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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

HEATHER-ANN MONTERO, as an  
individual and on behalf of all others  
similarly situated,

Plaintiff,

vs.

BISCO INDUSTRIES, INC., a California  
Corporation; and DOES 1 through 100,

Defendants.

CASE NO. 23STCV00918

*[Case Assigned for all purposes to the Hon.  
William F. Highberger; Dept. SSC-10]*

**AMENDMENT TO SETTLEMENT  
AGREEMENT**

Action Filed: January 13, 2023  
Trial Date: None Set

The Class Action and PAGA Settlement Agreement and Class Notice (“Settlement”) entered into on or about October 1, 2024 and attached hereto as Exhibit 1, by and between Plaintiff Heather-Ann Sission (née Montero) (“Plaintiff”) on behalf of the settlement class, and Defendant Bisco Industries, Inc. (“Defendant”), is hereby amended and modified as follows:

The Parties agree that, in all other respects, the Settlement entered into on or about October 1, 2024, remains unchanged and is in full force and effect.

  
Andrew J. Rowbotham  
Counsel for Plaintiff



# CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Heather-Ann Sisson (née Montero) (“Plaintiff”), as an individual and as a representative of the proposed Class described herein and as a representative of the State of California, and Defendant Bisco Industries, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

## 1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Heather-Ann Montero vs. Bisco Industries, Inc.*, Case No. 23STCV00918, and pending in the Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.3. “Aggrieved Employees” means all current and former employees of Defendant in California who worked at any time during the PAGA Period.
- 1.4. “Class” means all current and former employees of Defendant in California who worked at any time during the Class Period.
- 1.5. “Class Counsel” means Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham, of Haines Law Group, APC.
- 1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.7. “Class Data” means a confidential spreadsheet that includes for each Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, phone number, Social Security number, number of Class Period Workweeks and PAGA Pay Periods, and any amounts paid as a Pick-Up-Stix Payment.
- 1.8. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.9. “Class Member Address Search” means the Settlement Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database (“NCOA”), skip traces, and direct contact by the Administrator with Class Members.

- 1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.11. “Class Period” means the period between January 13, 2019, and August 31, 2024.
- 1.12. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.13. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.14. “Court” means the Superior Court of California, County of Los Angeles.
- 1.15. “Defendant” means Defendant Bisco Industries, Inc.
- 1.16. “Defense Counsel” means Max Fischer, Eric M. Makinen, and Eva M. Nofri of Morgan, Lewis & Bockius LLP.
- 1.17. “Effective Date” means the date on which the Judgment becomes a Final Judgment. For purposes of this Settlement Agreement, the final judgment “becomes final” only after the Court grants the motion for final approval of the settlement and upon the latter of (i) the period for filing any appeal, writ, or other appellate proceeding challenging or opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; (ii) any appeal, writ or other appellate proceeding challenging or opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (iii) any appeal, writ or other appellate proceeding has upheld the Court’s final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective, and Defendant will not be obligated to fund this Settlement, until the Court’s order approving the Settlement is completely final, and there is no further recourse by an appellant, objector, or intervenor who seeks to contest the Settlement.
- 1.18. “Eligible Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.
- 1.19. “Eligible Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.22. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.23. “Gross Settlement Amount” means \$7,500,000.00 which is the total amount Defendant

agrees to pay under the Settlement except as provided in Paragraph 3.1.1 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.

- 1.24. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Eligible Workweeks worked during the Class Period.
- 1.25. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Payment calculated according to the number of Eligible Pay Periods worked during the PAGA Period.
- 1.26. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.27. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699, subd. (i).
- 1.28. "LWDA PAGA Payment" means the 75% of the PAGA Payment paid to the LWDA under Labor Code § 2699, subd. (i).
- 1.29. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Administration Expenses Payment, and the Pick-Up-Stix Payment (as defined in Paragraph 2.4). The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.30. "Non-Participating Class Member" means any Class Member who opts out of the class Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.31. "PAGA Period" means the period between January 13, 2022, and August 31, 2024.
- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.33. "PAGA Notice" means Plaintiff's January 13, 2023, letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3, subd.(a).
- 1.34. "PAGA Payment" means the total amount paid in settlement of the claim for PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$62,500.00) and the 75% to LWDA (\$187,500.00) in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Pick-Up-Stix Class Members" means the Class Members who previously accepted an individual settlement with Defendant in exchange for a release of claims asserted in this Action.

- 1.37. “Pick-Up-Stix Payment” means the aggregate amount of \$153,500.00 previously paid to the Pick-Up-Stix Class Members as individual settlements with Defendant.
- 1.38. “Plaintiff” means Heather-Ann Sisson (née Montero), the named plaintiff in the Action.
- 1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.40. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.41. “Released Class Claims” all federal, state and local law claims, rights, demands, liabilities, and causes of action, asserted in the First Amended Complaint, or that reasonably could have been alleged in the First Amended Complaint based upon or arising out of the facts alleged therein, including causes of action for: (1) failure to pay minimum wages for all hours worked; (2) claims related to the regular rate calculation; (3) failure to pay overtime compensation; (4) failure to provide meal periods and pay meal period premiums; (5) failure to authorize and permit rest breaks and pay rest period premiums; (6) failure to indemnify necessary business expenses; (7) failure to timely pay all final wages during employment and at termination; (8) failure to provide accurate itemized wage statements; (9) unfair and unlawful competition based on the Labor Code violations alleged in (1)-(9); (10) unpaid expense reimbursements, and (11) all claims for interest, penalties, attorneys' fees, costs and any other monetary relief based upon the claims described above and including, but not limited to, pursuant to Labor Code §§ 210,218.5, 218.6, Code of Civil Procedure §1021.5, and/or Civil Code §§ 3287(b) and 3289.
- 1.42. “Released PAGA Claims” means all claims for civil penalties under PAGA that was alleged in the Complaint and/or in the PAGA Notice, or that reasonably could have been alleged in the Complaint and/or the PAGA Notice, based upon or arising out of the facts alleged in the Complaint or in the PAGA Notice.
- 1.43. “Released Parties” means: Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, or related entities (including any companies, corporations, partnerships, alter egos, joint venturers, and actual or alleged joint employers), parents and attorneys.
- 1.44. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.45. “Response Deadline” means 60 calendar days after the Settlement Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her written Objection to the Settlement, (c) submit Challenges to Workweeks and/or Pay Periods. Class Members to whom Class Notice is resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.46. “Settlement” means the disposition of the Action effected by this Agreement and the

Judgment.

- 1.47. “Settlement Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

## 2. **RECITALS.**

- 2.1. On January 13, 2023, Plaintiff filed the Action. On March 20, 2023, after Plaintiff exhausted her administrative requirements with the Labor & Workforce Development Agency ("LWDA"), Plaintiff amended her complaint to add a cause of action for civil penalties under the Private Attorneys General Act ("PAGA").
- 2.2. Pursuant to Labor Code § 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. Prior to mediation, Plaintiff obtained, through informal discovery, payroll data for substantially all Class Members through February 2024, in addition to relevant written policies. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.4. Prior to mediation, Defendant extended individual settlement offers to substantially all Class Members, offering \$500 to each employee in exchange for a release of liability. A total of 307 employees accepted Defendant's offer, who are the “Pick-Up-Stix Class Members.” Defendant paid a total of \$153,500.00 through this process to the Pick-Up-Stix Class Members as the Pick-Up-Stix Payment.
- 2.5. On April 5, 2024, the Parties participated in an all-day mediation presided over by Eve Wagner, Esq., which led to this Agreement to settle the Action.
- 2.6. Based on their own independent investigations and evaluations, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and terms set forth herein, considering the representative and class claims, and the risk of loss, is fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best interests of the Class. Class Counsel is also of the opinion that the total consideration and payment set forth in this Stipulation of Settlement is fair, reasonable, and adequate in light of the uncertainties surrounding the risk of further litigation, the possibility of losing class certification, and the defenses that Defendant has asserted and/or could assert as to the substantive merit of the claims.
- 2.7. Class Counsel has weighed the monetary benefit under the Settlement to the Settlement Class against the expenses and length of continued proceedings that would be necessary to prosecute the Action against Defendant through class certification, through pre-trial motions, summary judgment, trial and possible appeals. Class Counsel has also taken into account the uncertain outcome and risk of any litigation, especially in complex actions such as class and representative actions, as well as the difficulties and delay inherent in such litigation. As a result, Class Counsel has determined that the settlement set forth in this Stipulation of Settlement is in the best interests of the Class.

- 2.8. Defendant specifically and generally denies any and all liability or wrongdoing of any sort with regard to the claims alleged in the Action and makes no concessions or admissions of liability of any sort, and contends that for any purpose other than Settlement, the Action is not appropriate for class or representative action treatment. Nonetheless, Defendant has concluded that further conduct of the Action would be protracted, distracting, and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Defendant has also taken into account the uncertainty and risks inherent in any litigation. Defendant has therefore determined that it is desirable and beneficial to it to settle the Action in the manner and upon the terms and conditions set forth in this Stipulation.
- 2.9. Neither this Stipulation of Settlement, nor any document referred to in it, nor any actions taken pursuant to this Stipulation of Settlement, is or should be construed as an admission by Defendant of any fault, wrongdoing, or liability whatsoever. Nor should the Stipulation of Settlement be construed as an admission that Plaintiffs could meet any of the class action requirements or that any PAGA claims would be manageable for trial. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant, as to whether a class action should be certified, or that any PAGA claim could be tried.
- 2.10. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending class or PAGA actions asserting claims that will be extinguished or affected by the Settlement.

### 3. **MONETARY TERMS.**

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 3.1.1 below, Defendant promises to pay a total of \$7,500,000.00 as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Parties agree that the Pick-Up-Stix Payment shall be credited towards Defendant's payment obligations under this Agreement, as a pre-payment towards the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.1.1. Escalator of Gross Settlement Amount or Truncation of Class Period. Defendant represents that there are an estimated 50,277 Workweeks worked by Class Members through the mediation. If the number of Eligible Workweeks worked during the Class Period is more than 10% greater than this figure (i.e., if there are 55,305 or more Eligible Workweeks worked), then, solely at the Defendant's option, either (a) the Gross Settlement Amount will increase in proportion to the increased amount over the 10% threshold - for example, if such increase in workweeks is 11% over 50,277 workweeks, the Gross Settlement Amount will increase by 1%, or (b) the Class Period shall end as of the date the Workweeks during the Class Period reaches 55,305.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct

the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

- 3.2.1.            To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments in accordance with the timing required under Code of Civil Procedure section 1005. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2.            To Class Counsel: A Class Counsel Fees Payment of not more than 1/3 of the Gross Settlement Amount, which is currently estimated to be \$2,500,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$50,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment in accordance with the timing required under Code of Civil Procedure section 1005. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments. Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Defendant or the Released Parties except as expressly provided herein.
- 3.2.3.            To the Administrator: An Administrator Expenses Payment not to exceed \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than the above stated amount, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4.            To Each Participating Class Member: An Individual Class Payment, which reflect settlement of a dispute over claimed wages, interest, expenses penalties, and other alleged damages, which will be calculated by
- 3.2.4.1.            First, each Participating Class Member who is **not** a Pick-Up-Stix Class Member

will be awarded \$500 from the Net Settlement Amount.

- 3.2.4.2. Second, the remainder of the Net Settlement Amount after the distributions to the Participating Class Members who were not Pick-Up-Stix Class Members will be allocated to all Participating Class Members by (a) dividing the remaining Net Settlement Amount by the total number of Eligible Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Eligible Workweeks.

- 3.2.4.3. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest, expenses and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms, if required. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Other than as set forth above, the Administrator will not make any deductions, withholdings, or additional payments, including without limitation, medical or other insurance payments or premiums, employee 401(k) contributions or matching employer contributions, wage garnishments to the extent permitted by law, or charity withholdings, from or with respect to the Individual Class Payments, and entry of the Order of Final Approval by the Court shall be deemed authority not to make any such deductions, withholdings, or additional payments.

- 3.2.4.4. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members pursuant to the formula in Paragraph 3.2.4.

- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Payment in the amount of \$250,000.00 to be paid from the Gross Settlement Amount, with 75% (\$187,500.00) allocated to the LWDA PAGA Payment and 25% (\$62,500.00) allocated to the Individual PAGA Payments.

- 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Payment (\$62,500.00) by the total number of Eligible Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Eligible Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms, if required. The Administrator will not make any deductions, withholdings, or additional payments, including without limitation, medical or other insurance payments or premiums, employee 401(k) contributions or

matching employer contributions, wage garnishments to the extent permitted by law, or charity withholdings, from or with respect to the Individual PAGA Payments.

- 3.2.5.2. If the Court approves a PAGA Payment of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

- 4.1. Funding of Gross Settlement Amount. Defendant will pay the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes on the later of fifteen (15) calendar days after the Administrator provides all information necessary for Defendant to transfer funds to a QSF, or fifteen days after the Effective Date.
- 4.2. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.2.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all PAGA Group members including Non-Participating Class Members who qualify as PAGA Group members (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must conduct an updated Class Member Address Search.
- 4.2.2. The Administrator must conduct another Class Member Address Search for all Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.2.3. Forty-five days before the check cashing deadline, the Administrator will send a reminder postcard to anyone who has not yet cashed an Individual Class Payment or Individual

PAGA Payment check.

- 4.2.4. Uncashed Checks. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member or PAGA Group member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

**5. RELEASES OF CLAIMS.** As of the Effective Date, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

- 5.1. Plaintiff's Release. Upon Defendant fully funding the Gross Settlement Amount and separately paid all employer payroll taxes, the Class Representative shall each be deemed to have fully, finally, and forever released the Released Parties from all Class Representative's Released Claims through the Final Approval Date. The Class Representative may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but Class Representative expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement. The Class Representative shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had relating to the Class Representative's Released Claims pursuant to Section 1542 of the California Civil Code, which provides as follows:

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

- 5.2. Notwithstanding the foregoing, Class Representative does not waive or release any claim which cannot be waived or released by private agreement or law, including worker's compensation claims. Further, nothing in this Agreement shall prevent Class Representative from filing a charge or complaint with, or from participating in, an investigation or proceeding conducted by the SEC, OSHA, EEOC, DFEH, NLRB or any other federal, state or local agency charged with the enforcement of any employment or other applicable laws. Class Representative, however, understands that by signing this Agreement, she waives the right to recover any damages or to receive other relief in any claim or suit brought by or through the EEOC, the DFEH or any other state or local deferral agency on her behalf to the fullest extent permitted by law, but expressly excluding any monetary award or other relief available from the SEC/OSHA, including an SEC/OSHA whistleblower award, or other awards or relief that may not lawfully be waived.
- 5.3. Release by Participating Class Members: Upon Defendant fully funding the Gross Settlement Amount and separately paid all employer payroll taxes, all Participating Class Members fully and finally release the Released Parties from the Released Claims that arose during the Class Period.

- 5.4. Release by Aggrieved Employees: Upon Defendant fully funding the Gross Settlement Amount and separately paid all employer payroll taxes, Plaintiff as a representative of the State of California and on behalf of the LWDA and as representative of the PAGA Group, fully and finally releases the Released Parties from the PAGA Released Claims for the PAGA Period.
- 5.5. No Effect on Employee Benefits. Neither the Settlement nor any amounts paid under the Settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by the Released Parties. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under the Released Parties' sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Stipulation shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of the Released Parties' benefit plans, policies, or bonus programs. The Released Parties retain the right to modify the language of their benefit plans, policies and bonus programs to effectuate this intent, and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Stipulation of Settlement.
6. **MOTION FOR PRELIMINARY APPROVAL.** Plaintiff will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.
- 6.1. Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and/or the proposed Cy Pres (if applicable); and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3, subd. (a)), Operative Complaint (Labor Code § 2699, subd. (l)(1)), this Agreement (Labor Code § 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator.
- 6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval as soon as practicable

after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 6.3. Duty to Cooperate. Class Counsel will provide the motion for preliminary approval to Defendant for its review and approval at least seven days before filing. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.
- 6.4. Preliminary Approval Order: The Court's preliminary approval of this Settlement shall be embodied in an order certifying the Class for settlement purposes only, preliminarily approving the Settlement and providing for Class Notice to be mailed to the Class in materially the same format attached hereto as Exhibit A, and which will also set the date for the Final Approval Hearing.

## **7. SETTLEMENT ADMINISTRATION.**

- 7.1. Class Data. Not later than 10 business days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 7.2. Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.3. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.4. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation § 468B-1.

7.5. Notice to Class Members.

7.5.1. As expeditiously as possible after receipt of the Class Data, the Administrator shall notify the Parties that the list has been received and state the number of Class Members, PAGA Members, Eligible Workweeks, and Eligible Pay Periods in the Class Data.

7.5.2. Using best efforts to perform as soon as possible, and in no event later than 10 business days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses by conducting a Class Member Address Search.

7.5.3. Not later than 7 days after the Administrator’s receipt of any Class Notice returned by the USPS as undeliverable, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.5.4. The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.5.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in good faith. in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the Response Deadline, whichever is later.

7.6. Requests for Exclusion (Opt-Outs).

7.6.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by mail, a signed written Request for Exclusion by to the Response Deadline. A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member’s election to be excluded from the Settlement and includes the Class Member’s name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely postmarked by the

Response Deadline. Plaintiff agrees to not request exclusion from the Class Settlement.

7.6.2. The Class Representative, by signing this Stipulation, is bound by the terms herein and further agrees not to request to be excluded from the Settlement and not to object to any terms of this Stipulation. Any such request for exclusion or objection shall therefore be void and of no force or effect.

7.6.3. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity.

7.6.4. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.6.5. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the PAGA Released Claims and are eligible for an Individual PAGA Payment.

7.7. Conflicting Exclusions and Objections. A Class Member cannot submit both a Request for Exclusion and an objection. If a Class Member submits both a valid and timely objection and Request for Exclusion, the Request for Exclusion will control and the objection will be invalid.

7.8. Challenges to Calculation of Eligible Workweeks and Pay Periods. Each Class Member shall have until the Response Deadline to challenge the number of Eligible Workweeks and Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Eligible Workweeks and Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's Eligible Workweeks and Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Eligible Workweeks and Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.9. Objections to Settlement.

7.9.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement,

and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.9.2. Participating Class Members may send written objections to the Administrator, by mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so prior to the Response Deadline. The written objection should state the Participating Class Member's name and address and describe the reason(s) why the Participating Class Member objects to the Settlement and include or attach any documents upon which the objection is based.

7.9.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.10. No Solicitation. The Parties and their counsel agree that they will not solicit, encourage, counsel or advise any individual to opt out of or object to the Settlement.

7.11. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.11.1. Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval Order, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval Order and the Judgment. The settlement website will have the URL [www.MonteroClassActionSettlement.com](http://www.MonteroClassActionSettlement.com), or a substantially similar URL subject to the Parties' approval, and the website will only remain available until 30 days after the Effective Date at which time it will be taken down by the Administrator. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls and emails.

7.11.2. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, written objections received, challenges to Workweeks and/or Pay Periods received and/or resolved ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and written objections received.

7.11.3. Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its

obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), and the number of written objections. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.11.4. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

7.12. Nullification of Settlement. Defendant shall have the sole right to void and withdraw from this Settlement if at any time prior to the Final Approval Date: (a) within fourteen (14) calendar days after expiration of the Response Deadline if five percent (5%) or more of the Class Requests Exclusion from this Settlement; (b) the Settlement is construed in such a fashion that Defendant would be required to pay more than the Gross Settlement Amount, exclusive of employer-side taxes and any increase pursuant to escalator clause; (c) the Court does not certify the Class, or does not certify a class releasing all of the Released Class Claims defined in this Stipulation, or does not approve the PAGA settlement including the release all of the Released PAGA Claims, or otherwise makes an order inconsistent with any of the material terms (as determined by Defendant) of this Settlement; (d) any pending litigation or litigation filed prior to the Final Approval Date in any way prevents the Settlement from being preliminarily or finally approved by the Court; or (e) Plaintiff or Class Counsel materially breach the Settlement of this Agreement. If Defendant nullifies the settlement, it will pay administration costs to date.

## **8. MOTION FOR FINAL APPROVAL.**

8.1. Motion for Final Approval. Class Counsel will be responsible for drafting the Motion for Final Approval that includes a request for approval of the PAGA settlement under Labor Code section 2699, and approval of the requested Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Administrator Expenses Payment to be heard at the Final Approval Hearing. Plaintiff will provide the draft Motion for Final Approval and supporting papers to Defendant for its review and comment at least seven days before filing. The Parties will jointly prepare any proposed order granting final approval. Plaintiff shall request that the Court schedule the Final Approval Hearing no earlier than thirty (30) days after the expiration of the Response Deadline. Class Counsel will file the Motion before the calendared Final Approval Hearing in accordance with the timing required by Code of Civil Procedure section 1005.

8.2. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 8.3. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 8.4. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 8.5. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.
- 8.6. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.
- 8.7. Amended Judgment. If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

## **9. ADDITIONAL PROVISIONS.**

- 9.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Action have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative

treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 9.2. Publicity. Neither Plaintiffs nor Class Counsel shall issue any press release or announcement of any kind related in any way to the settlement. Plaintiffs and Class Counsel agree that, prior to seeking preliminary approval of the settlement, they will keep the terms of the settlement confidential. From and after preliminary approval of the settlement, Plaintiffs and Class Counsel may: (1) as required by law; (2) as required under the terms of the settlement; or (3) as required under counsel's duties and responsibilities as class counsel, comment regarding the specific terms of the settlement. In all other cases, Plaintiffs and Class Counsel agree to limit their statements regarding the terms of the settlement, whether oral, written or electronic (including the world wide web), to say the Actions have been resolved and that Plaintiffs and Class Counsel are satisfied with the settlement terms. Nothing in this Paragraph is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, communicating with Settlement Class Members regarding the Settlement, and nothing shall prohibit Class Counsel from referring to the Settlement in adequacy of counsel declarations or related court filings.
- 9.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 9.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 9.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 9.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the

assistance of a mediator and/or the Court for resolution.

- 9.7. Privacy of Documents and Information. Plaintiff and Class Counsel agree that none of the documents and information provided to them by Defendant in connection with the Action and this Settlement shall be used for any purpose (including in any other litigation) other than this Settlement of the Action.
- 9.8. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 9.9. No Tax Advice. Each Party to this Stipulation (for purposes of this section, the “acknowledging party” and each Party to this Stipulation other than the acknowledging party, an “other party”) acknowledges and agrees that (1) no provision of this Stipulation, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Stipulation, (b) has not entered into this Stipulation based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Stipulation.
- 9.10. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 9.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 9.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 9.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 9.14. Severability. Before declaring any provision of this Stipulation invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Stipulation valid and enforceable. Should the Court deem any clause or provision of this Stipulation be invalid, illegal, or

unenforceable, it shall first attempt to modify or reform it as minimally necessary to be valid, lawful, and enforceable.

- 9.15. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 9.16. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 9.17. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 9.18. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 9.19. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:
- To Plaintiff: Fletcher W. Schmidt of Haines Law Group, APC  
2155 Campus Drive, Suite 180, El Segundo, CA 90265  
fschmidt@haineslawgroup.com
- To Defendant: Max Fischer of Morgan, Lewis & Bockius LLP  
300 South Grand Avenue, Twenty-Second Floor, Los Angeles CA 90071  
max.fischer@morganlewis.com
- 9.20. Execution in Counterparts. This Agreement may be executed in one or more counterparts including execution electronically (i.e. DocuSign), which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 9.21. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. Upon the signing of this Agreement, the Parties further agree that this Agreement shall extend the date to bring a case

to trial under CCP § 583.310 for the entire period of this settlement process, pursuant to CCP § 583.330.

- 9.22. Enforcement Action. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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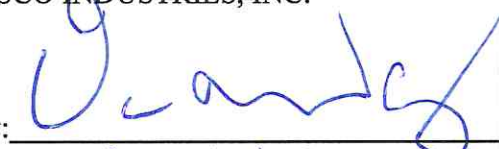
**[SIGNATURES BEGIN ON FOLLOWING PAGE]**

DATED:

10-1-24

BISCO INDUSTRIES, INC.

By:



Name:

Don Wagner

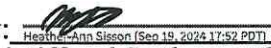
Title:

President - L.O.O.

DATED: 09/19/24

HEATHER-ANN SISSON (NÉE MONTERO)

By:

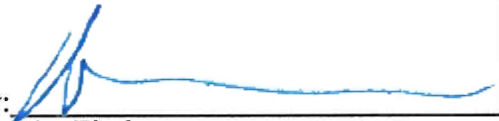
  
Heather-Ann Sisson (Sep 19, 2024 17:52 PDT)

Plaintiff and Settlement Class Representative

DATED: October 1, 2024

MORGAN, LEWIS & BOCKIUS LLP

By:



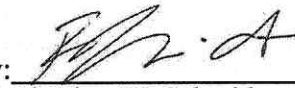
Max Fischer

Attorneys for Defendant

DATED: 09/19/24

HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt

Attorneys for Plaintiff