and/or Participating Class Members and not
27 cashed within one hundred eighty (180) calendar days of issuance shall be
28 canceled, and the money represented by such checks shall be distributed to the

1 State of California Controller's Office in the name of the PAGA Covered
2 Employee or Participating Class Member. Any cash benefit owed to any PAGA
3 Covered Employee or Participating Class Member whose addresses cannot be
4 located (after use of the search processes described in Section 6.1) shall also be
5 distributed to the State of California Controller's Office in the name of the PAGA
6 Covered Employee or Participating Class Member.

7 **10.8 Maintenance of Records.** The Settlement Administrator shall maintain complete,
8 accurate, and detailed records regarding the administration of the Settlement Fund,
9 including but not limited to, any objection to proposed benefits and the resolution
10 thereof and any receipts by and disbursements from the Settlement Fund. The
11 Settlement Administrator shall make such records available to counsel for the Parties
12 or to their designee upon reasonable request and at reasonable times. Upon request,
13 the Settlement Administrator shall provide such records to Defendant in an electronic
14 format designated by Defendant. The Settlement Administrator shall maintain all
15 records for a period of not less than four (4) years following the Final Effective Date.

16
17 **11. SETTLEMENT CLASS COUNSEL'S FEES, COSTS, AND EXPENSES AND**
18 **SETTLEMENT CLASS REPRESENTATIVE'S INCENTIVE PAYMENT**

19 **11.1 Settlement Class Counsel's Fees, Costs, and Expenses.** In connection with the
20 motion for final approval, Settlement Class Counsel shall file a motion with the
21 Court seeking approval of an award of attorneys' fees in an aggregate amount that
22 does not exceed One Hundred Thirty-Eight Thousand Three Hundred and Thirty-
23 Three Dollars and Thirty-Three Cents (\$138,333.33) and an award of costs and
24 expenses that does not exceed Fourteen Thousand Dollars and No cents
25 (\$14,000.00). Defendant agrees not to oppose such motion for attorneys' fees,
26 costs, and expenses, provided the request does not exceed the limits specified. In
27 the event that any court approves an award in excess of \$138,333.33 for attorneys'
28 fees or in excess of \$14,000.00 for costs and expenses, Settlement Class Counsel

1 shall take only the amounts listed in this Section and the difference shall be treated
2 as otherwise provided herein. The amounts so awarded shall be for and in
3 complete satisfaction of all attorneys' fees, costs, and expenses incurred to date by
4 the Settlement Class Representative, Settlement Class Counsel on behalf of the
5 Settlement Class Representative and the Settlement Class, and of all such future
6 fees, costs, and expenses related to this Action, including fees, costs, and expenses
7 incurred in documenting this Settlement, securing Court approval of this
8 Settlement, monitoring this Settlement, reviewing and participating in the claims
9 and distribution administration process, and obtaining the Final Effective Date.
10 The Settlement Administrator will provide Settlement Class Counsel with an IRS
11 Form 1099 for the awarded Settlement Class Counsel's Fees, Costs, and Expenses.
12 Not later than the Final Effective Date, Settlement Class Counsel shall provide a
13 fully and properly executed IRS Form W-9 for purposes of the payments which the
14 Settlement Administrator will make to Settlement Class Counsel. In the event the
15 Court awards an amount less than requested for attorneys' fees, costs and expenses,
16 such ruling shall not impact the enforceability of this Agreement or constitute
17 grounds to terminate or avoid the Settlement or delay the Final Effective Date. If
18 Settlement Class Counsel appeals such award, payments to the Settlement Class
19 will be delayed pending resolution of the amount to be deducted in determining the
20 Remainder.

21 **11.2 Incentive Payment/Service Award.** In connection with the motion for final
22 approval, Settlement Class Counsel shall submit a request to the Court seeking
23 approval for an award of an incentive payment to the Settlement Class
24 Representative appointed by the Court that does not exceed the sum of Ten
25 Thousand Dollars and No Cents (\$10,000.00). Such payments shall be in addition to
26 the Settlement Class Representative's cash benefit under Section 10. In the event
27 that any court awards an incentive payment in excess of \$10,000.00 to the
28 Settlement Class Representative, the Settlement Class Representative shall take only

\$10,000.00, and the difference shall be treated as otherwise specified herein. The Settlement Class Representative agrees that the incentive payment is not a wage payment. The Settlement Administrator shall issue an IRS Form 1099 to the Settlement Class Representative for his incentive payment. In the event the Court awards an amount less than requested incentive payment, such ruling shall not impact the enforceability of this Agreement or constitute grounds to terminate or avoid the Settlement or delay the Final Effective Date. If Settlement Class Counsel appeals such award, payments to the Settlement Class will be delayed pending resolution of the amount to be deducted in determining the Remainder.

11.3 No Additional Fees, Costs, or Expenses. Except as provided herein, each member of the Settlement Class shall bear his/her/its own attorneys' fees, costs, and expenses incurred in connection with any claim against Defendant.

12. FINAL ACCOUNTING AND DISPOSITION OF SETTLEMENT MONIES

12.1 Final Accounting. By no later than two-hundred and ten (210) calendar days after the occurrence of both the Final Effective Date and the distribution of all checks referenced in Section 10.7, the Settlement Administrator shall submit to the Parties a final accounting of all monies paid into and out of the Settlement Fund.

13. RELEASES

13.1 Final Approval Order. The Final Approval Order shall include (a) a release by the Releasing Parties of and from any Settled Claims, (b) a general release by the Settlement Class Representative, and (c) a release by the LWDA/PAGA Covered Employees of any PAGA claim based on the Settled Claims.

13.2 Release.

13.2.1 Settlement Class Release. Except for the obligations and rights created by this Agreement, upon the Final Effective Date, the Releasing Parties release

1 and absolutely and forever discharge Defendant and all other Released
2 Parties and Persons of and from any Settled Claims.

3 **13.2.2 General Release.** Settlement Class Representative on behalf of himself, his
4 spouse, his heirs and issue, and any assignee of any claim covered by such
5 release, fully releases and discharges Defendant and the other Released
6 Parties, with respect to and from, any and all claims, demands, rights, liens,
7 agreements, contracts, covenants, actions, suits, causes of action,
8 grievances, obligations, debts, costs, expenses, attorneys' fees, damages,
9 judgments, orders and liabilities, of whatever kind or nature, in law, equity
10 or otherwise, whether now known or unknown, suspected or unsuspected,
11 and whether or not concealed or hidden, which Settlement Class
12 Representative now owns or holds, or has at any time heretofore owned or
13 held, or may in the future hold against Defendant and/or other Released
14 Parties, or any of them, arising out of, grounded upon, or in any way
15 connected with Settlement Class Representative's former employment with
16 Defendant, his termination from any such actual or alleged employment,
17 and any other act or omission committed or omitted prior to the date of this
18 Agreement. In granting this general release, to the fullest extent permitted
19 by law, the Settlement Class Representative waives and relinquishes any
20 rights or benefits he has or may have under California Civil Code Section
21 1542, or any comparable provision of state or federal law. California Civil
22 Code Section 1542 provides:

23 "A general release does not extend to claims that
24 the creditor or releasing party does not know or
25 suspect to exist in his or her favor at the time of
26 executing the release and that, if known by him or
her, would have materially affected his or her
settlement with the debtor or released party."

27 The Settlement Class Representative acknowledges that he is aware that he
28 or his attorneys may hereafter discover claims or facts in addition to or

1 different from those now known or believed to be true with respect to the
2 subject matter of this Agreement. The Settlement Class Representative
3 acknowledges that he intends to and will fully, finally, and forever settle and
4 release all claims against Defendant and the other Released Parties whether
5 known or unknown, suspected or unsuspected, which now exist, hereinafter
6 may exist, or heretofore may have existed. In furtherance of this intention,
7 the general release contained in this Agreement shall be and remain in effect
8 as a full and complete release by the Settlement Class Representative without
9 regard to the subsequent discovery or existence of such different or
10 additional claims or facts.

11 **13.2.3 PAGA Release.** The LWDA and all PAGA Covered Employees
12 (regardless of whether they are also Settlement Class members) are deemed
13 to release, on behalf of the PAGA Covered Employees and their respective
14 agents, partners, joint venturers, affiliates, predecessors, successors,
15 spouses, heirs, assigns, insurers, and any other Persons or entities claiming
16 by or through the PAGA Covered Employees, Defendant and the Released
17 Parties from any and all claims for PAGA penalties, for the PAGA Covered
18 Period, that were alleged, or reasonably could have been alleged, based on
19 the Settled Claims.

20 **14. NOTICES**

21 **14.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed to
22 in writing by the Party receiving such communication, all notices, requests, or other
23 required communications hereunder shall be in writing and shall be sent by one of
24 the following methods: (a) by electronic mail, with a copy by first class mail,
25 postage prepaid; or (b) by personal or overnight delivery (including by Federal
26 Express or other courier service). All such communications shall be sent to the
27 undersigned persons at their respective addresses as set forth herein.

28 Settlement Class Counsel:
Scott E. Wheeler (sew@scottwheelerlawoffice.com)

1 Law Office of Scott Wheeler
2 250 West First Street, Suite 216
3 Claremont, CA 91711
4 Facsimile: (909) 621-4622

5 Aubry Wand (awand@wandlawfirm.com)
6 The Wand Law Firm, P.C.
7 100 Oceangate, Suite 1200
8 Long Beach, CA 90802

9 Defendant:
10 Seth Pierce (sep@msk.com)
11 Brian M. Ragen (byr@msk.com)
12 Mitchell Silberberg & Knupp LLP
13 2049 Century Park East, 18th Floor
14 Los Angeles, California 90067
15 Facsimile: (310) 312-3100

16 Notice shall be deemed effective: (1) if given by electronic means, at the time of
17 transmission if the sender does not receive an error message and a copy is duly mailed the same
18 day; (2) if given by personal delivery, when signed for or when delivery is refused; and (3) if
19 given by overnight delivery, when received as evidenced by a confirmation or evidence of
20 delivery.

21 **14.2 Changes in Designated Recipients.** Any Party may re-designate the Person to
22 receive notices, requests, demands, or other communications required or permitted
23 by this Agreement by providing written notice to the other Parties and the
24 Settlement Administrator.

25 **15. MISCELLANEOUS**

26 **15.1 Entire Agreement.** This Agreement supersedes and replaces any other prior
27 agreements and all negotiations leading up to the execution of this Agreement,
28 whether oral or in writing, between the Parties with respect to the subject matter
hereof. The Parties acknowledge that no representations, inducements, promises,
or statements, oral or otherwise, have been made or relied upon by any of the
Parties or by anyone acting on behalf of the Parties which are not embodied or
incorporated by reference herein, and further agree that no other covenant,
representation, inducement, promise or statement not set forth in writing in this

1 Agreement shall be valid or binding.

2 **15.2 Modification or Amendment.** This Agreement may not be modified or amended,
3 except in writing with the unanimous consent of the Parties and with the approval
4 of the Court.

5 **15.3 Execution in Counterparts.** This Agreement may be executed by signature of the
6 Parties hereto, or their authorized representatives, on multiple copies of this
7 Agreement, including copies transmitted by facsimile or electronic portable
8 document format (PDF), and, upon being so executed by all Parties hereto, shall be
9 effective as if all signatures appeared on the original of this Agreement.

10 **15.4 Authority of Counsel.** Settlement Class Counsel are authorized by the members
11 of the Settlement Class, and by the Court, to take all appropriate action required
12 and permitted to be taken by the Settlement Class pursuant to this Agreement to
13 effectuate its terms, and, subject to Court approval, are authorized to enter into any
14 modification or amendments to this Agreement on behalf of the Settlement Class
15 which they deem appropriate.

16 **15.5 Headings.** The headings of the sections, paragraphs, subparagraphs, and exhibits
17 of this Agreement are included for convenience only and shall not be deemed to
18 constitute part of this Agreement or to affect its construction.

19 **15.6 Liens.** The Parties released under this Agreement shall have no obligation to pay
20 or otherwise resolve any liens that are or may be asserted against settlement
21 payments to members of the Settlement Class pursuant to the terms of this
22 Agreement. In the event any such lien is asserted, it is the responsibility of the
23 Settlement Class member to pay, compromise, or otherwise resolve the lien at no
24 cost to Defendant, the Released Parties, or the Settlement Fund.

25 **15.7 No Encouragement to Opt Out.** The Parties agree that neither they nor their
26 counsel will solicit or otherwise directly or indirectly encourage Settlement Class
27 members to request exclusion from the Settlement Class, to object to this
28 Settlement, or to appeal from the Final Approval Order. Settlement Class

1 Representative will not request exclusion from the Settlement Class. Settlement
2 Class Representative and Settlement Class Counsel will not object to this
3 Settlement and will not appeal from the Final Approval Order, or any portion of it,
4 except that Settlement Class Counsel and/or the Settlement Class Representative
5 may appeal the attorneys' fee, expenses and cost award and/or the Settlement Class
6 Representative incentive payment if less than the full amount is awarded.

7 **15.8 No Publicity.** The Parties agree not to contact the press, which includes issuing a
8 press release, or to hold a press conference announcing the terms of the Settlement.
9 If the Parties are contacted by the press or receive other third party inquiries
10 regarding the Settlement or the case, the Parties shall be limited in their response to
11 inform the initiating contactor that the Parties have reached agreement to their
12 mutual satisfaction and that the initiating contactor should refer to the public
13 records filed with the Court for more information. Each Party shall use all
14 reasonable efforts to ensure that any public statements or press communication
15 about the Settlement with Settlement Class members prior to the Court-approved
16 Class Notice being mailed by the Settlement Administrator will be limited to a
17 general statement that a settlement has been reached and the details will be
18 communicated to them by U.S. Mail in a forthcoming Court-approved Class
19 Notice.

20 **15.9 Gender.** Whenever in this Agreement the context so requires, the neuter gender
21 shall refer to and include the masculine or feminine or non-binary, and the singular
22 shall refer to and include the plural.

23 **15.10 Further Acts.** The Parties shall perform such further acts and execute such further
24 documents as may be reasonably necessary or appropriate to effectuate the terms
25 and purposes of this Agreement.

26 **15.11 Beneficiaries.** This Agreement shall be binding upon the Parties and each of them,
27 and each of their respective heirs, successors, and assignees, and shall inure to the
28 benefit of the Parties, as well as to each of the Released Parties, each of whom shall

be deemed a third party beneficiary of this Agreement.

15.12 Choice of Law and Jurisdiction. This Agreement in all respects shall be interpreted, enforced, and governed by and under the laws of the State of California applicable to instruments, Persons, and transactions which have legal contacts and relationships solely within the State of California. Any action pertaining to the terms of this Agreement that is not covered by Section 4.1 shall be brought in a court of competent jurisdiction located in the State of California.

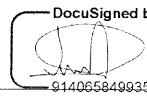
15.13 Warranty Regarding Advice. Settlement Class Counsel warrants that the Settlement Class Representative has been fully advised of and agrees to the terms of this Agreement. The Settlement Class Representative hereby acknowledges that he has been represented by legal counsel throughout all negotiations which preceded the execution of this Agreement, and that this Agreement has been executed with the consent and on the advice of said counsel.

15.14 No Tax Advice. None of the Released Parties, including Defendant, has any responsibility or liability for any tax matters relating to any payments made under this Agreement including, but not limited to, tax advice and/or the withholding of or reporting of taxes.

AGREED TO AND ACCEPTED.

Dated: 3/16/2024

FRANCISCO RAMIREZ ORDAZ

By:  9140658499354E7
Francisco Ramirez Ordaz
Settlement Class Representative

BURLINGAME INDUSTRIES, INC.

Dated: _____

By: _____

Its: _____

be deemed a third party beneficiary of this Agreement.

15.12 Choice of Law and Jurisdiction. This Agreement in all respects shall be interpreted, enforced, and governed by and under the laws of the State of California applicable to instruments, Persons, and transactions which have legal contacts and relationships solely within the State of California. Any action pertaining to the terms of this Agreement that is not covered by Section 4.1 shall be brought in a court of competent jurisdiction located in the State of California.

15.13 Warranty Regarding Advice. Settlement Class Counsel warrants that the Settlement Class Representative has been fully advised of and agrees to the terms of this Agreement. The Settlement Class Representative hereby acknowledges that he has been represented by legal counsel throughout all negotiations which preceded the execution of this Agreement, and that this Agreement has been executed with the consent and on the advice of said counsel.

15.14 No Tax Advice. None of the Released Parties, including Defendant, has any responsibility or liability for any tax matters relating to any payments made under this Agreement including, but not limited to, tax advice and/or the withholding of or reporting of taxes.

AGREED TO AND ACCEPTED.

FRANCISCO RAMIREZ ORDAZ

Dated: _____

By: _____
Francisco Ramirez Ordaz
Settlement Class Representative

BURLINGAME INDUSTRIES, INC.

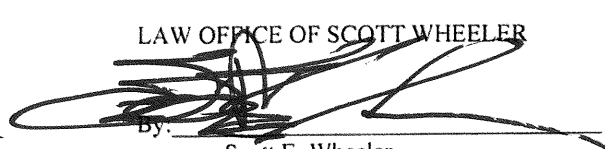
Dated: 3/18/2024

By: Victor Torcat
Its: Chief Operating Officer

1 APPROVED AS TO FORM.

2
3
4 Dated: 3/14/24

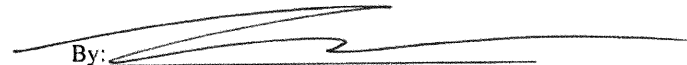
LAW OFFICE OF SCOTT WHEELER

By: 

Scott E. Wheeler
Settlement Class Counsel

6 THE WAND LAW FIRM, P.C.

7
8 Dated: 3/14/2024

By: 

Aubry Wand
Settlement Class Counsel

11 MITCHELL SILBERBERG & KNUPP LLP

12
13 Dated: _____

By: _____

Seth Pierce
Attorneys for Defendant

1 APPROVED AS TO FORM.

2 LAW OFFICE OF SCOTT WHEELER

3 Dated: _____

4 By: _____

5 Scott E. Wheeler
Settlement Class Counsel

6 THE WAND LAW FIRM, P.C.

7 Dated: _____

8 By: _____

9 Aubry Wand
Settlement Class Counsel

10 MITCHELL SILBERBERG & KNUPP LLP

11 Dated: 3/18/2024

12 By: Seth Pierce

13 Seth Pierce
Attorneys for Defendant

EXHIBIT 1

**NOTICE OF PENDENCY OF CLASS ACTION AND PAGA
SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL**

(Francisco Ramirez Ordaz v. Burlingame Industries, Inc., Case No. CIVSB2303162)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT.
PLEASE READ THIS NOTICE CAREFULLY.**

To: All hourly, non-exempt employees who were employed by Burlingame Industries, Inc. (“Defendant”) in the State of California and worked in Defendant’s manufacturing facilities at any time during the period January 23, 2019 to January 31, 2024, inclusive of those dates (“Settlement Class”). (Those individuals who worked during the period September 23, 2021 to January 31, 2024, inclusive of those dates, are referred to as “PAGA Covered Employees” as well and are entitled to an additional payment, as detailed below.)

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the settlement, you do not have to do anything. If the settlement is finally approved by the Court, the payment will be mailed to you at the same address as this Notice. If your address has changed or changes before you receive payment, please notify the Settlement Administrator, as explained below. In exchange for the settlement payment, you will release claims against Defendant as detailed below.
Exclude Yourself	To exclude yourself from the class settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will retain your right to sue Defendant as to the claims released by the class settlement. If you request exclusion, you will receive no money from the class settlement. Instructions are set forth below. You may not exclude yourself from the PAGA (or non-class) portion of this settlement, as that claim is filed on behalf of the Labor Workforce Development Agency (“LWDA”) (a state agency). If the Court finally approves the settlement, all PAGA Covered Employees will receive the PAGA payment and release claims under PAGA, regardless of whether you submit a request for exclusion from the class settlement.
Object/Comment	You may write to the Court about why you like or do not like the settlement or you may appear at the Final Approval Hearing to make an oral statement in support of or in opposition to the settlement. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in the Superior Court of the State of California, County of San Bernardino (the “Court”) has been reached between Plaintiff Francisco Ramirez Ordaz (“Plaintiff”) and Defendant, and has been granted preliminary approval by the Court. **You may be entitled to receive money from this Settlement. The Court has not made a determination about any of the contentions of the Parties. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims or defenses asserted by either side.**

You have received this Notice because you have been identified as a member of the Settlement Class, which is defined as:

All non-exempt employees who were employed by Defendant in the State of California and worked in Defendant's manufacturing facilities during the Class Period. The Class Period is January 23, 2019 through January 31, 2024, inclusive of those dates.

This Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On January 23, 2023, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Bernardino, Case No. CIVSB2303162 (the "Action"). Plaintiff asserted claims against Defendant for wage and hour violations based primarily on allegations that Defendant's alternative workweek schedule was improper; that Defendant improperly listed expended COVID sick time on wage statements; and that Defendant denied certain meal/rest periods, primarily during shifts exceeding 10 hours. Plaintiff also asserted claims based on the same conduct pursuant to the Private Attorneys General Act ("PAGA"). The PAGA claim was brought on behalf of a subset of the Settlement Class, specifically those Settlement Class members who worked during the shorter statute of limitations applicable to such PAGA claims (PAGA Covered Employees).

Through mediation on January 31, 2024, the Parties reached a settlement in order to avoid the inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the Settlement Class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented.

Defendant disputes all claims asserted in this litigation, and further denies that the Action is appropriate for class or PAGA treatment for any purpose other than this Settlement. Specifically, Defendant maintains that it has properly complied with all state and federal laws and regulations, including the California Labor Code and California Industrial Commission Wage Orders. Nothing in this Notice, the Settlement, or actions to carry out the Settlement means that Defendant admits any fault, wrongdoing or liability whatsoever. The Court has not made any findings regarding Plaintiff's claims.

The Court granted preliminary approval of the Settlement on [date]. At that time, the Court also preliminarily approved Plaintiff to serve as the Settlement Class Representative, and The Law Office of Scott Wheeler and The Wand Law Firm, P.C. to serve as Settlement Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. The Settlement contemplates the payment of Four Hundred Fifteen Thousand Dollars (\$415,000.00), inclusive of \$74,889.00 that has already been paid to certain of the Settlement Class members in exchange for a release of the claims at issue, to fully resolve the claims in the Action on a global basis as to everyone. The "Remainder," or Three Hundred Forty Thousand One Hundred Eleven Dollars (\$340,111.00), will cover all remaining payments to Participating Class Members and PAGA Covered Employees contemplated by the Settlement, Settlement Class Counsel's Fees, Costs and Expenses, the Settlement Administrator's expenses, and the incentive payment to Plaintiff as the Settlement Class Representative. If the Court finally approves the Settlement, the entirety of the Remainder will be disbursed. With the exception of Defendant's right to terminate the Settlement under certain conditions (as detailed further in the Settlement), none of this money will revert to Defendant for any reason.

Amounts to be Paid From the Remainder. The Court has tentatively approved certain payments to be made from the Remainder as described, below. These amounts are subject to final Court approval, and will be deducted from the Remainder before payments are made to Settlement Class members who do not request exclusion (“Participating Class Members”):

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed Nine Thousand and Two Hundred and Fifty Dollars and No Cents (\$9,250.00) for administering the Settlement.
- Attorneys’ Fees and Costs. Payment to Settlement Class Counsel of reasonable attorneys’ fees not to exceed \$138,333.33, and an additional amount to reimburse actual litigation expenses not to exceed \$14,000, or such lesser amount as may be approved by the Court, as the “Settlement Class Counsel’s Fees Costs, and Expenses.” Settlement Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Settlement Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.
- Settlement Class Representative Incentive Award. An incentive award to Plaintiff as the Settlement Class Representative that will not exceed Ten Thousand Dollars (\$10,000.00), or such lesser amount as may be approved by the Court, to compensate Plaintiff for his services on behalf of the Settlement Class in initiating and prosecuting the Action.
- PAGA Payment. A payment of \$40,000 relating to the claim for penalties under PAGA, \$30,000 of which, per statute, will be paid to the LWDA (a California government agency). The remaining \$10,000 will be distributed to the PAGA Covered Employees, allocated based on the number of PAGA Compensable Pay Periods each PAGA Covered Employee worked. Specifically, the amount paid to each PAGA Covered Employee (the “PAGA Allocation Amount”) will be calculated as follows: (a) the number of PAGA Compensable Pay Periods that the PAGA Covered Employee worked; divided by (b) the aggregate number of PAGA Compensable Pay Periods worked by all PAGA Covered Employees; multiplied by (c) \$10,000.00. This calculation shall be based on the information provided by Defendant to the Settlement Administrator.

Calculation of Payments to Participating Class Members. After all of the payments of the court-approved incentive award to the Settlement Class Representative, Settlement Class Counsel’s Fees, Costs, and Expenses, payment to the LWDA, payments to PAGA Covered Employees, and the Settlement Administrator’s expenses are deducted from the Remainder, the amount remaining shall be distributed to Participating Class Members, allocated based on the number of Compensable Pay Periods each Settlement Class member worked (with a deduction for any amount previously paid to the Settlement Class Member in exchange for the Member’s release). The submission of a claim form is not required to be paid. This amount shall be paid as described below.

The amount paid to each Participating Class Member (the “Participating Class Member Allocation Amount”) will be calculated as follows: (a) the number of Compensable Pay Periods the Participating Class Member worked; divided by (b) the aggregate number of Compensable Pay Periods worked by all Participating Class Members; multiplied by (c) \$415,000.00. (d) If the Settlement Class Member previously received a payment in exchange for executing a release, the net amount of the payment previously received will be deducted from that Settlement Class member’s payment. This calculation shall be based on the information provided by Defendant to the Settlement Administrator. If the amount described in subpart (d) equals or exceeds the amount calculated pursuant to subparts (a) through (c), then the Participating Class Member shall not be entitled to any Participating Class Member payment under this Settlement. (If the amount of the Participating Class Member Allocation Amounts, in the aggregate, exceeds the amount of Remainder funds available to distribute for those Payments as a result of the (d) credits, the payments will be ratably reduced.)

If the Settlement is approved by the Court and you do not opt out, you will automatically be mailed a check for your Participating Class Member Allocation Amount and, if applicable, your PAGA Allocation Amount

to the same address as this Notice. You do not have to do anything to receive a payment. If your address has changed or changes before the payment is issued, you must contact the Settlement Administrator to inform it of your correct address to insure you receive your payment. (Multiple payments due may be combined in one check.)

Tax Matters. With respect to the PAGA Allocation Amount, one hundred percent (100%) of such payment is in settlement of claims for penalties and interest allegedly due to employees, neither of which will be subject to wage withholdings. An IRS Form 1099 will be issued, if applicable. With respect to the Participating Class Member Allocation Amount, twenty-five percent (25%) of such payment is in settlement of claims for wages allegedly due to employees, which will be subject to wage withholdings. An IRS Form W-2 will be issued in connection with this payment. Seventy-five percent (75%) of such payment is in settlement of claims for penalties and interest allegedly due to employees, neither of which will be subject to wage withholdings. An IRS Form 1099 will be issued in connection with this payment.

PAGA Covered Employees and Participating Class Members shall be responsible for paying any employee-side taxes owing on their PAGA Allocation Amount and/or Participating Class Member Allocation Amount. Neither Settlement Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement.

4. What Do I Release Under the Settlement?

Settled Claims. As of the date that the final judgment in the Action becomes final, the Participating Class Members shall fully and finally release and discharge (a) Defendant and each and all of Defendant's past or present partners, parents, subsidiaries, or related entities (regardless of whether such partners, parents, subsidiaries, or related entities are individuals, corporations, partnerships, limited partnerships, limited liability companies, or other forms of entity); (b) each and all of the predecessor or successor entities of any of those entities identified in subparagraph (a); (c) any other individuals or entities of any kind which have been or could be alleged to be in any manner responsible (whether on an alter ego, joint employer, statutory employer, integrated enterprise, or any other theory) for any actual or alleged violations; and (d) all past and present directors, officers, representatives, insurers, agents, shareholders, partners, members, lawyers, and employees of any of the individuals or entities identified in subparagraphs (a), (b), or (c) ("Released Parties"), from all Settled Claims.

"Settled Claims" are any claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action, of every kind and/or nature whatsoever, regardless of legal theory or type or amount of relief or damages claimed, which any Participating Class Member now has or at any time ever had against any Released Party that arises out of or is based on the facts alleged in the operative Complaint or the Settlement Class Representative's PAGA Notices, including, without limitation, all claims under Labor Code sections 201, 202, 203, 204, 210, 226.2, 226, 226(a) and (e), 226.7, 510, 511, 512, 1174, 1194, 1194.2, 1197, 1198, FLSA claims based on the same unpaid wage and overtime claims, any claims under Sections 3, 6, 7, 11 and 12 of IWC Wage Order No. 1 and/or any other comparable provisions of any other applicable Wage Order(s), and/or California Business and Professions Code Section 17200 *et seq.*, as well as any civil penalty claims predicated on the claims alleged in the operative Complaint under PAGA. Without in any way limiting the foregoing, Settled Claims shall include all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action under the statutes and regulations set forth in this Section 2.27, whether enforced directly or pursuant to PAGA, California Business and Professions Code Section 17200 *et seq.*, or any other mechanism. The Settled Claims do not include claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the Class Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and/or any of the other Released Parties about the Settled Claims resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Release of PAGA Claims: Separate and apart from the Settled Claims specified above, all PAGA Covered Employees will release all PAGA claims pled in the operative Complaint or in the Settlement Class Representative's letters to the LWDA dated September 23, 2022 and January 20, 2023 ("PAGA Notices"), which arose during the PAGA Covered Period or could have been alleged based on the factual allegations contained in the operative Complaint or PAGA Notices sent by Plaintiff.

The release of PAGA claims shall be effective as to all PAGA Covered Employees, regardless of whether they submit a request for an exclusion from the Settlement Class.

5. How much will my payment be?

Defendant's records reflect that you worked <<[workweeks]>> PAGA Compensable Pay Periods during the PAGA Covered Period. Your estimated PAGA Allocation Amount is <<[amount]>>.

Defendant's records also reflect that you worked <<[workweeks]>> Compensable Pay Periods during the Class Period. Your estimated Participating Class Member Allocation Amount is <<[amount]>>.

The actual amount that you receive could be more or less than the above estimated amounts, depending on the final settlement terms approved by the Court, including the number of persons who request exclusion.

You may dispute the number of PAGA Compensable Pay Periods and/or Compensable Pay Periods assigned to you above. If you wish to dispute the accuracy of those figures, then you must submit a written, signed statement, setting forth the basis for the dispute, along with any supporting documents, to the Settlement Administrator at the address provided in this Notice no later than [date].

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Participating Class Member Allocation Amount, and your PAGA Allocation if you are a PAGA Covered Employee, will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed or changes, you must notify the Settlement Administrator. The Settlement Administrator is Phoenix Settlement Administrators.

The Court will hold a hearing on [date] at [time] to decide whether to finally approve the Settlement. If the Court finally approves the Settlement, and there are no objections or appeals, payments will be mailed within approximately two months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the class settlement, you may exclude yourself from the class portion of the Settlement or "opt out." **If you opt out, you will not receive a Participating Class Member Allocation Amount from the Settlement, and you will not be bound by the class settlement which means you will retain the right to sue Defendant for Settled Claims.** You may not exclude yourself from the PAGA (or non-class) portion of this Settlement, as that claim is filed on behalf of the LWDA (a state agency). If the Court finally approves the Settlement, all PAGA Covered Employees will receive their PAGA Allocation and release claims under PAGA, regardless of whether they submit a request for exclusion from the class settlement.

To opt out of the class settlement, you must submit a written, signed request to opt-out either (i) online through the Settlement Website; or (ii) by First Class Mail, postmarked (or in the case of online submission, submitted) no later than [date]. The request to opt-out must state in substance: "I have read the Class Notice, and I wish to opt-out of the class action and settlement of the case *Ordaz v. Burlingame Industries, Inc.*, Case No. CIVSB2303162." The request to opt-out must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. To be valid, the request to opt-out of the class settlement must be completed by you and must be timely submitted to the Settlement Administrator. No other person may opt-out for a living member of the Class. The Settlement Website is located at [website URL]. Any online submission of the request to opt-out must be confirmed with a confirmation number before the deadline.

The address for the Settlement Administrator is [address]. Written requests to opt-out of the class settlement that are postmarked or submitted online after [date], or are incomplete or unsigned, will be rejected. Settlement Class members who submit untimely, incomplete, or unsigned requests to opt-out will remain bound by the Settlement, will receive their Participating Class Member Allocation Amount, and will be deemed to have released the Settled Claims against Defendant and the Released Parties.

8. How do I tell the Court that I don't like the Settlement?

Any Participating Class member (i.e., a Settlement Class member who does not opt out) who believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement or to the motion for Settlement Class Counsel's Fees, Costs, and Expenses and/or the incentive award to Plaintiff as the Settlement Class Representative (which will be posted for viewing on or before [date] on the Settlement Website at [website URL]). Written objections must state your name, current address, telephone number, and describe why and what part of the Settlement you believe to be unfair and whether you intend to appear at the final approval hearing. All objections or other correspondence must also state the name and number of the case, which is *Ordaz v. Burlingame Industries, Inc.*, in the Superior Court for the State of California, County of San Bernardino, Case No. CIVSB2303162. Settlement Class members may enter an appearance through an attorney if the Settlement Class member so desires. (Note: You may not object to the class portion of the Settlement if you timely and validly opt out, as in that case, that part of the Settlement will not impact you.)

Alternatively, Settlement Class members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to make an oral objection.

Any written objections must be delivered or postmarked and mailed to the Settlement Administrator no later than [date]. The address for the Settlement Administrator is [address].

The addresses for Parties' counsel are as follows:

Settlement Class Counsel:

Scott E. Wheeler
Law Office of Scott Wheeler
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com

Aubry Wand
The Wand Law Firm, P.C.
100 Oceangate, Suite 1200
Long Beach, California 90802

Counsel for Defendant:

Seth E. Pierce
Brian M. Ragen
Mitchell Silberberg & Knupp LLP
2049 Century Park East, 18th Floor
Los Angeles, CA 90067-3120
Telephone: (310) 312-2000
Facsimile: (310) 312-3100
Email: sep@msk.com; byr@msk.com

Telephone: (310) 590-4503
Email: awand@wandlawfirm.com

To object to the class portion of the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object, including being deemed to have released the Settled Claims. Any Settlement Class member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on [date] at [time], at the Superior Court for the State of California, County of San Bernardino – Civil Division, 247 West Third Street San Bernardino, CA 92415, Department S-26 before the Hon. Jessica L. Morgan. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at [telephone number] or write to *Ordaz v. Burlingame Industries, Inc.* Settlement Administrator, c/o [address]; or contact Settlement Class Counsel at (909) 621-4988 or (310) 590-4503.

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You are able to review a copy of the Settlement Agreement, the motion for Settlement Class Counsel's Fees, Costs and Expenses and the incentive payment to Plaintiff as the Settlement Class Representative, the Final Judgment or other Settlement documents on the Settlement Website at [website URL]. You may also get more details by examining the Court's file using the Court Access Portal at <https://cap.sb-court.org/> and entering the Case No. CIVSB2303162, or by going to the Clerk's Office located at 247 West Third Street San Bernardino, CA 92415 during regular business hours.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. If a check of a Participating Class Member or PAGA Covered Employee remains uncashed by the expiration date, the funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

FRANCISCO RAMIREZ ORDAZ,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

BURLINGAME INDUSTRIES, INC., a
California corporation, d/b/a Eagle Roofing
Products; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. CIVSB2303162

[Hon. Jessica Morgan, Dept. S26]

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

1 Plaintiff Francisco Ramirez Ordaz's ("Plaintiff") Motion for Preliminary Approval of
2 Class Action and PAGA Settlement ("Motion") came on for hearing on April 19, 2024 at 8:30
3 a.m. in Department S26 of the above-captioned Court. Having fully reviewed the Motion, as
4 well as the papers filed in support of the Motion, arguments of counsel, and all other matters on
5 file in this action and presented to the Court, and in recognition of the Court's duty to make a
6 preliminary determination as to reasonableness of any proposed class action settlement, and if
7 preliminarily determined reasonable, to ensure proper notice is provided to the Settlement Class
8 in accordance with Due Process requirements, and to set a Final Approval Hearing to consider
9 the good faith, fairness, adequacy and reasonableness of the proposed Settlement, the Court
10 makes the following determinations and hereby ORDERS:

11 1. Except as otherwise specified herein, for purposes of this Preliminary Approval
12 Order the Court adopts all defined terms set forth in the Class Settlement Agreement
13 ("Settlement"). *See* Declaration of Scott E. Wheeler, Ex. A.

14 2. The Court finds on a preliminary basis that the settlement memorialized in the
15 Settlement Agreement appears to be fair and adequate, and falls within the range of
16 reasonableness, and therefore meets the requirement for preliminary approval.

17 3. The Court conditionally certifies for settlement purposes the following class (the
18 "Class" or "Settlement Class"):

19 All nonexempt hourly employees who worked at any time for Defendant
20 Burlingame Industries, Inc. in the state of California and worked in Defendant's
manufacturing facilities from January 23, 2019, through January 31, 2024.

21 The Class Period is January 23, 2019, through January 31, 2024.

22 4. The court conditionally approves for settlement purposes the Private Attorneys
23 General Act portion of this Settlement covering the subset of Settlement Class members who
24 worked during the PAGA Period ("PAGA Covered Employees"):

26 All hourly, non-exempt employees employed by Defendant in California at any time
27 during the PAGA Period.

28 The PAGA Period means the time from September 23, 2021 to January 31, 2024.

1 5. The Court finds, for settlement purposes, that the Class meets the requirements for
2 certification under California Code of Civil Procedure § 382 in that: (1) the Class is so numerous
3 that joinder is impractical; (2) there are questions of law and fact that are common, or of general
4 interest, to the Class, which predominate over any individual issues; (3) Plaintiff's claims are typical
5 of the claims of the Class; (4) Plaintiff and Plaintiff's counsel will fairly and adequately protect the
6 interests of the Class; and (5) a class action is superior to other available methods for the fair and
7 efficient adjudication of the controversy.
8

9 6. The Court finds on a preliminary basis that the Settlement appears to be within the
10 range of reasonableness of a settlement which could ultimately be given final approval by this
11 Court.

12 7. It appears to the Court on a preliminary basis that: (a) the non-reversionary
13 compensation provided by the Settlement is fair and reasonable to the Settlement Class when
14 balanced against the probable outcome of further litigation relating to class certification, liability
15 and damages issues, and potential appeals; (b) significant investigation, research, and informal
16 discovery have been conducted such that counsel for the Parties are able to reasonably evaluate
17 their respective positions; (c) settlement at this time will avoid substantial cost, delay, and risks
18 presented by further prosecution of the litigation; and (d) the proposed Settlement was reached
19 through intensive, non-collusive negotiations facilitated by an experienced mediator.

20 8. The Court finds the proposed Class Notice fairly and adequately advises the
21 Settlement Class of (a) the nature of this class and PAGA action; (b) the Settlement's principal
22 terms; (c) the Settlement Class and PAGA Covered Employee definitions; (d) the number of
23 Compensable Pay Periods and PAGA Compensable Pay Periods credited to each Settlement
24 Class member and PAGA Covered Employee, as applicable; (e) each Settlement Class member's
25 estimated Participating Class Member Allocation Amount; (f) each PAGA Covered Employee's
26 PAGA Allocation Amount; (g) the dates of the Class Period; (h) how to submit objections and
27 requests to opt out of the Settlement and the deadlines for doing so; (i) the Settled Claims
28 released in the Settlement; and (j) the date, time, and place of the Final Approval Hearing.

1 9. The Court find the proposed Class Notice provides the best practicable notice to
2 the Settlement Class and comports with all constitutional requirements, including those of Due
3 Process. Accordingly, good cause appearing, the Court APPROVES the Class Notice.

4 10. The Court further finds that mailing of the Class Notice to the last known address
5 of all Settlement Class members after updating addresses through the National Change of
6 Address database, and posting the Class Notice to the Settlement Website, as specifically
7 described in the Settlement is an effective and Due Process compliant method of notifying
8 Settlement Class members of their rights in this action and the Settlement. Accordingly, it is
9 ORDERED:

10 a. Phoenix Settlement Administrators be appointed the Claims Administrator
11 to administer this matter as more specifically stated in the Settlement.

12 b. Scott E. Wheeler and Justin Wheeler of The Law Office of Scott Wheeler,
13 and Aubry Wand of The Wand Law Firm be appointed Settlement Class Counsel.

14 c. Plaintiff be appointed Settlement Class Representative.

15 d. No later than fifteen (15) calendar days after the Court grants preliminary
16 approval of the Settlement, Defendant will deliver to the Claims Administrator a list of all
17 Settlement Class members, including whether the Settlement Class member is also a PAGA
18 Covered Employee. The list shall include all of the information required by Section 6.1 of the
19 Settlement Agreement.

20 e. No later than fifteen (15) calendar days after receiving the list described in
21 subsection (d) above, the Claims Administrator will mail the Class Notice to all Settlement Class
22 members identified in such list, as set forth in the Settlement.

23 f. Settlement Class members who wish to exclude themselves from the
24 Settlement must send the Claims Administrator a request to opt out during the Opt Out Period, as
25 set forth in the Settlement.

26 g. Only Participating Class Members may object to the class action
27 components of the Settlement by sending a written objection to the Claims Administrator no later
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1 than forty-five (45) days after the Claims Administrator's mailing of the Class Notice, as set
2 forth in the Settlement.

3 h. Each Settlement Class member or PAGA Covered Employee shall have
4 forty-five (45) days after the Claims Administrator mails Class Notice to challenge the number
5 of Compensable Pay Periods or PAGA Compensable Pay Periods (if any) credited to them in the
6 Class Notice.

7 11. The Parties are ordered to carry out the Settlement according to the following
8 implementation schedule:

Event	Date
Last day for Defendant to provide the Settlement Administrator with the Settlement Class information	Fifteen (15) calendar days after entry of the Preliminary Approval Order
Last day for Settlement Administrator to mail Class Notice	Fifteen (15) calendar days after the Settlement Administrator receives the Settlement Class information
Last day for Class Members to submit a dispute regarding Workweeks, Request for Exclusion, or written Objection	Forty-five (45) calendar days after mailing of the Class Notice
Last Day for Plaintiff to file Motion for Final Approval and for Attorneys' Fees and Costs and Class Representative Service Award	Thirty (30) calendar days after the expiration of the Opt Out Period
Final Approval Hearing	

12. At the Final Approval Hearing, the Court will consider whether the Settlement should be finally approved as fair, reasonable and adequate, whether a final judgment should be entered, and whether the payments provided for under the Settlement, including attorneys' fees and costs and class representative service awards, should be finally approved and granted.

13. IT IS FURTHER ORDERED that if for any reason the Court does not enter an Order Granting Final Approval, or if the Final Effective Date does not occur, the Settlement shall

1 have no effect, and the Parties shall be restored without prejudice to the status quo ante as stated
2 in the Settlement.

3 14. IT IS FURTHER ORDERED that pending further order of this Court, all
4 proceedings in this matter, except those contemplated by this Order and the Settlement are
5 stayed.

6 15. The Court expressly reserves the right to adjourn or continue the Final Approval
7 Hearing from time to time without further notice to Settlement Class members. However, if
8 written objections are submitted, the Settlement Administrator shall notify objecting Settlement
9 Class members of the new date and time set for the Final Approval Hearing.

10 IT IS SO ORDERED.

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12 DATED: _____

13 HONORABLE JESSICA L. MORGAN
14 JUDGE OF THE SUPERIOR COURT
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EXHIBIT 3

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN BERNARDINO**
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12
13 FRANCISCO RAMIREZ ORDAZ,
14 individually, and on behalf of all others
15 similarly situated,

16 Plaintiff,

17 v.

18 BURLINGAME INDUSTRIES, INC., a
19 California corporation, d/b/a Eagle Roofing
20 Products; and DOES 1 through 10,
21 inclusive,

22 Defendants.
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CASE NO. CIVSB2303162

[Hon. Jessica Morgan, Dept. S26]

**[PROPOSED] ORDER AND FINAL
JUDGMENT GRANTING MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

1 Plaintiff Francisco Ramirez Ordaz's ("Plaintiff") Motion for Final Approval of Class
2 Action and PAGA Settlement ("Motion") came on for hearing on [date] at [time] in Department
3 S-26 of the above-captioned Court pursuant to California Rule of Court 3.769 and this Court's
4 Order Granting Preliminary Approval of Class Action and PAGA Settlement. Having fully
5 reviewed the Motion, as well as the papers filed in support of the Motion, arguments of counsel,
6 and all other matters on file in this action and presented to the Court, the Court makes the
7 following determinations and hereby ORDERS:

8 1. Except as otherwise specified herein, for purposes of this Final Approval Order
9 the Court adopts all defined terms set forth in the Class Settlement Agreement ("Settlement").

10 2. Pursuant to the Preliminary Approval Order filed [date], a Class Notice was
11 mailed to each Settlement Class member by first-class U.S. mail and posted on the Settlement
12 Website. The Class Notice provided to each Settlement Class member informed the Settlement
13 Class Member of the terms of the Settlement, their right to receive payments in connection with
14 the Settlement, including a Participating Class Member Allocation Amount and/or PAGA
15 Allocation Amount (as appropriate), without any required action, their right to comment upon or
16 object to the class portion of the Settlement, and their right to appear in person or by counsel at
17 the Final Approval Hearing and to be heard regarding approval of the Settlement. Adequate
18 periods of time were provided for each of these procedures.

19 3. No member of the Settlement Class filed a written objection to the proposed
20 Settlement as part of this notice process or stated an intention to appear at the Final Approval
21 Hearing.

22 4. [Number] Settlement Class members have opted out of the class portion of the
23 Settlement by submitting a timely and valid opt out request. The Settlement Class members who
24 have opted out of the class portion of the Settlement are: [names].

25 5. The Court finds and determines that the Class Notice and notice procedure
26 afforded adequate protections to the Settlement Class and provides the basis for the Court to
27 make an informed decision regarding approval of the Settlement based on the responses of the
28

1 Settlement Class. The Court finds and determines that the notice provided in this case was the
2 best notice practicable, which satisfies the requirements of law and Due Process.

3 6. With respect to the Settlement Class and for purposes of approving this
4 Settlement only, this Court confirms certification of the Settlement Class defined as: all non-
5 exempt employees who were employed by Defendant Burlingame Industries, Inc. (“Defendant”)
6 in the State of California and worked in Defendant’s manufacturing facilities during the Class
7 Period. The Class Period is January 23, 2019 to January 31, 2024, inclusive of those dates.

8 7. The Court finds and determines the terms set forth in the Settlement are fair,
9 reasonable, and adequate and, having found that the Settlement was reached as a result of
10 informed and non-collusive arms’-length negotiations facilitated by a neutral and experienced
11 mediator, directs the Parties to effectuate the Settlement according to the terms set forth in the
12 Settlement. The Court further finds the Parties conducted extensive investigation, research, and
13 informal discovery, and that their attorneys were able to reasonably evaluate their respective
14 positions. The Court also finds that Settlement will enable the Parties to avoid additional and
15 potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to
16 litigate the case. The Court has reviewed the monetary recovery and recognizes the significant
17 value provided to the Settlement Class.

18 8. The Court further finds and determines that the terms of the Settlement are fair,
19 reasonable and adequate to the Settlement Class and to each Settlement Class member, and the
20 Settlement is ordered finally approved, and all terms and provisions of the Settlement should be
21 and hereby are ordered to be consummated.

22 9. The Court finds and determines that the Participating Class Member Allocation
23 Amounts and PAGA Allocation Amounts to be paid to Participating Class Members and PAGA
24 Covered Employees, respectively, as provided for by the Settlement are fair and reasonable. The
25 Court hereby grants final approval to and orders the payment of those amounts be made to the
26 Participating Class Members and PAGA Covered Employees in accordance with the Settlement.

27 10. The Court finds and determines that the fees and expenses in administrating the
28 Settlement incurred by Phoenix, in the amount of \$9,250.00 are fair and reasonable. The Court

1 hereby grants final approval to and orders the payment of that amount in accordance with the
2 Settlement.

3 11. The Court finds and determines the incentive award of \$10,000.00 to Plaintiff as
4 the Settlement Class Representative is fair and reasonable. The Court hereby orders the
5 Settlement Administrator to make this payment to the Plaintiff in accordance with the terms of
6 the Settlement.

7 12. The Court finds and determines that payment to the California Labor and
8 Workforce Development Agency of \$30,000.00 (75% of \$40,000.00) as its share of the civil
9 penalties attributable to claims under the Private Attorneys General Act, Labor Code Section
10 2898 *et seq.* ("PAGA") is fair, reasonable, and appropriate. The Court hereby grants final
11 approval to and orders that amount be paid in accordance with the Settlement.

12 13. Pursuant to the terms of the Settlement, and the authorities, evidence and
13 argument submitted by Settlement Class Counsel, the Court hereby awards Settlement Class
14 Counsel attorneys' fees of \$138,333.33 and costs and expenses of \$14,000.00. The Court finds
15 such amounts to be fair and reasonable. The Court hereby orders the Settlement Administrator to
16 make these payments in accordance with the terms of the Settlement.

17 14. Upon the Final Effective Date of the Settlement, Plaintiff and all Settlement Class
18 members who did not timely opt out of the Settlement shall be deemed to have waived the
19 Settled Claims against the Released Parties. Those who did validly opt out are nonetheless
20 bound by the Settlement's release of claims under PAGA.

21 15. Without affecting the finality of this Order or the entry of judgment in any way,
22 the Court retains jurisdiction of all matters relating to the interpretation, administration,
23 implementation, effectuation, and enforcement of this Order and the Settlement.

24 16. Neither Defendant nor any Released Parties shall have any further liability for
25 costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability with
26 respect to the Settled Claims, except as provided for by the Settlement.

27 17. Nothing in this Order shall preclude any action to enforce the Parties' obligations
28 under the Settlement or under this Order, including the requirement that Defendant make

1 payments to the Participating Class Members and PAGA Covered Employees in accordance with
2 the Settlement.

3 18. The Court hereby enters final judgment in accordance with the terms of the
4 Settlement, the Court's Preliminary Approval Order, and this Order.

5 19. The Parties will comply with Cal. Rules of Court, Rule 3.771(b), by providing
6 notice of entry of judgment with the posting of the Order Granting Final Approval and Entering
7 Judgment on the Settlement Website. The Settlement Website may be deactivated 60 days after
8 the settlement checks are issued.

9 20. The Parties will bear their own costs and attorneys' fees except as otherwise
10 provided by this Court's Order awarding Settlement Class Counsel's Fees, Costs, and Expenses.

11 IT IS SO ORDERED.

12
13 DATED: _____

14 HONORABLE JESSICA L. MORGAN
15 JUDGE OF THE SUPERIOR COURT
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