

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Alfredo Abarca v. Circosta Iron and Metal Company, Inc.
(San Francisco County Superior Court, Case Number CGC-22-602245)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (“**Agreement**”).

This Agreement is made by and between Defendant Circosta Iron and Metal Company, Inc., (“**Circosta**”), Plaintiff Alfredo Abarca (“**Plaintiff**”), individually, and on behalf of the State of California, and the law firms defined below as “Plaintiff’s Counsel” and “Defense Counsel.” (Circosta, Plaintiff and Aggrieved Employees, as defined herein, are sometimes collectively referred to as the “**Parties**”). This Agreement shall be effective upon the last date upon which it is signed by the Parties.

The Parties agree that, subject to approval by the Court, the claim under the Private Attorneys General Act (“**PAGA**”) alleged by Plaintiff in *Alfredo Abarca v. Circosta Iron and Metal Company, Inc.*, San Francisco County Superior Court, Case Number CGC-22-602245, (“**Litigation**”) shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Circosta to pay the total gross sum of One Hundred Thirty-Five Thousand Dollars and no cents (\$135,000.00), inclusive of all attorneys’ fees and costs, settlement administrator’s fees and costs (hereafter entire settlement amount as the “**PAGA Gross Settlement Amount**” or “**PAGA GSA**”).

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “**Aggrieved Employees**” means all current and former non-exempt employees who worked for **Circosta** in California during the PAGA Period.
- (b) “**Complaint**” means the operative First Amended Complaint filed by Plaintiff on December 12, 2022, in San Francisco County Superior Court, Case No. CGC-22-602245. This action is referred to as the “**Litigation**.”
- (c) “**Court**” means the Superior Court for the State of California, County of San Francisco.

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(d) **“Defense Counsel”** or **“Counsel for Circosta”** is:

Brian J. McSweeney, Esq. (SBN 127758)
Ira Leshin, Esq. (SBN 139768)
ANDERLINI & McSWEENEY, LLP
66 Bovet Road, Suite 285
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CHAUVEL & GLATT, LLP
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cory@chauvellaw.com

(e) **“Effective Date”** means the date the Court approves the settlement of the PAGA penalties and enters an Order thereon.

(f) **“Net Settlement Amount”** means the portion of the PAGA GSA to be paid to the LWDA and Aggrieved Employees after deductions for attorneys fees, litigation costs, Service Award and Settlement Administrator costs.

(g) **“PAGA Period”** – October 6, 2021 through the Effective Date.

(h) **“Plaintiff’s Counsel”** is:

Tuvia Korobkin, Esq. (SBN# 268066)
Neil M. Larsen, Esq. (SBN #276490)
W. Zev Abramson, Esq. (SBN # 289387)
ABRAMSON LAW GROUP
1700 W. Burbank Boulevard
Burbank, CA 91506
tuvia@abramsonlaw.com
neil@abramsonlaw.com
wza@abramsonlabor.com

(i) **“Released Claims”** means any and all claims for civil penalties and/or causes of action under the California Private Attorneys General Act alleged in the Action, or which could have been alleged in the Action based on the facts and claims alleged therein, arising from Aggrieved Employees’ employment with Circosta during the PAGA Period, including but not limited to alleged violations of Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 516, 558, 1174, 1194, and 1198..

- (j) “**Released Parties**” means Circosta and its past, present, and future representatives, directors, officers, employees, agents, attorneys, affiliates, members and shareholders, including Stephen Circosta, Diane Circosta and Nick Circosta, individually, as well as all parent companies, affiliated companies, subsidiary companies, affiliates, client(s), client(s) facilities, vendors, consultants, agents, attorneys, predecessors, assignors, and/or assigns.
- (j) “**Settlement Administrator**” means the third-party administrator agreed upon by Parties to administer this Settlement, ILYM Group, Inc. (“ILYM”)

Article II.

Background.

Section 2.01 Background.

- (a) On or about October 6, 2022, Plaintiff transmitted a letter to the Labor & Workforce Development Agency and Circosta, articulating claims related to alleged overtime violations, meal period and rest period violations, waiting time penalties, wage statement violations and resulting Civil Penalties pursuant to PAGA.
- (b) Plaintiff filed a First Amended Complaint in the Superior Court of the State of California for the County of San Francisco, on December 12, 2022, entitled *Alfredo Abarca v. Circosta Iron & Metal Company, Inc.* case number CGC-22-602245. The Litigation was brought by Plaintiff individually, as a Class Action, and on behalf of the State of California and other aggrieved employees, as a PAGA action based on violations of Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 516, 558, 1174, 1194, 1198.
- (c) The Parties engaged in informal discovery and fully shared the information necessary for all sides to conduct a legitimate investigation into the allegations of the Litigation and potential defenses thereto. The Parties have reached this Settlement only after informal discovery (including a sampling of timekeeping and payroll records) and investigation was performed, meet & confers, and mediation took place before Judge Maria-Elena James on December 6, 2023.
- (d) Circosta disputes and denies any liability or wrongdoing of any kind associated with the claims alleged in this matter. Circosta contends, among other things, that it complied at all times with the local, state, and federal laws, and that the claims alleged in this matter are without merit. Further, Circosta denies Plaintiff, individually and as a representative of the Aggrieved Employees, is owed any wages, penalties, as alleged, but does recognize that litigation will be protracted and expensive. As a result, Circosta has agreed to pay a reasonable amount in order to resolve this matter finally and fully.
- (e) The Parties believe and agree that this Agreement provides a fair, adequate, and reasonable resolution of Plaintiff’s PAGA claims after doing their own independent investigations and evaluations of the claims alleged in this matter. The Parties have taken into account the risk

and uncertainty of the outcome inherent in any litigation as well as the challenges in evidence as shown through Mediation.

- (f) This Settlement Agreement contemplates the (a) entry of an Order by the Court approving the payment allocated for settlement of the PAGA penalties; (b) Agreement being binding on Plaintiff, individually, as well as all Aggrieved Employees for the PAGA Period; (c) dismissal without prejudice of the Class claims and dismissal with prejudice of the individual claims; and (d) all parties bearing their respective fees and costs except as expressly provided in this Agreement.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining through an unopposed Motion an Order \from the Court approving the payment of PAGA penalties as described in this Agreement at the earliest practicable date.

- (a) Plaintiff's Attorney Fees and Costs: Plaintiff's Counsel shall request and be paid up to one-third of the PAGA Gross Settlement Amount (currently estimated at \$45,000.00) for attorneys' fees, as well as up to \$10,000.00 as reimbursement of litigation costs from the PAGA Gross Settlement Amount, and Circosta will not oppose these requests.
- (b) Settlement Administration Fees: The Parties agree to engage ILYM a as the Settlement Administrator for this Settlement, and that they will request that ILYM be paid up to \$2,450.00 from the PAGA Gross Settlement Amount for its services as Settlement Administrator.
- (c) Plaintiff's Service Award: Plaintiff shall request, and Defendant will not oppose, a Service Award to Plaintiff of up to \$5,000.00 from the PAGA Gross Settlement Amount.
- (d) Net Settlement Amount: After deducting the above amounts from the PAGA Gross Settlement Amount, the remainder shall be Net Settlement Amount, which will be distributed to the LWDA and Aggrieved Employees as detailed in this Settlement.
- (e) The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

Section 3.02 Court Approval.

The Parties will seek to obtain the Court's approval of the payment of PAGA penalties as described in this Agreement by way of a Motion to be filed by Plaintiff's Counsel as soon

as practicable following the execution date of this Agreement. The parties have already secured a date for the approval hearing, and Plaintiff will file a motion for approval for the PAGA settlement with statutory notice. Plaintiff will also file a request for dismissal without prejudice of the Class claims as alleged in the Action and will file the Motion for Approval with statutory notice based on the hearing date. Plaintiff's Counsel will lodge this Agreement with the Court for its approval and will submit this Agreement to the LWDA as required under the PAGA. The Court's approval of the payment of PAGA penalties as described in this Agreement shall be embodied in a written Order from the Court. Should the Court not grant approval of the payment of PAGA penalties as described in this Agreement, the Parties shall request leave and work jointly, using their best efforts, to attempt to revise the Agreement consistent with the Court's expressed concerns, if any, in order to obtain the Court's approval. In the event that the Court does not finally approve the settlement contained herein,

- i. The settlement and this Agreement shall be deemed null and void and this Agreement shall be terminated and shall have no force or effect and no Party shall be bound by any of its terms;
- ii. If the settlement is terminated, Circosta shall have no obligation to make any of the payments contemplated by this Agreement;
- iii. The Parties will revert to the positions they held prior to the execution of this Agreement, including a re-allegation of the class claims, which would be tolled from the date of dismissal.
- iv. This Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the right of any of the Parties, all of whom shall be restored to their respective positions in the litigation prior to the settlement; and
- v. Neither this Agreement nor any related or ancillary documents, actions, statement, or filings in furtherance of settlement shall be admissible or offered into evidence in this action nor in any other action for any purpose whatsoever.

Section 3.03 Settlement Administration.

For the purposes of this Settlement, the Parties stipulate and agree that ILYM. shall administer the PAGA Gross Settlement Amount under this Agreement pursuant to the terms outlined below.

Section 3.04 Notice to Aggrieved Employees.

(a) Notice to Aggrieved Employees.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than five (5) days after the Effective Date, Circosta shall confidentially provide the settlement administrator with a list of all Aggrieved Employees ("**Aggrieved Employees List**"). The Aggrieved Employees List shall state the first name and last name for each Aggrieved Employee, the last known address for each Aggrieved

Employee, each Aggrieved Employee's social security number, and the number of pay periods worked by each Aggrieved Employee during the PAGA Period. The Settlement Administrator shall run all the addresses provided by Circosta through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to verify and/or obtain current address information.

- (2) No later than thirty (30) days after the PAGA Gross Settlement Amount has been paid by Circosta to the Settlement Administrator, the Settlement Administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit "A") to all Aggrieved Employees, together with their settlement checks representing their allotted payment, by first-class United States mail, postage prepaid, to the last known address of each recipient, with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the Settlement Administrator. For each Notice of PAGA Settlement that is returned as undeliverable, the settlement administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Aggrieved Employee involved and will then perform a single re-mailing. Concurrently with the mailing of PAGA payments and notices to Aggrieved Employees, the settlement administrator shall mail (i) the LWDA its share of the PAGA Gross Settlement Amount, (ii) Plaintiff's Counsel the attorneys' fees and costs approved by the Court, (iii) Plaintiff the Service Award approved by the Court, and (iv) shall be authorized to pay itself the administration expenses approved by the Court.
- (3) All costs incurred by the Settlement Administrator in connection with the current settlement, including mailing of the Notice of PAGA Settlement described herein, whether foreseen or not, shall be paid out of the PAGA GSA. These costs shall not exceed \$2,450.00; to the extent they exceed this amount, they shall be paid from the Net Settlement Amount (as defined herein), subject to approval by the Court; to the extent they fall below this amount, they shall be added to the Net Settlement Amount.

Section 3.05 Settlement Payment Procedures.

(a) Deposit of Settlement Sum with Settlement Administrator

Subject to the Escalator Provision below, Circosta shall issue the total gross amount of One Hundred Thirty-Five Thousand Dollars and no cents (\$135,000.00) to the Settlement Administrator to be held in escrow for payment to the Plaintiff, the Aggrieved Employees, the State of California and their attorneys in as full and final Settlement of matter ("**PAGA Gross Settlement Amount**" or "**PAGA GSA**"). Circosta shall pay the PAGA GSA as follows:

- (ii) a first gross sum payment of the PAGA GSA of One Hundred Thousand Dollars (\$100,000.00) shall be paid to the Settlement Administrator, ILYM Gorup, Inc., no later than fifteen (15) days after the Effective Date;

(iii) a second gross sum payment of the PAGA GSA of Thirty-Five Thousand Dollars (\$35,000.00) shall be paid to the Settlement Administrator, ILYM., no later than thirty (30) days thereafter (i.e. 45 days after the Effective Date) in full and final settlement of the PAGA case. All payments made under this Agreement will be characterized by the Settlement Administrator for tax purposes as 1099.

Circosta can pay any additional amount toward the PAGA GSA to the Settlement Administrator in any installment payment which will be deducted from the next installment payment and the total amount due, if such additional payments are made. The installment payments shall be deposited into a Qualified Settlement Fund (“QSF”) within the meaning of Section 468B-1 of the United States Treasury Regulations. The Settlement Administrator shall be responsible for arranging for the establishment of a QSF in order to effectuate the disbursement of the PAGA GSA to the State of California Labor and Workforce Development Agency, to Aggrieved Employees, to Plaintiff, and to Plaintiff’s Counsel in the manner and within the times periods described herein. The Settlement Administrator will inform Circosta of the QSF in order for Circosta to deposit the two payments as directed herein. Any delay in payment due to delay on the Settlement Administrator’s side to open or inform Circosta of the QSF does not constitute breach of this Agreement.

(b) Escalator Provision: the Parties represent there is a total of approximately 2,900 pay periods worked by Aggrieved Employees during the PAGA Period. If the actual number of pay periods worked by Aggrieved Employees during the PAGA Period exceeds 2,900 by more than 10%, the PAGA GSA shall increase by the same percentage above 10% by which the actual number of pay periods exceeds 2,900. For example, if the actual number of pay periods worked by Aggrieved Employees during the PAGA Period is 12% greater than 2,900, then the PAGA GSA will increase by 2%. Alternatively, if this Escalator Clause is triggered, Circosta will have the option to truncate the end of the PAGA Period such that the PAGA Period will end on the date immediately prior to the date that the number of pay periods worked by the Aggrieved Employees during the PAGA Period exceeded 10% greater than 2,900.

(c) Payment of PAGA Penalties.

The total sum available for payment of PAGA penalties shall be calculated by deducting the amounts referenced in Section 3.01 above, including Plaintiff Counsel’s fees and costs, Plaintiff’s Service Award, and the costs of administration referenced in Section 3.01(a)(3) above, from the PAGA GSA. This will yield the “Net Settlement Amount,” which is estimated to be approximately \$72,550.00.

Seventy-five percent (75%) of the Net Settlement Amount shall be paid to the LWDA; the remaining twenty-five percent (25%) of the Net Settlement Amount (the “Employee Net Settlement Amount”) shall be paid to Aggrieved Employees pro rata based on the number of pay periods worked for Circosta during the PAGA Period. **100% of the PAGA payments are considered penalties and will not be subject to local, state or federal tax withholdings.** All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the settlement administrator (in compliance with IRS guidelines).

The Parties acknowledge that the PAGA GSA is adequate consideration for this Agreement.

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days after issuance. Thereafter, all uncashed checks shall be transmitted to Bay Area Legal Aid, as a Cy pres Award: 1800 Market Street, 3rd Floor, San Francisco, CA 94102

The Settlement Administrator will send a declaration to Plaintiff's counsel attesting to the distribution of PAGA funds to the Aggrieved Employees within ten (10) calendar days of the final distribution at ABRAMSON LABOR GROUP, 1700 W. Burbank Boulevard, Burbank, CA 91506, and/or by email to tuvia@abramsonlabor.com.

If any interest accrues on the PAGA GSA while under the control of the QSF and/or Settlement Administrator, the aggregate total of such interest shall be distributed to Aggrieved Employees and included in the Aggrieved Employee Payments on a pro rata basis.

(c) Tax Treatment of Settlement Sum.

The Settlement Administrator shall be responsible for preparation and issuing all necessary IRS form 1099s, including to Plaintiff's Counsel, who shall assume full responsibility and liability for the payment of taxes due on the payments to Plaintiff's Counsel. Plaintiff's Service Award will also be allocated as 1099 income for tax purposes. Aggrieved Employees are solely responsible for all appropriate taxes due and any penalties assessed on any and all amounts paid to them under this Agreement. Aggrieved Employees shall hold the parties and their respective counsel free and harmless from any claims resulting from treatment of such payments, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes. Aggrieved Employees assume full responsibility and liability for the payment of taxes due on their individual shares of the Settlement Sum. Nothing in this Settlement is intended to constitute legal or tax advice regarding local, state, or federal tax obligations and the parties make no representations or warranties with respect to the tax consequences of any payment under this Agreement.

(e) Settlement Administrator Declaration of Compliance.

After the Court approves this Agreement and the Settlement Sum is paid in full to the Settlement Administrator, Plaintiff agrees to file the declaration attesting to the distribution of PAGA funds received by the Aggrieved Employees from the Settlement Administrator with the Court within five (5) Court days of receipt of the declaration from the Settlement Administrator.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Circosta of any liability whatsoever, or as admission by Circosta of any violations of Plaintiff's or the Aggrieved Employees' rights, violation of any order, law, statute, duty or

contract whatsoever. Circosta specifically disclaims any liability to Plaintiff, as an individual, as well as liability to the Aggrieved Employees, or any other allegedly aggrieved employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

Section 4.03 Nullification.

Payment of the PAGA GSA is conditioned on the Court's approval of this Agreement. To comply with the requirements of Lab. Code Section 2699(l), Plaintiff shall prepare and submit, after Circosta's approval, a Motion to Approve Settlement Pursuant to the Private Attorneys General Act, together with a supporting declaration, within the time frames required by this Agreement. However:

- (a) If the Court should for any reason fail to approve the payment of PAGA penalties as described in this Agreement, then the Parties shall follow the steps outlined in Section 3.02 above;
- (b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims.

Section 5.01 Release by Aggrieved Employees.

Upon entry of the Order approving payment of the PAGA penalties as described in this Agreement, and subject to Circosta's full payment of the PAGA GSA, Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the PAGA Period. This includes but is not limited to any and all claims for civil penalties under PAGA predicated on the Defendant's alleged failure to (i) pay overtime compensation, (ii) provide meal periods or pay meal period premiums, (iii) authorize and permit rest periods or pay rest period premiums, (iv) issue accurate itemized wage statements, (v) pay all final wages at termination, and (vi) maintain accurate records of hours worked, including claims for PAGA civil penalties for violations of Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 516, 558, 1174, 1194, and 1198 ("PAGA Released Claims").

Article VI.

Miscellaneous Provisions.

Section 6.01 Notice, Default, Cure, Acceleration, Time is of the Essence.

If any required installment payment is not received on the date due, Circosta shall be in default of its obligations under this Agreement. Plaintiff shall e-mail notice of the default to Circosta's Counsel at the e-mail addresses listed in paragraph 1.01(d) above. Circosta will then have seven (7) business days from the date notice is e-mailed to cure the default. If the default remains uncured for seven (7) business days from the date notice is sent, then all sums remaining unpaid under this Agreement shall be accelerated and become all due and payable and begin to accrue interest at the legal rate. Plaintiff may thereafter move the Court to enforce this Agreement and enter judgment consistent herewith, pursuant to Code of Civil Procedure section 664.6. Time is of the essence with respect to all provisions of this Agreement.

Section 6.02 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity. All Parties acknowledge that they had the opportunity to consult with legal counsel prior to entering into this Agreement.

Section 6.03 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff and Circosta who executed this Agreement (or their respective counsel) and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.04 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto and the LWDA. The representations, warranties, covenants, and agreements contained in this Agreement are for the benefit of the LWDA, Plaintiff, Defendant and Aggrieved Employees under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that they have not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.05 Governing Law/Venue.

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

Section 6.06 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the PAGA claims asserted in the Litigation.

Section 6.07 Waiver of Compliance.

Any failure of any Party, hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.08 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.11 Necessary Acts.

The Parties agree to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

Section 6.12 Electronic Imaging and Signature.

The Parties intend to allow for the electronic imaging and storage of this Agreement, and the admissibility into evidence of such an image in lieu of the original paper version of this Agreement. The Parties stipulate that any computer printout of any such image of this Agreement shall be considered to be an "original" under the applicable court or arbitral rules of evidence when maintained in the normal course of business and shall be admissible as between the parties to the same extent and under the same conditions as other business records maintained in paper or hard copy form. The parties further warrant that all DocuSign and/or SignRequest signatures (or other electronic signatures) were authorized by the parties to this Agreement and carry the same weight and legal effect as any wet ink signatures. Any party using DocuSign and/or SignRequest (or other electronic signature software) waives any claim that the signature affixed to their name is not authentic for purposes of approval and authorization in the understanding or execution of this Agreement. The Parties agree not to contest, in any proceeding involving the parties in any judicial or other forum, the admissibility, validity, or enforceability of any image of this Agreement because of the fact that such image was stored or handled in electronic form. The Parties agree to allow the use of DocuSign and/or SignRequest (or other electronic signature software), an

electronic signature technology, to expedite the execution of this Agreement pursuant to California Civil Code Section 1633.7. Electronic signatures shall be deemed originals.

Section 6.13 Attorneys' Fees and Costs.

Except as expressly provided herein, Circosta and Plaintiff shall each bear their own attorney's fees and costs, including attorney's fees in connection with the negotiation and execution of this Agreement, other than those included in the total PAGA GSA stated herein and those which may be recoverable for any breach by either Party of this Agreement.

Section 6.14. Ambiguity.

In the event of an ambiguity under this Agreement, such ambiguity shall not be construed against either Party, as this Agreement has been negotiated at arm's length between the Parties and the Parties have sought and been advised by counsel.

Section 6.15 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to Judge Maria Elena James first, whom the parties mediated with, before submitting to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 6.16 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.17 Continuing Jurisdiction.

The Parties agree that upon the entry of the Court Order in this case pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

Section 6.18 Successors and Assigns.

The provisions of this Agreement shall be binding upon and inure to the benefit of the respective Parties and their heirs, executors, administrators, agents, representatives, successors, and assigns.

PLAINTIFF ACKNOWLEDGES THAT HE HAS CONSULTED WITH AN ATTORNEY BEFORE SIGNING THIS RELEASE

THE PARTIES ACKNOWLEDGE THAT THEY HAVE EXECUTED THIS SETTLEMENT AGREEMENT FREELY AFTER INDEPENDENT INVESTIGATION

AND WITHOUT FRAUD OR UNDUE INFLUENCE. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT AND FULLY UNDERSTAND EACH AND EVERY PROVISION CONTAINED HEREIN AND INTEND TO BE BOUND BY ALL OF ITS TERMS.

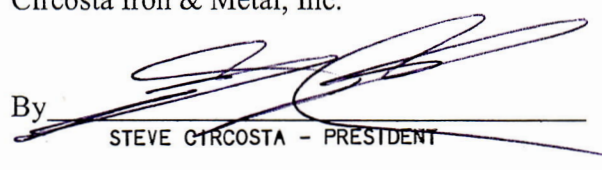
IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

Dated: Feb. 1, 2024

Circosta Iron & Metal, Inc.

By


STEVE CIRCOSTA - PRESIDENT

Dated: _____, 2024

By

Alfred Abarca, as the PAGA representative

AND WITHOUT FRAUD OR UNDUE INFLUENCE. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT AND FULLY UNDERSTAND EACH AND EVERY PROVISION CONTAINED HEREIN AND INTEND TO BE BOUND BY ALL OF ITS TERMS.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

Dated: _____, 2024

Circosta Iron & Metal, Inc.

By _____
Nick Circosta, as Chief Financial Officer

Dated: 2/1/2024, 2024

By  _____
Alfred Abarca, as the PAGA representative

DocuSigned by:
5872540E7E70470...

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

ALFREDO ABARCA, AND ON BEHALF
OF ALL OTHER SIMILARLY
SITUATED PERSONS,

Plaintiff,

v.

CIRCOSTA IRON & METAL
COMPANY, INC., a California
Corporation; and DOES 1 through 100,
Inclusive,

Defendants.

Case No. CGC-22-602245

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIM
(CAL. LABOR CODE § 2698 *ET SEQ.*)**

You have been identified as a person employed by Circosta Iron & Metal, Inc. (“**Circosta**”) in California between October 6, 2021 to [end of PAGA Period]. (“**Aggrieved Employee**”).

On December 12, 2022, Alfredo Abarca (the “**Plaintiff**”) filed a First Amended Complaint in San Francisco County Superior Court, Case No. CGC-22-602245 (the “**Lawsuit**”) to recover civil penalties against Circosta. In the Lawsuit, Plaintiff alleges wage and hour claims against Circosta including failure to provide timely meal periods and rest breaks, failure to pay overtime, inaccurate wage statements, waiting time penalties, and failure to keep proper records. For these alleged violations, Plaintiff sought penalties pursuant to the California Labor Code’s Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.* (“**PAGA**”). Plaintiff is solely seeking civil penalties on behalf of the California Labor and Workforce Development Agency (“**LWDA**”) and other aggrieved employees under the Private Attorneys General Act (“**PAGA**”), such that 75% of the penalties collected will be paid to the LWDA.

Circosta denies and continues to deny Plaintiff’s allegations and disputes all of Plaintiff’s claims and maintains it was in compliance with the California Labor Code. The parties to the Lawsuit participated in a mutual exchange of information and a mediation before a third-party neutral, and the Parties reached a settlement which takes into account the uncertainties, challenges and risks of proceeding with litigation.

The San Francisco Superior Court approved the settlement on , 2024 and has determined that the settlement is fair and reasonable. The Court has not made a determination about Plaintiff’s allegations. This Notice is not to be understood as an expression of any opinion

by the Court as to the merits of the claim. The payment which accompanies this notice is the payment being made to you pursuant to the terms of the Settlement. You are receiving a pro rata share of the settlement, calculated by taking the number of pay periods you worked during the time period from October 6, 2021 to [end of PAGA Period], and dividing that by the total number of pay period worked by all Aggrieved Employees during that time period.

You, [Employee Name], worked <<Pay Periods>> pay periods during the PAGA Period. The total amount of pay periods worked by all Aggrieved Employees during the PAGA Period is [insert].

As a result, your individual PAGA payment is <<Check Amount>>.

The Court-approved settlement contains the following release of claims, to which you are bound:

Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have, finally, and forever released, relinquished, and discharged each and all of the Released Parties (defined as Circosta Iron & Metal Company, Inc. and its past, present, and future representatives, directors, officers, employees, agents, attorneys, affiliates, members and shareholders, as well as all parent companies, affiliated companies, subsidiary companies, affiliates, client(s), client(s) facilities, consultants, agents, attorneys, predecessors, assignors, and/or assigns), from the Released Claims (defined as any and all claims for civil penalties and/or causes of action under the California Private Attorneys General Act alleged in the Action, or which could have been alleged in the Action based on the facts and claims alleged therein, arising from Aggrieved Employees' employment with Circosta during the PAGA Period, including but not limited to alleged violations of Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 516, 558, 1174, 1194, and 1198.

If you have any questions, you may contact the settlement administrator, ILYM Group, Inc, at [Insert Contact Information]:

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

ILYM Group, Inc. has been chosen as the Settlement Administrator in this matter. A Settlement Administrator is a third-party entity appointed by the Court to handle the settlement distribution process. As Settlement Administrator, ILYM, Inc. is responsible for distributing this Notice and paying out your settlement payment pursuant to the Settlement. You may call the ILYM Group, Inc. toll free at 1 [(888) insert] with any questions.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to Bay Area Legal Aid, San Francisco Office. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.