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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

VICTOR MEDINA and FRANCISCO
CRUZ, individually, on a representative basis,
and on behalf of all others similarly situated;

Plaintiffs,

vs.

HOWARD ROOFING COMPANY, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2312233
*[Assigned to the Hon. Christian Towns, Dept.
S26, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing:
Date: November 4, 2024
Time: 8:30 a.m.
Dept.: 26

Complaint Filed: May 30, 2023

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County, and I manage the firm's employment law practice. I am

1 thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I
2 submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action
3 Settlement. If called as a witness, I could and would competently testify thereto.

4 **COUNSEL'S EXPERIENCE**

5 2. I have been a member, in good standing, of the State Bar of California since 2001.
6 I am admitted to practice in the United States District Courts for the Central and Southern
7 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
8 courts in California.

9 3. I have handled well over 500 employee vs. employer litigation matters during my
10 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
11 representing employees, the majority of which has included class action and representative
12 action wage and hour matters. In total, I have handled upwards of 300 class action and
13 representative action wage/hour cases, and have been appointed by the court as class counsel and
14 have received final court approval and judgment in over half of those actions to date, and
15 anticipate receiving final approval in many more of those in the future.

16 4. As part of these settlements and judgments, I have recovered in excess of \$250
17 million in damages for my clients and the class members (who often work as nurses, ambulance
18 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
19 countless other trades). My team and I once held the record for the largest known PAGA-only
20 case in California's history - a \$12.5 million-dollar court approved settlement, which followed
21 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
22 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

23 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
24 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
25 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
26 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
27 Both cases were appealed.
28

6. I was named by the LA Times as one “Southern California Leading Lawyers” in the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

ADEQUACY OF THE SETTLEMENT

7. The Class, as conditionally certified by this Court, consists of 425 current and former nonexempt employees of Defendant Howard Roofing Company, Inc., who worked in California at any time during the period of May 30, 2019 to May 4, 2024 (the “Class Period”).

8. As set forth in the Declaration of the Administrator, the Net Settlement Amount is approximately \$545,894.60, after the deductions set forth in the chart below:

<i>Gross Settlement Amount</i>	\$ 970,000.00
Attorneys’ Fees (1/3)	\$ 323,333.33
Litigation Costs	\$ 21,272.07
Administrator Costs	\$ 9,500.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 545,894.60

9. The process of mailing the Notice Packets was very successful, as only 17 Class Notices were determined to be undeliverable, resulting in a 96% success rate in mailing the notices.

10. The response from the Class Members was overwhelmingly positive, as no Class Member has objected to or opted out of the settlement.

11. As discussed at length in Plaintiff’s motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is favorable to the Class and the release is narrowly limited to the claims alleged.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties’ arms’ length bargaining facilitated by a reputable and experienced wage and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that 100% of the Class has elected to participate and no objections were submitted, the

1 presumption of fairness is justified.

2 13. I believe that the Settlement is fair, reasonable and adequate, and in the best
3 interests of the Class, given the litigation risks and delay inherent in further litigation and
4 possible appeals. As set forth in Plaintiffs' motion for preliminary approval and the declarations
5 submitted in support thereof, Defendant vigorously contested Plaintiffs' claims, and Plaintiffs
6 faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter.
7 Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and
8 that it is desirable that the action be fully and finally settled in the manner and upon the terms
9 and conditions set forth in the Settlement Agreement in order to limit further expense,
10 inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit
11 the operation of Defendant's business without further expensive litigation and the distraction and
12 diversion of its personnel with respect to matters at issue. All parties took into account the
13 uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The
14 parties determined that it is desirable and beneficial to both the Class and Defendant that this
15 case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The
16 recoveries contemplated by the Settlement represent a good result for the Class, fairly
17 proportioned to the likely risk-adjusted recovery in litigation.

18 **ADEQUACY OF COUNSEL AND**
19 **REASONABLENESS OF REQUESTED FEE AND COST AWARDS**

20 14. As set forth above, I have handled upwards of 300 class and representative
21 actions, have been appointed as class counsel and have successfully resolved over half of those
22 cases, and many others remain pending and will successfully resolve in the future while
23 recovering hundreds of millions of dollars for my clients and Class Members. This is
24 substantially better than average accordingly to Mayer Brown LLP's study entitled, An
25 Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc.*, No. 12-
26 55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared
27 to two-thirds that are defeated and result in no payment to the class members.¹

28 ¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 15. When this case was taken on a contingency fee basis, with Plaintiffs' counsel
2 agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain.
3 In the course of this litigation, Class Counsel paid all costs including filing fees, court costs,
4 research fees, and mediation costs. There was never a guarantee that we would recoup those
5 expenditures.

6 16. It has been my experience that the benchmark for attorney fee awards in
7 California state cases is one-third of a common settlement fund, which the CA Supreme Court
8 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
9 Counsel is seeking a fee of one-third of the Settlement Amount.

10 17. There are several additional factors why I believe that the Court should award
11 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
12 resulted in a common fund settlement amount of \$970,000, whereby the Class Members will
13 receive approximately **\$1,284.46 on average** and **up to a maximum of \$5,859.97** for those
14 employees that worked the entire Class Period. This is an ***excellent result*** in light of the disputed
15 nature of the claims alleged. This result was achieved by the work and success of my office,
16 who negotiated the settlement after extensive litigation, discovery, preparation, investigation,
17 mediation, and substantial work thereafter.

18 18. Second, Plaintiffs faced significant risks going forward with the litigation. As
19 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
20 this litigation, any one of which, if successful, could have decimated Plaintiffs' case. And
21 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues
22 going forward with this litigation, and it would have taken several more years to realize any
23 recovery in this action along with the possibility of post-trial appeals.

24 19. Third, Class Counsel are experienced class action litigators. This experience and
25 expertise, combined with the high quality of work performed in this case, resulted in the
26 settlement achieved in this case.

27 20. Fourth, Class Counsel have been representing Plaintiffs in this matter strictly on a
28 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a

1 substantial amount of time, money, and resources, and have done so since the inception of this
2 case without any payment or compensation. If Plaintiffs had lost this case, we would have
3 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
4 my office, which is a small firm. If, despite these hardships and risks, the best my office could
5 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for
6 the hardships and serious risks we faced litigating this contingency case, and would not be
7 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
8 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
9 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation- coordination-
10 preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above,
11 only one-third of class actions are successful, compared to two-thirds that are defeated and result
12 in no payment to the class members.

13 21. Fifth, the request for attorney's fees in the amount of one-third of the common
14 fund falls well within the norms accepted by state and federal courts in California in comparable
15 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
16 recovery under the common fund doctrine was recently approved by the California Supreme
17 Court in *Laffitte, supra*, 1 Cal.5th 480, 503.

18 22. For all of the above reasons, a common fund fee award here in the amount of one-
19 third of the common fund created by Plaintiffs and Class Counsel is fair and reasonable.

20 23. At my office, this case was primarily handled by my senior associate attorney,
21 Peter Carlson, while I performed the role of the supervising attorney. As set forth in his
22 declaration, Mr. Carlson works exclusively with me on employment law matters and has been in
23 practice for 10 years. He bills at the hourly rate of \$650/hour. I have been in practice for 23
24 years, with most of those years handling complex litigation and for over the last 17 years, my
25 practice has almost entirely consisted of handling class action wage and hour matters. My billing
26 rate is \$775/hour. I believe these rates are consistent with Plaintiff and Defense attorneys who
27 handle complex class action litigation, if not somewhat lower.
28

24. The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com indicates that the benchmark rates are: \$777/hour for an 8–10-year attorney, \$878/hour for a 11–19-year attorney, and \$1,057/hour for a 20+ year attorney). Moreover, the Wolters Kluwer 2023 Real Rate Report (“Real Rate Report”) provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data, comprising millions of billing entries from a hundred thousand individual timekeepers who worked at thousands of law firms. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area: (a) the rate for partners in Los Angeles is between \$840 and \$1,159 per hour for the middle and upper quartiles, and (b) the rates for associates with seven or more years of experience, the median rate is \$674 per hour, and the upper quartile rate is \$888 per hour. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms, which makes it “a much better reflection of true market rates than self-reported rates in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*, 22 Cal.4th at 1085 (holding that rates should be premised upon precisely this form of independent, “objective” rate data that reflects “fair market” rates actually billed to clients “in the community for similar work.

25. The table below includes a summary of the hours worked by Plaintiffs’ counsel, plus an estimated 35 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the Settlement Administrator and defense counsel to finalize this matter. Thus, the actual aggregated lodestar between the attorneys that worked on this case is approximately \$287,592.50, resulting in a fair and reasonable 1.12 multiplier, which is summarized in the following table:

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	Trial Counsel	23	\$775	97.5	\$75,562.50
Peter Carlson (Senior Associate – LML)	Handling Attorney	10	\$650	218.3	\$141,895
Daniel Hyun (Partner – Torus)	Attorney	9	\$650	107.9	\$70,135
Grand Total					\$287,592.50

26. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendant does not oppose this fee request.

27. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, messenger services, postage, fax transmission expenses, transportation, mediator fees, and other incidental expenses directly related to this action. The Settlement Agreement provided up to \$25,000 in costs. Through final approval, my office incurred \$19,203.71 in litigation costs (see Exhibit “B” attached hereto), plus \$2,068.36 by Torus LLP, for total combined costs of \$21,272.07. The saving will be placed in the Net Settlement Amount for payment to the Class Members. Defendant does not oppose this request for costs.

REASONABLENESS OF REQUESTED SERVICE AWARD

28. I also believe that the service award of \$10,000 to Plaintiff Medina is fair and warranted for the reasons outlined in his declarations and in the motion. He came forward and worked directly with my office in analyzing the claims and documents, providing valuable information. (See his declarations for supporting information.) Indeed, his participation was an essential element of Defendant’s desire to mediate and of the pre and post mediation analysis that allowed Class Counsel to settle the case. He also took on various risks, including the risk that he could have been ordered to pay Defendant’s costs if he lost and the risk of retaliation and

1 being black-balled in the industry. He also provided a full release of all claims. Defendant does
2 not oppose the requested service awards.

3 **SUBMISSION TO THE LWDA**

4 29. The Motion and declarations, including the Settlement Agreement, have
5 concurrently been submitted to the LWDA. (See Exhibit "C").

6 **EXHIBITS AND CONCLUSION**

7 30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
8 "A."

9 31. Attached hereto as Exhibit "B" is a true and correct copy of an itemized statement
10 of my firm's litigation costs.

11 32. The LWDA's confirmation of receipt of this Motion and Declaration is attached
12 hereto as Exhibit "C."

13 33. For the foregoing reasons, it is respectfully requested that the Court grant final
14 approval of the settlement as being fair, reasonable, and in the best interest of the class, and
15 approve the requested attorneys fees, costs, and service award.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed on October 10, 2024, at Riverside, California.

18
19 By: 
20 Brian J. Mankin, Esq.
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EXHIBIT “A”

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Attorneys for Defendant HOWARD ROOFING COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

VICTOR MEDINA and FRANCISCO
CRUZ, individually, on a representative basis,
and on behalf of all others similarly situated;

Plaintiff,

vs.

HOWARD ROOFING COMPANY, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2312233

*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Class Action Settlement Agreement and Release of Claims (the “Agreement”) is
2 entered into by and between Plaintiffs Victor Medina and Francisco Cruz, individually and on
3 behalf of all others similarly situated, and on behalf of the State of California, and Defendant
4 Howard Roofing Company, Inc., and is approved by their respective counsel of record, subject to
5 the terms and conditions hereof and the Court’s approval.

6 **A. Definitions**

7 1. “Action” or “Lawsuit” means and refers to the case entitled *Medina v. Howard*
8 *Roofing Company, Inc.* San Bernardino County Superior Court, Case No. CIVSB2312233,
9 initiated on May 30, 2023, and the case entitled *Cruz v. Howard Roofing Company, Inc.* Los
10 Angeles Superior Court, Case No. 23STCV15380.¹

11 2. “Administrator” means and refers to Phoenix Settlement Administrators , the
12 neutral third-party class action settlement administrator agreed to by the Parties, that will provide
13 the Notice to the Class Members and distribute the settlement amounts as described in this
14 Agreement.

15 3. “Administration Costs” means the costs payable from the Gross Settlement
16 Amount to the Administrator for its reasonable fees and expenses in administering this
17 Settlement, including, but not limited to, printing, distributing, and tracking documents for this
18 Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes,
19 unclaimed property due diligence, reporting and remittance obligations, distributing the
20 Settlement Amount, and providing necessary reports and declarations, as requested by the
21 Parties. The Administration Costs shall be paid from the Gross Settlement Amount, including, if
22 necessary, any such costs in excess of the amount represented by the Administrator as being the
23 maximum costs necessary to administer the Settlement.

24 4. “Aggrieved Employee(s)” means all California citizens currently and formerly
25 employed by Defendant as a non-exempt employee who worked for Defendant in the State of
26 California at any time during the PAGA Period (or, if any such person is incompetent, deceased,
27

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¹ On May 14, 2024, Plaintiff Francisco Cruz requests dismissal, without prejudice, of the *Cruz* lawsuit filed in Los Angeles Superior Court.

or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).

5. “Agreement” or “Settlement Agreement” or “Settlement” shall mean this Class Action and PAGA Settlement Agreement and Release of Claims.

6. “Class” is defined all current and former non-exempt employees who worked for Defendant in California during the Class Period (or, if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).

7. “Class Member(s)” or “Settlement Class Member” refers to individual members 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).

8. “Class Counsel” refers to Brian Mankin and Peter Carlson of Lauby, Mankin & Lauby LLP and Daniel J. Hyun and David Alami of Torus LLP.

9. “Class Data” means a complete list that Defendant will diligently and in good faith compile from their records and provide to the Administrator on one spreadsheet which shall include, for each Class Member, the individual’s full name, last known address, Social Security Number, dates of employment, and total Weeks Worked during the PAGA Period and the Class Period.

10. “Class Period” is deemed to be any time during the period of May 30, 2019, through May 4, 2024.

11. “Class Representatives” or “Plaintiffs” means and refers to Plaintiffs Victor Medina and Francisco Cruz.

12. “Complaint” refers to the operative second amended class and PAGA representative action complaint filed in the Action.

13. “Court” (or “Judge”) means the California Superior Court, County of San Bernardino.

14. “Defendant” means and refers to Howard Roofing Company, Inc.

1 15. “Defendant’s Counsel” or “Defense Counsel” means and refers to O’Hagan &
2 Meyer.

3 16. “Effective Date” means the latest of the following dates: (i) if no Class Member
4 timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement
5 Agreement under Code of Civil Procedure § 663, then 60 days following the date of the Court’s
6 Notice of Entry of Order regarding Final Approval of the Settlement and the judgment is final;
7 (ii) if a Class Member intervenes, or files a motion to vacate the judgment approving the
8 Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an
9 order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, then
10 the date of final resolution of that appeal or other collateral attack (including any requests for
11 rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

12 17. “Escalator Clause:” Defendant represents that, as of March 4, 2024, the Class
13 Members worked approximately 23,418 Work Weeks during the Class Period. Should the total
14 number of Work Weeks in the Class Period exceed 25,760 (which is 10% more than Defendant’s
15 representation), then Defendant shall have the option of either (i) increasing the Gross Settlement
16 Amount by \$41.42 (Settlement Amount divided by 23,418) for each additional workweek above
17 25,760, or (ii) changing the end date of the Class Period to a date for which there are no more
18 than 25,760 workweeks. However, if Defendant elects to change the end date of the Class
19 Period, then: (i) Defendant must make that election at least 10 days prior to Plaintiffs filing their
20 motion for preliminary approval, and (ii) in no event shall Defendant be permitted to change the
21 end date to a date prior to March 4, 2024 (the date of mediation).

22 18. “Final Approval” refers to the order of the Court granting final approval of this
23 Settlement Agreement and entering a judgment approving this Agreement on substantially the
24 terms provided herein or as may be modified by subsequent agreement of the Parties.

25 19. “Gross Settlement Amount” is \$970,000.00, which is the total amount Defendant
26 agrees to pay under the Settlement, subject to the Escalator Clause and exclusive of Defendant’s
27 obligation to fund their share of payroll taxes, as further discussed in Paragraph 49(c) below.
28

1 20. “Individual Class Payment” refers to each Participating Class Members *pro rata*
2 share of the Net Settlement Amount calculated according to the number of workweeks worked
3 during the Class Period, as further discussed in Paragraph 49(c) below.

4 21. “Individual PAGA Payment” refers to each Aggrieved Employees *pro rata* share
5 of 25% of the PAGA Penalties calculated according to the number of pay periods worked during
6 the PAGA period, as further discussed in Paragraph 49(h) below.

7 22. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)
8 below.

9 23. “Notice” means the notice of proposed class settlement that will be mailed to the
10 Class Members and which will advise each Class Member of the settlement and his or her
11 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
12 setting of a Final Approval Hearing. The Notice is attached as Exhibit A and incorporated by
13 reference into this Agreement.

14 24. “Objecting Class Member” means a Class Member, other than Plaintiffs, who
15 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 70(c)
16 below.

17 25. “PAGA Penalties” means the total amount that the Parties have agreed to pay to
18 the Labor and Workforce Development Agency (“LWDA”), allocated 75% (\$37,500) to the
19 LWDA, in connection with the California Labor Code Private Attorneys General Act of 2004
20 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well as the Individual PAGA Payment allocated
21 25 % (\$12,500) to the Aggrieved Employees.

22 26. “PAGA Period” is deemed to be any time during the period of May 30, 2022,
23 through May 4, 2024.

24 27. “Participating Class Member” means any and all Class Members who are deemed
25 to participate and receive an Individual Class Payment and do not opt-out by submitting timely
26 valid Requests for Exclusion.

27 28. “Parties” means Plaintiffs and Defendant, collectively.
28

1 29. “Preliminary Approval Date” means the date the Court approves the Settlement
2 Agreement and enters the Preliminary Approval Order.

3 30. “Preliminary Approval Order” means the proposed judicial Order Granting
4 Preliminary Approval of the Settlement to be entered by the Court, upon the application or
5 motion of the Plaintiffs, preliminarily approving this Settlement and providing for the issuance of
6 the Notice to the Class, an opportunity to opt out of the Settlement, an opportunity to submit
7 timely objections to the Settlement, and setting a final approval hearing on the fairness of the
8 terms of Settlement, including approval of attorneys’ fees and costs. Provided that the motion is
9 consistent with the terms herein, Defendant will not object to Plaintiffs’ motion for preliminary
10 approval but will be provided with an opportunity to review and comment upon the motion
11 before it is filed.

12 31. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
13 benefit of the Participating Class Members and Aggrieved Employees, and from which the
14 settlement payments shall be made.

15 32. “Released Class Claims” or “Class Claims” by the Participating Class Members
16 upon Final Approval of the Settlement will include all causes of action and claims that were
17 alleged in the Actions or reasonably could have been alleged based on the facts and legal theories
18 contained in the complaints filed, including the operative Complaint, including all of the
19 following claims for relief: (i) failure to pay all regular rate wages, minimum wages, straight
20 time wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure
21 to provide compliant rest breaks and recovery/cool down periods; (iv) failure to timely pay
22 wages during employment; (v) failure to provide complete, accurate wage statements; (vi) failure
23 to pay wages timely at time of termination or resignation; (vii) failure to reimburse or indemnify
24 necessary business expenses; (viii) failure to pay sick leave and/or vacation pay; (ix) failure to
25 pay reporting time pay; (x) failure to provide fresh drinking water and (xi) unfair business
26 practices that could have been premised on the claims, causes of action or legal theories of relief
27 described above or any of the claims, causes of action or legal theories of relief pleaded in the
28 operative complaint. The Class Members who cash their Settlement Checks further acknowledge

1 they are releasing any claims under the Fair Labor Standards Act (“FLSA”) directly based on or
2 arising out of the Released Class Claims. Additionally, this definition of “Released Class
3 Claims” expressly excludes all claims for vested benefits, wrongful termination, unemployment
4 insurance, disability, social security, workers’ compensation, claims while classified as exempt,
5 and claims outside of the Class Period.

6 33. “Released PAGA Claims” or “PAGA Claims” means all causes of action and
7 claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004
8 that were alleged in the operative complaint in the Actions or reasonably could have been alleged
9 based on the facts contained in the operative complaint in the Actions, including claims for civil
10 penalties based on the following: (i) failure to pay all regular rate wages, minimum wages,
11 straight time wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii)
12 failure to provide compliant rest breaks; (iv) failure to timely pay wages during employment; (v)
13 failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of
14 termination or resignation; (vii) failure to reimburse or indemnify necessary business expenses;
15 (viii) failure to pay sick leave and/or vacation pay; (ix) failure to pay reporting time pay (x)
16 failure to provide fresh drinking water (xi) failure to maintain records in accordance with Labor
17 Code Section 1174; and/or (xi) claims, causes of action or legal theories of relief seeking civil
18 penalties under the California Labor Code Private Attorneys General Act of 2004 plead in the
19 operative Complaint and underlying LWDA exhaustion letters.

20 34. “Released Parties” means Defendant and its past, present and/or future, direct
21 and/or indirect, officers, directors, members, managers, employees, agents, representatives,
22 attorneys, insurers, partners, investors, shareholders, administrators, parent companies,
23 subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

24 35. “Release Period” shall be the time period governing the Released Class Claims,
25 which shall be the same as the Class Period.

26 36. “Response Deadline” is 30 calendar days from the date the Notice is mailed to the
27 Class Members, and shall be the last date on which Class Member may: (a) mail Requests for
28 Exclusion from the Settlement, or (b) mail his/her/their Objection to the Settlement. Class

Members to whom notice packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline or an additional 14 calendar days from the date of re-mailing, whichever is later.

37. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 70(a) below.

38. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to the Class Representatives in addition to their Individual Class Payments as Participating Class Members and Individual PAGA Payments as Aggrieved Employees.

39. “Work Weeks” or “Weeks Worked” in the context of a Class Member means any and all Work Weeks during the Class Period during which the Class Member worked at least one day in California for Defendant. Likewise, in the context of Aggrieved Employees, it means any and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at least one day in California for Defendant.

B. General Terms

40. On May 30, 2023, Plaintiff Medina filed a putative class action complaint against Defendant in San Bernardino County Superior Court. Plaintiff later filed a first amended complaint, alleging putative class and representative PAGA claims, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to timely pay wages upon separation of employment, (g) failure to provide accurate itemized wage statements, (h) unfair and unlawful competition, and (i) related claims under PAGA.

41. On June 30, 2023, Plaintiff Cruz filed a separated class action against Defendant in Los Angeles County Superior Court, entitled *Francisco Cruz v. Howard Roofing Company Incorporated*, Los Angeles County Superior Court Case No. 23STCV15380, which generally alleged the same wage-and-hour violations as Plaintiff Medina’s action.

42. On March 4, 2024, the Parties attended private mediation with Todd Smith, Esq., and reached this Settlement. As part of the Settlement, the Parties agreed to consolidate Plaintiff Cruz’s action and claims into Plaintiff Medina’s action by filing a second amended complaint to

1 add Francisco Cruz as a plaintiff and to add any claims in Plaintiff's Cruz's action that were not
2 already included within Plaintiff's Medina's action. After the Court approved the Parties
3 stipulation in this regard, Plaintiffs filed the operative second amended complaint on April 10,
4 2024. On May 14, 2024, Francisco Cruz filed his a request for dismissal, without prejudice, of
5 his later filed lawsuit in Los Angeles Superior Court.

6 43. Defendant denies Plaintiffs' claims and allegations and contends that the Action is
7 not suitable for class certification. The Court has not granted class certification.

8 44. The Class Representatives believe they can proceed with the representative and
9 class claims, that the Action is meritorious, and that class certification is appropriate.

10 45. The Parties have conducted a thorough investigation into the facts of the Action.
11 This includes conducting an extensive exchange of informal discovery, including a sampling of
12 payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about
13 and has done extensive research with respect to the applicable law and potential defenses to the
14 claims of the Class. Class Counsel has diligently pursued an investigation of the Class
15 Members' claims against Defendant. Based on the foregoing data and on their own independent
16 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant
17 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
18 and adequate and is in the best interest of the Class Members in light of all known facts and
19 circumstances, including the risk of significant delay and uncertainty associated with litigation,
20 various defenses asserted by Defendant, and numerous potential appellate issues.

21 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
22 to be performed or judgment to be entered pursuant to the terms of the Settlement and
23 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
24 any statute or law or liability on the claims or allegations in the Action.

25 47. Stipulation for Class Certification. For settlement purposes only, Defendant will
26 stipulate that the Participating Class Members may be conditionally certified as a Class. This
27 stipulation to certification is in no way an admission that class action certification is proper and
28 shall not be admissible in this or in any other action except for the sole purposes of enforcing this

1 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
2 stipulation to class certification as part of the Settlement shall become null and void *ab initio* and
3 shall have no bearing on, and shall not be admissible in connection with, the issue of whether
4 certification would be appropriate in a non-settlement context. Defendant expressly reserves its
5 rights and declares that it would continue to oppose class certification and the substantive merits
6 of the case should the Court fail to issue Final Approval. Plaintiffs expressly reserves their rights
7 and declare that they will continue to pursue class certification and a trial should the Court fail to
8 issue Final Approval.

9 **C. Terms of Settlement**

10 48. The financial terms of the Settlement are as follows:

11 (a) Settlement Amount: The Parties agree to settle this Action for the Gross
12 Settlement Amount of \$970,000, subject to the Escalator Clause and Defendant's obligation to
13 separately pay the share of payroll taxes owed on the wage portion of the Individual Class
14 Payments, which is the maximum amount that will be paid by Defendant and includes Individual
15 Class Payments, Class Counsel's Attorneys' Fees and Costs Award, the Service Payments to the
16 Class Representatives, Administration Costs, and PAGA Penalties. The Administrator will
17 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
18 Members or Aggrieved Employees to submit any claim as a condition of payment.

19 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
20 Gross Settlement Amount less the following payments in the amounts approved by the Court:
21 Attorneys' Fees and Costs Award, the Service Payments to the Class Representatives as awarded
22 by the Court, the Administration Expenses and Costs, and PAGA Penalties. If the Court reduces
23 the Attorneys' Fees and Costs Award, Service Award, or Administrator Costs, or either increases
24 or decreases the amount allocated to the PAGA Penalties, the difference shall be placed in the
25 Net Settlement Amount and allocated to the Class.

26 (c) Individual Class Payments for the Class will be calculated and apportioned
27 from the Net Settlement Amount based on the number of Weeks Worked by a Class Member
28 during the Class Period. Each specific Individual Class Payment will be calculated by: (a)

1 dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating
2 Class Members during the Class Period, and (b) multiplying the result by each Participating
3 Class Members' Weeks Worked. The entire Net Settlement Amount will be disbursed to all
4 Participating Class Members. If there are any valid and timely Requests for Exclusion, the
5 Settlement Administrator shall proportionally increase the Individual Class Payment for each
6 Participating Class Member according to the number of Weeks Worked, so that the amount
7 actually distributed to Participating Class Members equals one hundred percent (100%) of the
8 Net Settlement Amount.

9 (d) Allocation of Individual Class Payments: The Individual Class Payments
10 to Participating Class Members will be allocated as follows: 10% will be allocated as wages
11 subject to withholding of all applicable local, state and federal taxes (the "Wage Portion"); and
12 90% will be allocated for interest and statutory penalties (pursuant to, *e.g.*, California Labor
13 Code sections 203, 210, 226) from which no taxes will be withheld (the "Non-Wage Portion").
14 The Administrator will issue to each Participating Class Member an Internal Revenue Service
15 Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with
16 respect to the penalties and interest allocations. Participating Class Members assume full
17 responsibility and liability for any employee taxes owed on their Individual Class Payment. The
18 Parties and their attorneys cannot provide and will not provide any advice regarding tax
19 obligations. Participating Class Members should consult with their tax advisors concerning the
20 tax consequences of the payments they receive under the Settlement.

21 (e) Service Payments to Class Representatives: The amount, if any, awarded
22 to each Class Representative as a Service Payment will be set by the Court in its discretion, not
23 to exceed \$10,000 each, in exchange for the services that Plaintiffs performed on behalf of the
24 Class. Defendant agrees not to oppose this request for Service Payments that do not exceed
25 \$10,000. The Service Payments to the Class Representatives will be paid out of the Gross
26 Settlement Amount. The Class Representatives will be issued an IRS Form 1099 in connection
27 with these payments and shall be solely and legally responsible to pay all applicable taxes on this
28 payment. The Parties agree that any amount awarded as the Service Payments to the Class

Representatives less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payments, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. The Administrator will pay the Class Representative Service Payments. Plaintiffs assume full responsibility for employee taxes owed on the Class Representative Service Payments.

(f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of up to one-third of the Gross Settlement Amount, plus reasonable litigation costs not to exceed \$25,000 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be paid from the Gross Settlement Amount, and, except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel assumes full responsibility and liability for taxes owed on the Attorneys' Fees and Costs Award and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

(g) Administration Costs: The fees and other charges of the Administrator will be paid from the Settlement Amount, not to exceed \$9,500, unless (1) the Escalator Clause is triggered (whereby any reasonable increase in Administration Costs shall be paid from the increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all Parties and the Court.

1 (h) PAGA Penalties: The Parties agree that \$50,000 is allocated to PAGA
2 Penalties (the “PAGA Payment”), and is to be paid from the Gross Settlement Amount, subject
3 to Court approval. Of this amount, \$37,500 (75%) shall be paid to the LWDA in satisfaction of
4 civil penalties under the Private Attorney General Act of 2004 (“PAGA”) (the “LWDA
5 Payment”). The remaining \$12,500 (25%) will form the Individual PAGA Payments to the
6 Aggrieved Employees, which shall be calculated and allocated pro-rata on a Work Week basis,
7 which will be treated entirely as civil penalties and shall be reported as required on an IRS Form
8 1099. Class Counsel shall give proper notice to the LWDA of the Settlement. Aggrieved
9 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
10 Payment.

11 (i) Tax Liability: Class Counsel and Defendant make no representations as to
12 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiffs and the
13 Class Members are not relying on any statement or representation by Class Counsel or Defendant
14 in this regard. Plaintiffs, Participating Class Members, and Aggrieved Employees understand
15 and agree that they will be solely responsible for the payment of any taxes and penalties assessed
16 on their respective Individual Class Payments and Individual PAGA Payments, described herein.
17 Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the
18 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
19 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
20 set forth in this Section may be modified in a manner to bring Defendant into compliance with
21 any such changes. Plaintiffs, Participating Class Members, and Aggrieved Employees
22 understand and agree that they will be solely responsible for the payment of any taxes and
23 penalties assessed on their respective payments described herein.

24 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
25 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
26 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
27 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
28 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR

1 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
2 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
3 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
4 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
5 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
6 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
7 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
8 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
9 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
10 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
11 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
12 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
13 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
14 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
15 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
16 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
17 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
18 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
19 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

20 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
21 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
22 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
23 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
24 Individual Class Payment or Individual PAGA Payments will be made directly to each
25 Participating Class Member and Aggrieved Employee. The Administrator shall be responsible
26 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
27 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks
28 delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

1 (l) Class Counsel and Plaintiffs believe that the Settlement is fair and
2 reasonable and will so represent same to the Court.

3 **D. Release by the Participating Class Members**

4 49. Upon entry of the Final Approval Order and Defendant's funding of the Gross
5 Settlement Amount and the required employer-side payroll taxes, and except as to such rights or
6 claims as may be created by this Agreement, Plaintiffs and the Participating Class Members will
7 forever completely release and discharge the Released Parties from the Released Class Claims
8 for the Class Period.

9 50. Each Participating Class Member will be deemed to have made the foregoing
10 release of the Released Class Claims as defined in paragraph 32 as if by manually signing it.

11 51. Class Representatives, on behalf of themselves and the Class, acknowledge and
12 agree that the claims for unpaid wages and untimely payment of wages in the Action are
13 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
14 them. Class Representatives, on behalf of themselves and the Class, acknowledge and agree that
15 Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
16 in pertinent part as follows: "An employer shall not require the execution of any release of any
17 claim or right on account of wages due, or to become due, or made as an advance on wages to be
18 earned, unless payment of those wages has been made."

19 **E. Release of PAGA Claims**

20 52. Upon entry of the Final Approval Order and Defendant's funding of the Gross
21 Settlement Amount and the required employer-side payroll taxes, and except as to such rights or
22 claims as may be created by this Agreement, Plaintiffs and Aggrieved Employees will forever
23 completely release and discharge the Released Parties from the Released PAGA Claims for the
24 Release Period

25 53. Each Aggrieved Employee will be deemed to have made the foregoing release of
26 the Released PAGA Claims as defined in paragraph 33 as if by manually signing it.

1 54. Regardless of submitting a valid Request for Exclusion, neither Plaintiffs nor any
2 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
3 releasing the Released PAGA Claims.

4 55. It is the intent of the Parties that the Final Approval Order shall have full
5 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

6 **F. Release by Plaintiffs and Class Representatives**

7 56. The Class Representatives do hereby, for themselves and their spouses, heirs,
8 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
9 guardians, personal representatives, and assigns forever and completely release and discharge
10 Defendant and the Released Parties from any and all charges, complaints, claims, liabilities,
11 obligations, promises, agreements, controversies, damages, actions, causes of action, suits,
12 rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties,
13 civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of
14 any nature whatsoever, from the beginning of time through the execution of this Agreement,
15 whether known or unknown, suspected or unsuspected, including but not limited to all claims
16 arising out of, based upon, or relating to Class Representatives' employment with Defendant or
17 the remuneration for or termination of such employment (the "Class Representatives' Claims").
18 The Release of Class Representatives' Claims is expressly conditioned on and subject to the
19 terms of the separate individual settlement agreements entered into by and among Plaintiffs and
20 Defendant.

21 57. Without limiting the generality of the foregoing, this general release by Plaintiffs
22 includes all federal, state and local statutory claims, federal and state common law claims
23 (including but not limited to those for contract, tort and equity), including without limitation the
24 Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil
25 Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
26 Standards Act, the Employment Retirement Security Income Act of 1974, the California
27 Constitution, the California Fair Employment and Housing Act, the California Unfair
28

1 Competition Act (California Business and Professions Code section 17200 et seq.), and the
2 California Labor Code.

3 58. Plaintiffs agree that there is a risk that any injury that they may have suffered by
4 reason of Defendant and the Released Parties' relationship with them might not now be known,
5 and there is a further risk that said injuries, whether known or unknown at the date of this
6 Settlement Agreement, might possibly become progressively worse, and that as a result thereof
7 further damages may be sustained. Nevertheless, Plaintiffs agree to forever and fully release and
8 discharge Defendant and the Released Parties, and understands that by the execution of this
9 Settlement Agreement no further claims for any such injuries that existed at the time of the
10 execution of this Settlement Agreement may ever be asserted by Plaintiffs with respect to claims
11 arising in the time period from the beginning of time to the execution of this Settlement
12 Agreement.

13 59. Plaintiffs expressly waive and relinquish all rights and benefits afforded by
14 Section 1542 of the Civil Code of the State of California and do so understanding and
15 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
16 of the State of California states:

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

22 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
23 full and complete release and discharge of all parties, the Plaintiffs expressly acknowledge that
24 this Settlement Agreement is intended to include in its effect, without limitation, all claims that
25 Plaintiffs knew of, as well as all claims that they do not know or suspect to exist in his favor
26 against the Released Parties, or any of them, for the time period from the beginning of time to the
27 execution of this Settlement Agreement, and that this Settlement Agreement contemplates the
28 extinguishment of any such Plaintiffs' Claims. Notwithstanding the above, the general release by

the Plaintiffs shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, claims for state disability benefits, or other claims that may not be released by law.

G. Interim Stay of Proceedings

60. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as is necessary to effectuate the Settlement.

H. Notice Process and Settlement Administration

61. Appointment of Administrator. The Parties have agreed to the appointment of the Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Class Payment and Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. The Parties have verified that as condition of appointment, the Administrator agrees to be bound by this Agreement, and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of the Administration Costs.

62. Disputes Regarding Administration. Any and all disputes relating to administration of the Settlement by the Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiffs and Defendant notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Administrator shall also be responsible for issuing to Plaintiffs, Participating Class Members, and Aggrieved Employees, and Class

1 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
2 Agreement.

3 63. Class Data. Not later than twenty-one (21) days after entry of the Preliminary
4 Approval Order, Defendant shall provide the Class Data to the Administrator. The Administrator
5 will run a check of the Class Members' addresses against those on file with the U.S. Postal
6 Service's National Change of Address List. The Class Data provided to the Administrator will
7 remain confidential and will not be used or disclosed to anyone, except as required by applicable
8 tax authorities, pursuant to Defendant's express written consent, or by order of the Court.

9 64. Total Workweeks. Based on review of its records, as of March 4, 2024,
10 Defendant estimated the Class Members collectively worked at total of 23,418 Workweeks. No
11 later than five (5) business days after receipt of the Class Data, the Administrator shall notify
12 Class Counsel that the list has been received and state the number of Class Members, Aggrieved
13 Employees, Workweeks, and Pay Periods in the Class Data. At least 5 days prior to mailing the
14 Notice, the Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel
15 containing a preliminary calculation of all payments to be paid from the Settlement Amount,
16 including the estimated Individual Class Payments to each Class Member and Individual PAGA
17 Payments to each Aggrieved Employee (a person's name shall be redacted and a control number
18 used in place of the name). In the event that the total Workweeks worked by all Class Members
19 exceeds 25,760, (23,418 plus 10% of 23, 418), and triggers the Escalator Clause, the
20 Administrator shall notify the Parties of the increased total of Workweeks and Defendant shall
21 have the option of either (i) increasing the Gross Settlement Amount by \$41.42 (Gross
22 Settlement Amount divided by 23,418) for each additional Workweek above 25,760, or (ii)
23 changing the end date of the Class Period to a date for which there are no more than 25,760
24 Workweeks. The Administrator shall also update the Notice to reflect the any changes due to the
25 Escalator Clause.

26 65. Notice to Class Members. The Notice, as approved by the Court, shall be sent by
27 the Administrator to the Class Members, by first class mail, in English and Spanish, within ten
28 (10) calendar days following the Administrator's receipt of the Class Data. The Administrator

1 shall use standard devices, including a skip trace, to obtain forwarding addresses of Class
2 Members if any envelopes are returned.

3 66. Returned Notice Packets. The Administrator will take steps to ensure that the
4 Notice is received by all Class Members, including utilization of the National Change of Address
5 Database maintained by the United States Postal Service to review the accuracy of and, if
6 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
7 updated address is located within ten (10) calendar days following both the Administrator
8 learning of the failed mailing and its receipt of the updated address. The Notice shall be identical
9 to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out)
10 request or objection must be returned by the later of the Response Deadline or fifteen (15) days
11 after the remailing of the Notice.

12 67. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
13 if an envelope has not been returned to Administrator by the Response Deadline that the Class
14 Member received the Notice.

15 68. Disputes Regarding Class Data. Class Members are deemed to participate in the
16 Settlement unless they wish to exclude themselves (opt-out). Aggrieved Employees may not opt
17 out of the Released PAGA Claims. The Notice will inform Class Members of his/her estimated
18 Individual Class Payment and Individual PAGA Payment, as well as the number of weeks he/she
19 worked during the Class Period and the PAGA Period. Class Members may dispute their Weeks
20 Worked if they feel they should be credited with more Weeks Worked in the Class Period and/or
21 PAGA Period in California than Defendant's records show by timely submitting evidence to the
22 Administrator. Each Class Member shall have until the Response Deadline (plus an additional 14
23 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class
24 Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.
25 Defendant's records will be presumed determinative absent reliable evidence to rebut
26 Defendant's records, but the Administrator will evaluate the evidence submitted by the Class
27 Member. The Administrator must encourage the challenging Class Member to submit supporting
28 documentations. In the absence of any contrary documentation, the Administrator is entitled to

1 presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct
2 as long as they are consistent with the Class Data. The Administrator's determination of each
3 Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not
4 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
5 copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Counsel and
6 the Administrator's determination of the challenges. Class members will have until the
7 Response Deadline to object or opt out, unless extended by the Court. Class Members and
8 Aggrieved Employees will have until the Response Deadline to dispute Workweeks, object or
9 opt out, unless extended by the Court.

10 69. Declaration of Due Diligence. The Administrator shall provide counsel for the
11 Parties, at least 25 days prior to the final approval hearing, a declaration of due diligence and
12 proof of mailing with regard to the mailing of the Notice. The Administrator's declaration of
13 due diligence shall be suitable for filing in Court and attest to the Administrator's due diligence
14 and compliance with all of its obligations under this Agreement, including but not limited to, its
15 mailing of the Class Notice, the Class Notices returned as undelivered, the re-mailing of Class
16 Notices, attempts to locate Class Members, the total number of Requests for Exclusion from
17 Settlement it received, the number of written objections, and attach the objections and a list of
18 the employees that opted-out (if any.). The Administrator will supplement its declaration as
19 needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the
20 Administrator's declaration(s) in Court.

21 70. Class Members' Rights. Each Class Member will be fully advised of the
22 Settlement, the ability to timely object to the settlement, and the ability to timely opt-out or
23 timely request exclusion from the Class Claims portion of the Settlement. The Notice will
24 inform the Class Members of the Court-established deadlines for filing objections or requesting
25 exclusion from the Settlement in accordance with the following guidelines:

26 (a) Requests for Exclusion from Class. Any Class Member, other than
27 Plaintiffs, may request to be excluded from the Class by submitting a "Request for Exclusion" to
28 the Administrator, postmarked on or before the Response Deadline. To be valid, the Request for

1 Exclusion must be timely postmarked by the Response Deadline. The Request for Exclusion
2 should state:

3 “I WISH TO BE EXCLUDED FROM THE CLASS IN THE
4 HOWARD ROOFING LAWSUIT. I UNDERSTAND THAT IF I
5 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
6 WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT
7 FROM THIS LAWSUIT.”

8 To be valid, any Request for Exclusion must include the full name, address, telephone
9 number, last four digits of the social security number or date of birth, and signature of the Class
10 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
11 Administrator at the specified address set forth in the Notice. Any such Request must be made in
12 accordance with the terms set forth in the Notice. A Request for Exclusion via mail will be
13 timely only if postmarked by the Response Deadline, unless the Parties otherwise agree in
14 writing. Any Class Member who timely requests exclusion in compliance with these
15 requirements: (i) will not have any rights under this Agreement, including the right to object,
16 appeal or comment on the Settlement; (ii) will not be entitled to receive the Individual Class
17 Payment under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment.
18 Any Class Member who is an Aggrieved Employee who requests timely exclusion will still be
19 subject to the Released PAGA Claims to the fullest extent permitted by law and receive an
20 Individual PAGA Payment. Because future PAGA claims are subject to claim preclusion upon
21 entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are
22 deemed to release the claims identified in Section E of this Agreement and are eligible for
23 Individual PAGA Payment. All Parties and their counsel, including Defendant’s respective
24 members, member managers, owners, officers, and directors, shall not encourage or solicit opt-
25 outs or objections, directly or indirectly, through any means.

26 (b) Binding Effect on Participating Class Members. All Participating Class
27 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
28 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have

1 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
2 Settlement.

3 (c) Objections to Settlement. Only Participating Class Members may object
4 to the class action components of the Settlement and/or this Agreement. Any Participating Class
5 Member, other than Plaintiffs, who does not submit a valid and timely Request for Exclusion
6 may object to the terms of this Agreement. To object, a Participating Class Member shall inform
7 the Administrator, in writing, of his or her objection which must be postmarked by the Response
8 Deadline at the address set forth in the Notice. Such written objection shall include the
9 Objecting Class Member's full name, address, telephone number, last four digits of the social
10 security number or date of birth, signature, and dates of employment with Defendant, in addition
11 to the case name and number, the basis for the objection, including any legal support and each
12 specific reason in support of the objection, as well as any documentation or evidence in support
13 thereof, and, if the Objecting Participating Class Member is represented by counsel, the name
14 and address of his or her counsel. The Administrator shall provide objections, if any, to Class
15 Counsel and Defense Counsel within three (3) calendar days of receipt, and the Administrator
16 shall attach the same to its declaration of due diligence and file with the Court prior to the Final
17 Approval Hearing. An Objecting Participating Class Member remains eligible to receive
18 monetary compensation from the Settlement. Plaintiffs and Defendant shall not be responsible
19 for any fees, costs, or expenses incurred by an Objecting Participating Class Member and/or his
20 or her counsel related to any objections to the Settlement. In the alternative, Participating Class
21 Members may appear in Court (or hire an attorney to appear in Court) to present verbal
22 objections at the Final Approval hearing. Submitting an objection does not preserve the right to
23 appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record
24 by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil
25 Procedure § 663. Non-Participating Class Members have no right to object to any of the class
26 action components of the Settlement.

27 (d) Failure to Object. Any Participating Class Member who does not timely
28 and properly become a party of record by objecting or filing a motion to vacate the judgment

1 waives any and all rights to appeal from the Judgment, including all rights to any post-judgment
2 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial,
3 a motion under California Code of Civil Procedure section 473, and extraordinary writs.

4 (e) Responses to Objections. Each Party retains the right to respond to any
5 objection raised by a Participating Class Member, including the right to file responsive documents
6 in Court. Counsel for the Parties may file a response to any objections submitted by an Objecting
7 Participating Class Member at least five (5) court days before the date of the Final Approval
8 Hearing, or as otherwise ordered or accepted by the Court.

9 (f) Participating Class Members will have until the Response Deadline to
10 object or submit a Request for Exclusion to the Administrator by U.S. Mail. The Administrator
11 shall disclose jointly to Class Counsel and Defense Counsel what objections or Requests for
12 Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or
13 Defense Counsel.

14 (g) Defendant's Right to Withdraw. If the number of timely and valid
15 Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class
16 Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The
17 Parties agree that, if Defendant withdraws, the Settlement shall be void *ab initio*, have no force
18 or effect whatsoever, and that neither Party will have any further obligation to perform under this
19 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
20 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the
21 Court of its election to withdraw not later than seven (7) days after the Administrator sends the
22 final Exclusion List to Defense Counsel. Late elections will have no effect.

23 71. Funding of the Gross Settlement Amount. Defendant shall deposit the Gross
24 Settlement Amount, plus Defendant's share of payroll taxes owed on Individual Class Payments,
25 with the Administrator no later than 20 days after the Effective Date.

26 72. Distribution of Funds. No later than 14 calendar days after the deposit of the
27 Settlement Amount by Defendant, the Administrator shall mail via First Class U.S. Mail, postage
28 prepaid the Individual Class Payments to the Participating Class Members, the Individual PAGA

1 Payments to the Aggrieved Employees, the payment to Class Counsel for the Attorneys' Fees
2 and Costs Award, any Service Payment to the Class Representative, the payment to the LWDA
3 for PAGA Penalties, and will pay itself the Administration Costs. The Administrator's
4 disbursement of the Class Counsel's Attorneys' Fees and Costs payment and the Class
5 Representatives' Service Payments shall not precede disbursement of Individual Class Payment
6 and Individual PAGA Payments.

7 73. Deadline for Cashing Settlement Checks. Participating Class Members and
8 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
9 their settlement checks. The face of each check shall prominently state the date (typically one
10 hundred and eighty (180) days after the date of mailing) when the check will be voided. The
11 Administrator will cancel all checks not cashed by the void date. The Administrator will send
12 checks for Individual Settlement Payments to all Participating Class Members (including those
13 for whom Class Notice was returned undelivered). The Administrator will send checks for
14 Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class
15 Members who qualify as Aggrieved Employees (including those for whom Class Notice was
16 returned undelivered). The Administrator may send Participating Class Members a single check
17 combining the Individual Class Payment and the Individual PAGA Payment. The release will be
18 binding upon all Participating Class Members who do not cash their checks within the 180-day
19 period. In the event that any settlement check is returned to the Administrator within 180 days of
20 mailing, the Administrator will, within five (5) business days of receipt of the returned settlement
21 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
22 Counsel of the results. If a new address is located by these means, the Administrator will have
23 ten (10) business days to re-issue the check. The Administrator need not take further steps to
24 deliver checks to Class Members whose re-mailed checks are returned as undelivered. Neither
25 Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor the Administrator will have any
26 liability for lost or stolen settlement checks, forged signatures on settlement checks, or
27 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a
28 Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she

believes that a settlement check has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check. If any Participating Class Member's or Aggrieved Employee's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member.

I. Duties of the Parties Prior to the Court's Approval

74. Promptly after execution of this Agreement, Plaintiffs will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

- (a) Approving as to form and content the proposed Notice;
- (b) Directing the mailing of the Notice by first class mail to the Class Members;
- (c) Preliminarily approving this Settlement;
- (d) Preliminarily certifying the class for purposes of this Settlement;
- (e) Advising the LWDA of the proposed Settlement; and
- (f) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate. Plaintiff will prepare the first draft of the Preliminary Approval. Plaintiff shall provide a draft of the Motion for Preliminary Approval and Proposed Order to Defense Counsel not later than seven (7) days prior to filing the Motion for Preliminary Approval. Class Counsel and Defense Counsel will expeditiously meet and confer via e-mail or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Preliminary Approval. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than sixty (60) days 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 Order to the Administrator and LWDA.

1 If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the
2 supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously
3 work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to
4 resolve the disagreement. If the Court does not grant Preliminary Approval or conditions
5 Preliminary Approval on any material change to this Agreement, Class Counsel and Defense
6 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by
7 telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's
8 concerns.

9 **J. Duties of the Parties Following Court's Final Approval**

10 75. Not later than sixteen (16) court days before the calendared Final Approval
11 Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a
12 request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a
13 Proposed Final Approval Order and a proposed Judgment. In connection with the Final Approval
14 Hearing provided for in this Agreement, Class Counsel shall submit a proposed Final Approval
15 Order:

16 (a) Approving the Settlement, adjudging the terms thereof to be fair,
17 reasonable and adequate, and directing consummation of its terms and provisions;

18 (b) Approving Class Counsel's application for an award of attorneys' fees and
19 reimbursement of litigation costs and expenses, Service Payments to the Class Representatives,
20 and the payment to the Administrator for costs of administering the settlement; and

21 (c) Entering judgment approving settlement.

22 Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7) days
23 prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will
24 expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
25 disagreements concerning the Motion for Final Approval.

26 **K. Duty to Cooperate & Voiding the Agreement**

27 76. If the Court does not grant Final Approval or conditions Final Approval on any
28 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 Payments, Class Counsel Attorneys' Fees and Costs Payment, and/or Administrator Expenses Payment shall not constitute a material change to the Agreement within the meaning of this paragraph. The Parties agree 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. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

77. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Attorneys' Fees and Costs Payment 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, except as to matters that do not affect the amount of the Net Settlement Amount.

78. 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, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. 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.

79. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

80. If the Settlement is voided or fails for any reason, any costs incurred by the Administrator shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in this Agreement.

L. Other Terms

81. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

82. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

83. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment.

84. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Agreement.

1 85. No Admission of Liability, Class Certification or Representative Manageability
2 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
3 claims. Defendant denies any and all liability to Plaintiffs and/or any Class Member and/or
4 Aggrieved Employee in this Action, as to any and all causes of action that were asserted or that
5 might have been asserted in this Action. Nothing in this Agreement is intended or should be
6 construed as an admission by Defendant that any of the allegations in the Action and/or
7 Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor
8 should it be intended or construed as an admission by Plaintiff's that Defendant's defenses in the
9 Action have merit. Nonetheless, Plaintiffs and Defendant wish to settle and compromise the
10 matters at issue in the Operative Complaint to avoid further substantial expense and the
11 inconvenience and distraction of protracted and burdensome litigation. Plaintiffs and Defendant
12 have taken into account the uncertainty and risks inherent in litigation, and without conceding
13 any infirmity in the claims and defenses that they has asserted or could assert against each other,
14 have determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner
15 and upon the terms and conditions set forth in this Agreement. The Parties agree that class
16 certification and representative treatment is for purposes of this Settlement only. If, for any
17 reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment,
18 Defendant reserves the right to contest certification of any class for any reasons, and Defendant
19 reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to
20 move for class certification on any grounds available and to contest Defendant's defenses. The
21 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on,
22 and will not be admissible in connection with, any litigation (except for proceedings to enforce
23 or effectuate the Settlement and this Agreement).

24 86. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
25 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
26 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
27 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
28 Agreement with the intention of avoiding further disputes and litigation with the attendant

1 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
2 related documents such as the notices, and motions for preliminary and final approval, shall,
3 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
4 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
5 settlement, and/or interpret or enforce this Agreement.

6 87. No Publicity. The Parties will not publicize the Settlement or disclose it to third
7 parties prior to the Court granting Preliminary Approval, except as required or necessary to
8 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
9 Class Representatives agree that they will not discuss the Settlement with the media, any
10 settlement and verdict reporting service, any social media postings or other Internet postings.
11 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
12 other case materials in the Action related to seeking and obtaining Court approval of this
13 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
14 Members or their representatives about this Settlement, including through the posting of Court-
15 filed documents on Class Counsel's websites for access solely by the Class Members, or to
16 prevent the Parties or their representatives from communicating with financial or legal advisors
17 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
18 the Action has been settled on terms mutually agreeable to the Parties.

19 88. Non-Disparagement. Plaintiffs agree not to make any untruthful, malicious,
20 disparaging or defamatory statements, allegations, comments or communications, regardless of
21 form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp, or
22 otherwise), regarding the Defendants. Plaintiffs further agree not to encourage authorize any
23 such statements, allegations, comments or communications to be made by others on their behalf.
24 To the extent Plaintiffs have posted any negative comments about the Defendants on Glassdoor,
25 Yelp, or other websites, Plaintiffs agree to request that these comments be removed and to
26 provide a copy of such request to Defense Counsel within thirty (30) calendar days of the
27 execution of this Agreement.
28

1 89. Notices. Unless otherwise specifically provided herein, all notices, demands or
2 other communications given hereunder shall be in writing and shall be deemed to have been duly
3 given as of the third business day after mailing by United States registered or certified mail,
4 return receipt requested, addressed:

5 *To the Class:*

6 Brian J. Mankin
7 **brian@lmlfirm.com**
8 Lauby, Mankin & Lauby LLP
9 5198 Arlington Ave, PMB 513
 Riverside, CA 92504
 Tel: (951) 320-1444 | Fax: (951) 320-1445

10 *To Defendant:*

11 Matthew Sgnilek
12 **msgnilek@ohaganmeyer.com**
13 O'HAGAN & MEYER
14 3200 Park Center Drive, Suite 700
 Costa Mesa, CA 92626
 Tel: (949) 942-8500 | Fax: (949) 942-8510

15 90. Construction. The Parties hereto agree that the terms and conditions of this
16 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
17 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
18 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiffs
19 and Defendant expressly waive the common-law and statutory rule of construction that
20 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
21 and represent that the language in all parts of this Agreement shall be in all cases construed as a
22 whole, according to its fair meaning.

23 91. Captions and Interpretations. Paragraph titles or captions contained herein are
24 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
25 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
26 contractual and not merely a recital.

27 92. Modification. This Agreement may not be changed, altered, or modified, except
28 in writing and signed by the Parties hereto, and approved by the Court. This Settlement

1 Agreement may not be discharged except by performance in accordance with its terms or by a
2 writing signed by all of the Parties hereto.

3 93. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
4 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
5 provide written notice to the other Party and allow an opportunity to cure the alleged
6 deficiencies, and Plaintiffs and Defendant may agree to seek the help of the Mediator to resolve
7 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
8 own attorneys' fees and costs. This provision shall not apply to any legal action or other
9 proceeding instituted by any person or entity other than Plaintiffs or Defendant.

10 94. Choice of Law. This Settlement Agreement shall be governed by and construed,
11 enforced and administered in accordance with the laws of the State of California, without regard
12 to its conflicts-of-law rules.

13 95. Integration Clause. This Settlement Agreement contains the entire agreement
14 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
15 or contemporaneous agreements, understandings, representations, and statements, whether oral
16 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
17 hereunder may be waived except in writing.

18 96. Binding On Assigns. This Agreement shall be binding upon and inure to the
19 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
20 successors and assigns.

21 97. Integration. Upon execution by all Parties and their counsel, this Agreement
22 together with its attached exhibits shall constitute the entire agreement between the Parties
23 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
24 inducements made to or by any Party.

25 98. Waiver of Reemployment. Plaintiffs acknowledge that they have no intent to
26 apply for employment and/or re-employment with Defendant. Plaintiffs further acknowledge that
27 Defendant has the right to refuse to rehire Plaintiffs for non-discriminatory and non-retaliatory
28

1 reasons and Plaintiffs acknowledge that Defendant's position is that such legitimate non-
2 discriminatory and non-retaliatory reasons exist.

3 99. No Prior Assignments. The Parties separately represent and warrant that they have
4 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
5 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
6 action, or right released and discharged by the Party in this Settlement.

7 100. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense
8 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
9 Settlement be relied upon as such within the meaning of United States Treasury Department
10 Circular 230 (31 CFR Part 10, as amended) or otherwise.

11 101. Applicable Law. All terms and conditions of this Agreement and its exhibits will
12 be governed by and interpreted according to the internal laws of the state of California, without
13 regard to conflict of law principles.

14 102. Confidentiality. To the extent permitted by law, all agreements made, and orders
15 entered during Action and in this Agreement relating to the confidentiality of information shall
16 survive the execution of this Agreement.

17 103. Use and Return of Class Data. Information provided to Class Counsel pursuant to
18 Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
19 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
20 connection with the Settlement, may be used only with respect to this Settlement, and no other
21 purpose, and may not be used in any way that violates any existing contractual agreement,
22 statute, or rule of court.

23 104. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
24 because the members of the Class are numerous, it is impossible or impractical to have each
25 Class Member execute this Agreement. The Notice will advise all Class Members of the binding
26 nature of the release provided herein and such shall have the same force and effect as if this
27 Agreement were executed by each Class Member.
28

105. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: Jun 2, 2024

PLAINTIFF AND CLASS REPRESENTATIVE


Victor medina (Jun 2, 2024 08:28 PDT)

Victor Medina

Dated: 05/29/2024

PLAINTIFF AND CLASS REPRESENTATIVE


Francisco Cruz (May 29, 2024 10:50 PDT)

Francisco Cruz

Dated: _____

DEFENDANT HOWARD ROOFING COMPANY, INC.

By: _____ (name)
_____ (title)

APPROVED AS TO FORM:

Dated: 6/3/2024

CLASS COUNSEL

LAUBY, MANKIN & LAUBY LLP


Brian J. Mankin
Attorneys for Plaintiffs

Dated: May 29, 2024

CLASS COUNSEL

TORUS LLP


Daniel J. Hyun
Attorneys for Plaintiffs

Dated: _____

DEFENSE COUNSEL
O'HAGAN & MEYER

Matthew C. Sgnilek, Esq.
Attorneys for Defendant

105. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

Victor Medina

Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

Francisco Cruz

Dated: 5/31/2024

DEFENDANT HOWARD ROOFING COMPANY, INC.

RON MALEKOW

By: RON MALEKOW 2E7C058962F040E... (name)
EVP (title)

APPROVED AS TO FORM:

Dated: _____

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiffs

Dated: _____

CLASS COUNSEL
TORUS LLP

Daniel J. Hyun
Attorneys for Plaintiffs

Dated: 05/31/2024

DEFENSE COUNSEL
O'HAGAN & MEYER

Matthew C. Sgnilek, Esq.
Attorneys for Defendant

EXHIBIT “B”

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00552 Medina v Howard
Roofing (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
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Victor Medina

14000-00552 Medina v Howard Roofing

05-30-2023	Approved		Billable	E112 Court fees	Chiarito, Tracie	75.00	0.00	1.00	75.00
Receipt for LWDA - submit PACA letter									
05-30-2023	Approved		Billable	E101 Copying	Chiarito, Tracie	0.06	0.00	112.00	6.72
112 copies @ .06 each - initial letters to company									
05-30-2023	Approved		Billable	E108 Postage	Chiarito, Tracie	28.02	0.00	1.00	28.02
Postage for May 2023									
05-30-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	462.66	0.00	1.00	462.66
TurboCourt Order #8036719 - file complaint									
06-20-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	101.50	0.00	1.00	101.50
Bosco Inv #8966859 Serve: Howard Roofing Company, Inc., a California Corporation Summons; Complaint; Civil Case Cover Sheet; Certificate of Assignment; ADR Court: San Bernardino County Superior Court - Central District Closed on: 06/20/2023									
06-23-2023	Approved		Billable	E112 Court fees	Chiarito, Tracie	1,002.00	0.00	1.00	1,002.00
Receipt for San Bernardino Superior Court for complex fees									
07-12-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	9.95	0.00	1.00	9.95
TurboCourt Order #8122626 - file Notice and Acknowledgement of Receipt									
07-31-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	8.80	0.00	1.00	8.80
LoopUp Inv #429295 Dated 07-31-2023									
08-04-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	9.95	0.00	1.00	9.95
TurboCourt Order #8173919 - file FAC									
08-09-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	31.06	0.00	1.00	31.06
TurboCourt Order #8183173 - file Slip and Order to Cont CMC									
11-05-2023	Approved		Billable	E125 Mediation fees	Chiarito, Tracie	7,500.00	0.00	1.00	7,500.00
Invoice from Todd Smith Mediation for 3/4/24 mediation w Todd Smith, Esq.									
03-14-2024	Approved		Billable	E119 Experts	Chiarito, Tracie	8,880.00	0.00	1.00	8,880.00
Berger Consulting Group Inv #10853									

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00552 Medina v Howard
Roofing (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Victor Medina</u> <u>14000-00552 Medina v Howard Roofing</u>									
03-20-2024	Approved	Bosco Inv #10611277 File and conform in Dept. 526. -Stipulation: Proposed Order *advance fee* Court: San Bernardino County Superior Court - Central District Completed on: 03/15/2024	Billable	Attorney Service	Chiarito, Tracie	91.45	0.00	1.00	91.45
03-28-2024	Approved	Bosco Inv #10750725 File and conform in Dept. 526. Stipulation: Proposed Order **advance fee* ***Ok to resubmit as defense has paid their fees in full. *** Court: San Bernardino County Superior Court - Central District Completed on: 03/27/2024	Billable	Attorney Service	Chiarito, Tracie	81.95	0.00	1.00	81.95
04-11-2024	Approved	Bosco Inv #10830052 File and Conform: Second Amended Complaint Court: San Bernardino County Superior Court - Central District Completed on: 04/10/2024	Billable	Attorney Service	Chiarito, Tracie	74.30	0.00	1.00	74.30
06-05-2024	Approved	Bosco Inv #11164036 File and conform. -Motion -Declaration x4 -Proposed Order *advance fees* Court: San Bernardino County Superior Court - Central District Completed on: 06/03/2024	Billable	Attorney Service	Chiarito, Tracie	222.85	0.00	1.00	222.85
06-20-2024	Approved	Bosco Inv #8968859 Serve: Howard Roofing Company, Inc., a California Corporation Summons: Complaint; Civil Case Cover Sheet; Certificate of Assignment; ADR Court: San Bernardino County Superior Court - Central District Closed on: 06/20/2023	Billable	Attorney Service	Chiarito, Tracie	101.50	0.00	1.00	101.50

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00552 Medina v Howard
Roofing (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Victor Medina</u>									
<u>14000-00552 Medina v Howard Roofing</u>									
06-27-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11837960 for 6/26/24 PA									
10-11-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	300.00	0.00	1.00	300.00
Estimated costs to file MFA and supporting documents via Bosco									
11-04-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	144.00	0.00	1.00	144.00
Estimated costs for Courtcall for MFA hearing									

Project Total 19,203.71
Client Total 19,203.71
Grand Total 19,203.71

EXHIBIT “C”