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8 Attorneys for Plaintiff,
9 FERNANDO NINO

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

FERNANDO NINO,

Plaintiff,

v.

PREMO ROOFING COMPANY; and DOES
1 through 50, inclusive,

Defendants.

Case No. 23CV001620

**DECLARATION OF B. JAMES
FITZPATRICK IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE
ATTORNEY GENERAL ACT**

Date: August 9, 2024

Time: 8:30 a.m.

Dept.: 15

1 I, B. James Fitzpatrick, hereby declare and state as follows:

2 1. I am an attorney duly admitted to practice in the State of California and am a
3 partner in the law firm of Fitzpatrick & Swanston, counsel of record for Plaintiff Fernando
4 Nino ("Plaintiff"). I have personal knowledge of the facts set forth below and if called to
5 testify I could and would do so competently.

6 **I. LITIGATION BACKGROUND**

7 2. On May 18, 2023, Plaintiff sent a letter to Defendant and the LWDA, on behalf
8 of himself and other aggrieved employees, in compliance with California Labor Code section
9 2699.3.

10 3. On May 18, 2023, Plaintiff filed an individual complaint. On September 12,
11 2023, Plaintiff filed a First Amended Complaint adding a representative claim pursuant to
12 Labor Code § 2698.

13 4. After commencement of the lawsuit, the Parties met and conferred to discuss
14 participating in mediation. The Parties subsequently agreed to participate in private mediation.

15 5. In connection with mediation, the Parties engaged in informal discovery.
16 Defendant has provided informal discovery pertaining to aggrieved employees during the
17 PAGA period, the number of pay periods at issue, Plaintiff's personnel file and wage
18 statements, a sample of payroll records of the PAGA group, as well as production of pertinent
19 policies. The data provided allowed Plaintiff's counsel to analyze liability and exposure in
20 preparation for the mediation.

21 6. On May 9, 2024, the Parties participated in private mediation with wage-and-
22 hour mediator, Christopher Panetta, Esq., of Fenton & Keller . The Parties spoke at length
23 about the strengths and weaknesses of each side's claims and defenses, and ultimately reached
24 the current settlement of Plaintiff's PAGA claims.

25 **II. SUMMARY OF THE PAGA SETTLEMENT**

26 7. Counsel supports the settlement as fair, reasonable, and adequate, and in the best
27 interest of the Aggrieved Employees as a whole. Attached hereto as **Exhibit A** is a true and
28 correct copy of the Private Attorneys' General Act Settlement Agreement.

1 8. Counsel's application for an award of attorneys' fees in the amount of
2 \$90,000.00 and reimbursement of actual litigation costs in the amount of \$6,000.00 is
3 reasonable and fair. These amounts are well within what is reasonable and customary in both
4 wage and hour settlements in general and is based on the skill displayed by Counsel, the effort
5 and resources invested in this case by Counsel, the factual and legal complexities of this case,
6 the importance of the interests which are the subject of this litigation, the risks undertaken by
7 Counsel, and the degree of success achieved by Counsel.

8 9. Pursuant to the terms of the Parties' proposed Settlement Agreement, Defendant
9 will pay the total amount of \$250,000.00 (the "Gross Settlement Amount"). This amount
10 encompasses a settlement of PAGA claims asserted in this lawsuit, a service award to Plaintiff
11 in the amount of \$5,000.00, attorneys' fees to Plaintiff's counsel in the amount of \$90,000.00,
12 Plaintiff's counsel's actual litigation costs of \$6,000.00, and settlement administration costs in
13 an amount not to exceed \$5,000.00.

14 10. Based on the amounts above, the PAGA Fund is \$144,000.00. Pursuant to the
15 PAGA, this amount includes approximately \$108,000.00 to be distributed to the California
16 Labor and Workforce Development Agency ("LWDA"), and approximately \$36,000.00 to be
17 distributed to "Aggrieved Employees," defined as all current and former non-exempt
18 employees of Defendant who worked in California at any time from May 18, 2022, through
19 May 9, 2024 (the "PAGA Period").

20 11. The portion of the PAGA Fund distributed to the Aggrieved Employees will be
21 distributed on a *pro rata* basis, based on the number of pay periods each Aggrieved Employee
22 worked as a non-exempt employee in California during the PAGA Period divided by the
23 aggregate total number of pay periods worked by all Aggrieved Employees as non-exempt
24 employees in California during the PAGA Period.

25 12. Defendant has represented that there are 80 Aggrieved Employees. Based
26 thereon, on a raw average, each Aggrieved Employee may potentially recover approximately
27 \$450.00 from the portion of the Net Settlement Amount attributable to the Aggrieved
28 Employees.

1 13. The Settlement Agreement was the product of negotiations between highly able
2 and experienced attorneys on both sides who possessed the relevant data and extensive
3 information which they had carefully analyzed. Over many years in highly contested litigation
4 the Parties engaged in extensive investigation and discovery, involving formal and informal
5 discovery, and in arm's length negotiations at mediation with an experienced neutral that
6 resulted in the settlement.

7 14. Counsel engaged in extensive factual investigation before settling, including the
8 exchange of informal discovery, analyzing time and payroll records, and reviewing
9 Defendant's pertinent payroll policies. This allowed Counsel to conduct a full analysis of
10 exposure.

11 15. The Settlement Agreement authorized Plaintiff to request a Service Award of
12 \$5,000.00 for serving as the Representative. Plaintiff provided significant assistance with the
13 lawsuit, including providing information and documents to his counsel, discussing the lawsuit
14 with his counsel on multiple occasions, remaining available during mediation, reviewing
15 various documents, including the complaint, PAGA letter, his respective declaration, and the
16 Settlement Agreement.

17 16. Plaintiff does not have any interests adverse to the Aggrieved Employees, nor
18 have any such issues been raised or presented. Plaintiff has taken all necessary steps to
19 represent the interests of the Aggrieved Employees.

20 **III. POTENTIAL DAMAGES AND PENALTIES**

21 17. Plaintiff asserts that his representative PAGA claims are based on the allegations
22 that Defendant (a) failed to pay all minimum, regular, and overtime wages, meal and rest
23 period premiums owed in violation of Labor Code §§ 201-204, 226.7, 510, 558, 1194, 1197,
24 and 1197.1; (b) failed to reimburse work-related expenses in violation of Labor Code § 2802;
25 and (c) failed to provide accurate itemized wage statements in violation of Labor Code § 226.

26 18. Defendant has denied violations of any applicable laws and denied liability for
27 any claims asserted in the Action. In this regard, Defendant asserts that it maintained lawful
28 policies and practices in place. With respect to the off-the-clock claims, Defendant contends

1 that it has revised its practices, which limits any potentially recoverable PAGA penalties to the
2 State of California and aggrieved employees. Defendant also argues that the Court has
3 discretion under PAGA to reduce the maximum allowable PAGA penalties, or to decide not to
4 award PAGA penalties at all. Should Defendant have prevailed on its arguments or defenses
5 above, the State of California and aggrieved employees would have been left with minimal or
6 zero recovery.

7 19. Based on the data provided by Defendant, Plaintiff calculated total exposure to
8 be approximately \$1,627,650.00, based on the following:

- 9 • \$361,700.00 for the off-the-clock violations (calculated based on 3,617 total pay
10 periods x \$100 penalty per violation);
- 11 • \$361.700.00 for the meal and rest period premium violations (calculated based on
12 3,617 pay periods x \$100 penalty per violation);
- 13 • \$904,250.00 for the derivative wage statement violations (calculated based on 3,617
14 total pay periods x \$250 per pay period, pursuant to Labor Code § 226.3 and *Raines*
15 *v. Coastal Pac. Food Dist.* (2018) 23 Cal. App. 5th 667).

16 20. Specifically, with respect to the failure to pay wages claim, Plaintiff alleges that
17 Defendant failed to pay all wages owed for off-the-clock work performed by Plaintiff and
18 employees. In this regard, Plaintiff alleges that employees were required to report to work at
19 Defendant's "yard" to receive their work assignments and supplies. This procedure was done
20 entirely off-the-clock. As a result of such policy and practice, Plaintiff alleges that Plaintiff
21 and employees were not paid all wages owed.

22 21. With respect to meal and rest period claims, Plaintiff alleges that Defendant
23 routinely denied employees the opportunity to take timely, off-duty meal and rest periods, and
24 never provided a second meal period after ten hours of work. In all of these instances, no meal
25 or rest period premium was ever paid, and the sample data set provided by Defendant
26 demonstrates that Defendant never paid any employee a meal period premium.

27 22. With respect to the failure to reimburse work-related expenses, Plaintiff alleges
28 that Defendant required the employees to use their personal cellular telephone to communicate

1 regarding work-related matters and to receive work instructions and schedule changes.

2 Additionally, Defendant required employees to purchase necessary tools and equipment, and
3 deducted the money from their pay.

4 23. Lastly, as a result of the claims above, Plaintiff asserts wage statement violations
5 under the PAGA. Based on the above, Plaintiff alleges violations of Labor Code §§ 201-204,
6 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2800.

7 24. The proposed settlement for \$250,000.00 exceeds PAGA settlements that courts
8 have approved in other cases, when considered as a percentage of the overall settlement value
9 of the case. Here, the proposed settlement amounts to 15% of the total possible liability in this
10 matter, which exceeds other PAGA settlements approved by courts.

11 **IV. ATTORNEY EXPERIENCE**

12 25. I am familiar with all aspects of this case and all tasks undertaken by the various
13 members of this firm in litigating this case. I have spent significant time pursuing the claims
14 that have been alleged in this action since the commencement of the case. I have been assisted
15 by attorney Alison L. Baker and several paralegals in my office. As a result of my firm's
16 diligence in pursuing the factual and legal issues presented by this case, we were able to
17 realistically assess the Aggrieved Employees' claims, evaluate their damages, and Defendant's
18 exposure. All work performed by our office is done on a contingency basis. Our firm has
19 received no compensation for our time invested or expenses incurred in litigating this case.
20 We have prosecuted this litigation up to this point, taking the risk that we ultimately would not
21 receive any compensation for our work. My office will have invested 190.3 hours on this
22 case, which includes anticipated future time. Attached hereto as **Exhibit B** is a detailed
23 summary of tasks and hours spent by this firm in litigating this case.

24 26. The hourly rate for attorneys in this firm is \$800.00 and the hourly rate for
25 paralegals is \$185.00. Since at least 2020, I have been approved at hourly rates of \$750.00
26 and \$800.00 per hour by various Courts, in several matters, including, in the matters entitled:
27 *Jose Antonio Ortiz Arrellano v. Rocha Brothers Farms, LLC*, Santa Cruz County Superior
28 Court, Case No. 21CV01286; *Sione Fuapau v. LHOIST North America of Arizona, Inc.*,

1 United States District Court, Northern District of California, Case No. 20-CV-04404-VKD;
2 *Sandra Lopez v. Motel 6 Operating, L.P.*, Ventura County Superior Court Case No. 56-2020-
3 00542312-CU-OE-VTA; *Christina Mendoza v. Planned Parenthood Mar Monte, Inc.*, Santa
4 Clara Superior Court, Case No. 18CV329544; *Javier Mendoza v. National Vision, Inc.*, United
5 States District Court, Northern District of California, Case No. 19-CV-01485-SVK; *Valarie*
6 *Murray v. Granite Wellness Centers*, Nevada County Superior Court, Case No. CU20-084680;
7 and *Nicolas Serafica v. HGST, Inc.*, Santa Clara County Superior Court Case No.
8 21CV386574.

9 27. In this motion, I request a reduced attorney hourly rate of \$595.00. Accordingly,
10 the total lodestar for my hours will be approximately \$95,200.00 based on the reduced hourly
11 rate of \$595.00 per hour [\$595.00 x 160 attorney hours]. This has been the approved hourly
12 rate by this Court for the past three years without any adjustment for inflation.

13 28. Having represented both employees and employers during my practice, I am
14 familiar with the contingent fee market throughout Northern California, where I primarily
15 practice law, and in other areas of the state in which my firm regularly litigates. Considering
16 our experience and my knowledge of the market, I believe that the hourly rates charged by my
17 firm, and previously approved by this Court, are fair and reasonable and less than those
18 charged by my colleagues in other areas of California and the national market for prosecuting
19 class actions.

20 29. I received my bachelor's degree from the University of California, Santa Barbara
21 and my Juris Doctor degree from the University of Santa Clara School of Law. I have
22 practiced law since 1987. The primary emphasis of my practice is employment litigation. I
23 have represented both employers and employees. Over 15 years ago, my office commenced
24 handling plaintiff class action wage and hour cases. Since then, my office has handled
25 hundreds of wage and hour cases to conclusion and has been class counsel and/or co-counsel
26 in over 100 class actions. My firm currently has wage and hour cases in Alameda County
27 Superior Court, Monterey County Superior Court, Nevada County Superior Court, Santa Clara
28 Superior Court, San Benito Superior Court, San Bernardino County Superior Court, San

1 Joaquin County Superior Court Santa Cruz Superior Court, Ventura County Superior Court,
2 and the United States District Courts for the Eastern and Northern District of California.

3 30. Counsel risked not only a great deal of time, but also significant expense to
4 ensure the successful litigation of this action on behalf of all employees. In addition to the
5 supporting documentation and legal authority presented in Plaintiff's moving papers, Counsel
6 submits that the attorneys' fees proposed are not just fair and reasonable; they are necessary in
7 order to incentivize attorneys to take on the risk of time and expense associated with these
8 types of actions. Indeed, many times counsel expend enormous amounts of work and out of
9 pocket costs in the interest of aggrieved employees and/or the State of California, only to end
10 up without any recovery whatsoever. For example, Counsel expended significant time and
11 expenses in a wage/hour class and PAGA action, only to have the District Court grant
12 summary judgment in its entirety against plaintiff. See *Guynn-Neupane*, 2021 WL 4481661
13 (N.D. Cal. Sep. 30, 2021). There are actual risks that Plaintiff requests this Court take into
14 account when considering the requested attorneys' fees, including any multiplier to be
15 accounted into Plaintiff's lodestar.

16 31. To date, my firm has incurred \$5,483.51 in litigation costs. The costs are all
17 litigation-related costs. All costs were reasonable and necessary to the effective prosecution of
18 this matter. Counsel advanced costs without guarantee that any of the advanced costs would be
19 recovered. *Berkeley Cement, Inc. v. Regents of the University of California*, (2019) 30 Cal.
20 App. 5th 1133, explains that mediation-related expenses are recoverable under the
21 circumstances of this case. Attached hereto as **Exhibit C** is a copy of the litigation costs my
22 firm has incurred in connection with the prosecution of this lawsuit.

23 32. I do not have a conflict of interest with Plaintiff or the Aggrieved Employee. I
24 will adequately represent the Aggrieved Employees in this action. Counsel has and will
25 zealously represent Plaintiff and the Aggrieved Employees and pursue this lawsuit to its
26 conclusion.

27 33. I do not have any relationship with the proposed *cy pres* recipient that would
28 create an actual or potential conflict of interest. The Parties further agree that Salud Para La

1 Gente, satisfies the legislative intent set out in Code of Civil Procedure § 384(a), in that the
2 organization helps further the purposes of the underlying action and promote justice for all
3 Californians.

4 **V. NOTICE TO THE LWDA**

5 34. Concurrent with the filing of this Motion, Plaintiff uploaded this motion and
6 proposed order to the LWDA's website.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct and if called as a witness I could and would competently testify to
9 each of the matters stated herein, and I state that these matters are based upon my own
10 personal knowledge acquired through first-hand observation, except where stated otherwise.
11 This declaration was executed by me on July 18, 2024, in Salinas, California.

12 /s/ B. James Fitzpatrick

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14 B. James Fitzpatrick
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EXHIBIT A

PRIVATE ATTORNEYS' GENERAL ACT SETTLEMENT AGREEMENT

Plaintiff Fernando Nino ("Plaintiff"), individually and in his capacity as a representative of the State of California on behalf of other aggrieved employees, and Defendant Premo Roofing Company ("Defendant"), hereby enter into this Private Attorneys' Act Settlement Agreement ("Settlement") as follows:

I. DEFINITIONS

As used in this Settlement, the following terms shall have the following meanings:

1. "Action" shall mean the civil action filed on May 18, 2023, entitled *Fernando Nino v. Premo Roofing Company*, Monterey County Superior Court Case No. 23CV001620. For purposes of this Settlement Agreement, the Action only includes Plaintiff's PAGA Claim and does not include Plaintiff's individual claims.
2. "Defendant" shall mean Premo Roofing Company.
3. "Defense Counsel" shall mean Sharilyn Payne of Noland, Hamerly, Etienne & Hoss.
4. "Effective Date" refers to the date upon which both of the following have occurred: (i) approval of the Settlement is granted by the Superior Court of California for the County of Monterey, or other court assuming jurisdiction of this matter, and (ii) the Court's Judgment approving the Settlement becomes Final. The Court's Judgment approving the Settlement becomes Final on the later of: (1) the day after the last day by which a notice of appeal of the Approval Order and/or of an order rejecting any motion to intervene may be timely filed, and none is filed; (2) if such an appeal is filed, and the Approval Order is affirmed, the day after the last date for filing a request for further review of the decision passes and no further review is requested; (3) if an appeal is filed and further review of the decision affirming the Approval Order is requested, the day after the request for review is denied with prejudice and/or no further review of the decision can be requested, or (4) if review is accepted, the day after the United States or California Supreme Court affirms the Settlement.
5. "Gross Settlement Amount" refers to Two Hundred Fifty Thousand and No Cents (\$250,000.00), which is the maximum amount that Defendant will pay pursuant to this Settlement,

PRIVATE ATTORNEYS' GENERAL ACT SETTLEMENT AGREEMENT

excluding Defendant's share of payroll taxes, excluding the Confidential Individual Settlement, and subject to the escalator provision in this Settlement.

6. **"LWDA"** refers to the California Labor & Workforce Development Agency.

7. **"PAGA"** refers to the Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*

8. **"PAGA Period"** shall mean May 18, 2022, and ending on May 9, 2024 (subject to the escalator provision set forth in Paragraph 28).

9. **"PAGA Settlement Members"** shall mean all individuals who are or previously were employed by Defendant in California as hourly, non-exempt employees, at any time during the PAGA Period.

10. **"PAGA Fund"** shall mean the Gross Settlement Payment less Plaintiff's Counsel Fees and Costs, Plaintiff's Enhancement Award, and the Settlement Administration Costs.

11. **"Plaintiff"** refers to Fernando Nino, individually and in his capacity as representative of the State of California on behalf of other aggrieved employees.

12. **"Plaintiff's Counsel"** refers to B. James Fitzpatrick and Alison L. Baker of Fitzpatrick & Swanston.

13. **"Parties"** collectively refers to Plaintiff and Defendant.

14. **"Released Claims"** shall mean any and all claims, whether known or unknown, to recover civil penalties pursuant to PAGA for any alleged violations by Defendants of California Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 210, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1175, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802, 2698, and any category of violations identified in Labor Code § 2699.5, and the related applicable IWC Wage Order provision for the PAGA Period, and any other violations that were alleged or could have been alleged in Plaintiff's letter to the LWDA or any complaint filed in this Action, with the exception of Plaintiff's Individual Claims.

15. **"Released Parties"** shall mean Defendant and each of its respective parent companies, subsidiaries, child companies, divisions, affiliates, related companies, common ownership entities, and co-employers through operation of law or otherwise, and the current, former, and/or future

shareholders, board members, directors, officers, managers, employees, agents, representatives, attorneys, insurers, reinsurers, partners, investors, lenders, administrators, predecessors, successors, assigns, and joint ventures of each, collectively, and individually.

16. “**Service Award**” means the amount that the Court authorized to be paid to Plaintiff, in addition to his Individual Settlement Payment as an Aggrieved Employee, in recognition of his efforts and risks in assisting with the prosecution of the Action. Subject to the Court granting approval of the Settlement, the Parties agree that Plaintiff shall be paid up to \$5,000.00.

17. “**Settlement Administrator**” refers to Phoenix Settlement Administrators, a qualified, third-party settlement administrator agreed to by the Parties to administer the terms of the Settlement.

II. RECITALS

18. On May 18, 2023, Plaintiff sent a letter to Defendant and the LWDA, on behalf of himself and other aggrieved employees, in compliance with California Labor Code section 2699.3.

19. On May 18, 2023, Plaintiff filed an individual complaint with the Monterey County Superior Court. On September 12, 2023, Plaintiff filed a First Amended Complaint with the Monterey County Superior Court adding a representative claim pursuant to Labor Code § 2698.

20. On May 9, 2024, the Parties engaged in private mediation with Christopher Panetta, Esq., of Fenton & Keller, which ultimately led to this Settlement.

21. Plaintiff’s Counsel have thoroughly investigated the facts relating to the claims alleged in the operative complaint and have made a thorough study of the legal principles applicable to the claims asserted against Defendant. Based on their independent investigation and evaluation of this case, Plaintiff’s Counsel have concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability, and potential appellate issues.

22. The Parties enter into this Settlement Agreement on a conditional basis. In the event the Court does not enter a Final Order and Judgment as defined in this Settlement Agreement, this Settlement Agreement will be deemed null and void *ab initio* and will be of no

force or effect whatsoever, and will not be referred to or utilized for any purpose whatsoever.

23. Defendant denies, and continues to deny, each and every claim and contention alleged in the Action and has always maintained that it never engaged in any unlawful acts regarding any of the matters alleged in the Action. Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural and factual grounds should this Settlement Agreement not become final. This Settlement Agreement reflects a compromise reached to end litigation.

24. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement finally disposes of the Action with prejudice, excluding Plaintiff's Individual Claims.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree as follows:

III. NON-ADMISSION OF LIABILITY

25. Based on the factual and legal issues involved, the expense and time necessary to prosecute the Action through trial, the risks, uncertainty and costs of further prosecution, and the relative benefits to the PAGA Settlement Members of an expeditious resolution to the Action, the Parties have concluded that the terms set forth in this Settlement are fair, reasonable, adequate and in the best interests of the PAGA Settlement Members.

26. Defendant denies any liability for any of the claims in the Action, as well as any other potential or unknown claims based on wage and hour violations under state or federal law. Neither this Settlement, nor any document referred to or contemplated herein, nor any action taken to carry out this Settlement, is, may be construed as, or may be used as, an admission, concession, or indication by or against Defendant of any unlawful conduct, fault, wrongdoing or liability whatsoever. Defendant specifically denies that it has engaged in any unlawful or wrongful conduct against Plaintiff or the PAGA Settlement Members.

IV. TERMS OF THE PAGA SETTLEMENT

A. The Gross Settlement Payment

27. Defendant shall pay a settlement payment in a total amount of Two Hundred Fifty--

Thousand and No Cents (\$250,000.00) (the “Gross Settlement Payment”). This is the maximum required payment under this Settlement Agreement. The Gross Settlement Payment includes the PAGA Penalties to be paid to the Labor and Workforce Development Agency (“LWDA”) and PAGA Members (“PAGA Penalties”), Settlement Administration Costs, Service Award to Plaintiff, and Attorneys’ Fees and Costs. The Gross Settlement Amount shall be paid in three installments as follows: Sixty-six Thousand Six Hundred Sixty-six Dollars and 66/100 Cents (\$66,666.66) no later than August 31, 2024; Ninety-one Thousand Six Hundred Sixty-six Dollars and 67/100 Cents (\$91,666.67) no later than October 31, 2024; Ninety-one Thousand Six Hundred Sixty-six Dollars and 67/100 Cents (\$91,666.67) no later than December 31, 2024.

B. Escalation Clause

28. The Gross Settlement Payment was calculated with, and is premised on, Defendant’s representation that there are approximately 4,635 pay periods (“PAGA Pay Periods”) during the PAGA Period. If the total number of pay periods exceeds more than 110% of 4,635, Defendant shall increase the total Gross Settlement Amount by 1% for every 1% increase in pay periods over the 10% threshold.

C. Plaintiff’s Counsel Payment of Attorneys’ Fees and Costs

29. Plaintiff’s Counsel will apply to the Court for an award of attorneys’ fees of Ninety Thousand Dollars and No Cents (\$90,000.00) (“Attorneys Fees”) and reasonable costs of up to Six Thousand Dollars and No Cents (\$6,000.00) (“Attorneys’ Costs”). (Attorneys’ fees and reasonable litigation costs are referred to as “Plaintiff’s Counsel Payment”).

30. Defendant will not oppose or object to Plaintiff’s Counsel’s application for attorneys’ fees, plus all reasonable litigation costs and expenses.

31. Plaintiff’s Counsel’s fees and costs payments shall be paid from the Gross Settlement Payment. Any reductions by the Court of Plaintiff’s Counsel’s request for attorneys’ fees or costs shall revert to the PAGA Fund.

D. Settlement Administration Fees and Costs

32. Settlement administration shall be done by Phoenix Settlement Administrators, a qualified, third-party settlement administrator agreed to by the Parties and approved by the Court

("Settlement Administrator"). The Parties agree that the Settlement Administrator Costs shall be paid from the Gross Settlement Payment. This includes all fees and costs for postage, envelopes, and computer searches to locate addresses; and expenses of the Settlement Administrator to implement and complete the settlement process according to the terms of this Settlement, to calculate payments to individual PAGA Settlement Members, any cost associated with the escheatment process for any uncashed or undeliverable settlement checks, to prepare any necessary tax documents for PAGA Settlement Members, and any other related fees and costs (the "Settlement Administration Costs").

33. The settlement administration fees and costs shall be paid from the Gross Settlement Payment. Any reductions by the Court or any unused amount shall revert to the PAGA Fund.

34. The Parties agree to utilize Phoenix Settlement Administrators to administer the Settlement, at an estimated cost not to exceed \$5,000.00.

E. Plaintiff's Service Award

35. Defendant agrees not to oppose Plaintiff's request for a Service Award of Five Thousand Dollars (\$5,000.00). The Service Award is in addition to the amount Plaintiff is entitled to recover from the PAGA Fund as a PAGA Member. Any portion of the Service Award not approved by the Court shall become part of the PAGA Fund. Further, any Service Award approved by the Court will result in the issuance of an IRS Form 1099 to Plaintiff, who shall assume full responsibility and liability for the payment of taxes due on such award.

F. PAGA Fund

36. After deducting the Plaintiff's Counsel Payment and Settlement Administration Costs, the remainder of the Gross Settlement Payment shall be allocated toward payment to the Labor & Workforce Development Agency and PAGA Settlement Members (the "PAGA Fund").

37. Seventy-five percent (75%) of the PAGA Fund will be sent to the LWDA and twenty-five percent (25%) of the PAGA Fund will be allocated among the PAGA Settlement Members, based on his or her proportionate share of the weeks worked during the PAGA Period.

V. COMPUTATION AND DISTRIBUTION OF TOTAL SETTLEMENT FUND

A. Deposit of Gross Settlement Payment

38. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID Number and calculate all settlement checks and withholdings (if any) required under law based on information that will be confidentially furnished by Defendants. There are no payroll deductions to be calculated under this Settlement, since no part of the Settlement will be classified as wages.

39. Defendant shall deposit the Gross Settlement Payment with the Settlement Administrator within thirty (30) calendar days of the Effective Date.

B. Formula for Calculating Share of PAGA Fund

40. The portion of the PAGA Fund that is paid to each PAGA Settlement Member shall be determined based on the following formula:

(a) The payment to PAGA Settlement Members will be based on the number of pay periods worked by each PAGA Settlement Member during the PAGA Period.

(b) The amount to be paid per pay period worked by a PAGA Settlement Member will be calculated by dividing the value of the portion of the PAGA Fund that will be paid to PAGA Settlement Members by the total number of pay periods worked by all PAGA Settlement Members during the PAGA Period.

(c) Defendant's records shall be determinative for purposes of calculating the number of pay periods worked and any payments to PAGA Settlement Members.

C. Distribution of PAGA Fund

41. Defendant shall provide the Settlement Administrator with a list of the names and addresses of the PAGA Settlement Members, to be furnished within thirty (30) days after the Court issues an Order approving the Settlement. The contact information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the

confidentiality of contact information of the PAGA Settlement Members. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement.

42. Within seven (7) days after the Gross Settlement Payment is fully funded, the Settlement Administrator shall pay the following:

(a) Payment to LWDA in an amount equivalent to seventy-five percent (75%) of the PAGA Fund, or as otherwise directed by the Court.

(b) Payment to the PAGA Settlement Members equivalent to their individual portion of the PAGA Fund (the "Individual Payment"), or as otherwise directed by the Court.

(c) Payment to Plaintiff's Counsel of the court-approved fees and litigation costs.

(d) Payment to the Settlement Administrator equivalent to the Settlement Administrator Costs, or as otherwise directed by the Court.

43. The Settlement Administrator will send the Individual Payment to the PAGA Settlement Members by postmarked First Class U.S. Mail, along with a letter explaining the settlement in substantially the same form as Exhibit A hereto.

44. To provide the best notice and delivery of Individual Payments practicable, any Individual Payment returned to the Settlement Administrator as non-delivered shall be sent by post-marked First Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address is provided for an Individual Payment that is returned as non-deliverable, the Settlement Administrator shall use the best available technology accessible (e.g. skip tracing, address verification, etc.) to the Settlement Administrator or other mutually agreeable method to locate PAGA Settlement Members and will then mail the Individual Payment to the address identified by the best available technology accessible to the Settlement Administrator or other mutually agreeable method. If no current address is located, the Individual Payment for that individual will be deemed undeliverable. If any PAGA Settlement Members cannot be located within two attempts at mailings by the Settlement Administrator, the Individual Payment for that individual will be deemed undeliverable.

45. The Settlement Administrator shall maintain a list of the postmark date for the

original mailing of the Individual Payment to the PAGA Settlement Members, the postmark date of any subsequent mailing to any PAGA Settlement Members, and a list of PAGA Settlement Members who did not receive the Individual Payment due to the inability to locate a valid address using the procedures described herein or who otherwise could not be located within two attempts at mailing.

46. All settlement checks will remain valid and negotiable for 180 days from the date of their mailing by the Settlement Administrator. Any Individual Payment not cashed within 180 days from the date of their mailing by the Settlement Administrator shall be paid to the following *cy pres* recipient: Salud Para La Gente.

47. No later than January 31 of the year following payment of their individual portion of the PAGA Fund, the Settlement Administrator will prepare and issue IRS Form 1099 to PAGA Settlement Members who received a payment.

VI. CLAIMS RELEASED BY PAGA SETTLEMENT MEMBERS

A. Claims Released by the LWDA and All PAGA Settlement Members

48. Upon the date of entry of an order by the Court in this Action approving this Settlement, and payment of all funds due under this Settlement, the LWDA and PAGA Settlement Members, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims, with the exception of Plaintiff's Individual Claims. As a result of this release, the PAGA Settlement Members will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code § 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

B. Tax Treatment and Tax Indemnification

49. PAGA Settlement Members will assume any tax obligations or consequences which may arise from this Settlement. PAGA Settlement Members release any and all claims that they have or may have against Defendant for any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes, indemnification, and any other recoveries related to any payments made under this Settlement. If any state or federal taxing authority contacts, investigates, or pursues any action against any PAGA Settlement Members for their

individual share of taxes related to any payments made under this Settlement or any compensation provided at any time by Defendant or any of the Released Parties, each PAGA Settlement Member shall be responsible for their own defense of and payment for any claim of unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the PAGA Settlement Member's share of any state or federal tax obligation. If a PAGA Settlement Member has questions about any liability to any state or federal taxing authority, they shall contact the Settlement Administrator. The PAGA Settlement Members shall not contact Defendant, any of the Released Parties, or Defense Counsel.

VII. MISCELLANEOUS PROVISIONS

A. Mutual Full Cooperation

50. Plaintiff and Defendant, Plaintiff's Counsel, and Defense Counsel agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms herein. The Parties agree to use their best efforts and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate this Settlement.

B. Parties' Authority

51. The signatories hereto represent that they are fully authorized to enter into this Settlement.

C. Binding Nature of the Settlement

52. This Settlement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. Plaintiff represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, any claim, demand, action, cause of action or rights released in the Released Claims in this Settlement. This Settlement also shall be binding upon Plaintiff and the PAGA Settlement Members.

53. This Settlement may be amended or modified only by a written instrument. No rights under this Settlement may be waived except in writing.

54. This Settlement constitutes the entire agreement between Plaintiff and Defendants relating to the settlement of the PAGA cause of action alleged in this Action. All prior or

contemporaneous agreements, understandings and statements, whether oral or written, whether express or implied, and whether by a party or its counsel, concerning this Settlement are merged herein. No oral or written representations, warranties or inducements have been made to any party concerning this Settlement other than the representations, warranties and covenants contained and memorialized in such documents.

55. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its provisions. Each term of this Settlement is intended to be contractual and not merely a recital.

D. Joint Drafting of Settlement Documents

56. Plaintiff's Counsel and Defense Counsel have arrived at this Settlement as a result of a series of arm's-length negotiations, taking into account all relevant factors, present and potential.

57. This Settlement has been drafted jointly by Plaintiff's Counsel and Defendant's Counsel and, therefore, in any construction or interpretation of this Settlement, the same shall not be construed against any of the Parties.

E. Execution of the Settlement

58. This Settlement may be executed in one or more counterparts and by electronic signatures. All executed copies of this Settlement and photocopies thereof shall have the same force and effect and shall be as legally binding and enforceable as the original.

F. Continuing Jurisdiction of the Court

59. Pursuant to California Code of Civil Procedure section 664.6, the Parties agree that the Court shall retain jurisdiction over the Parties, and over this Settlement, in order to: (i) monitor and enforce compliance of the Settlement, and/or (ii) resolve any disputes over this Settlement or the administration of the benefits of this Settlement.

G. Representations by Plaintiff

60. Plaintiff acknowledges the following: (a) Plaintiff has carefully read and fully understands all of the provisions of this Settlement; (b) Plaintiff knowingly and voluntarily agrees

to all of the terms set forth in this Settlement and has not been coerced, threatened, or intimidated into executing this Settlement; (c) Plaintiff was advised, and hereby is advised in writing, to consider the terms of this Settlement and consult with his attorneys before signing this Settlement; and (d) Other than the fees and costs awarded pursuant to the terms of this Settlement, Plaintiff acknowledges that all parties shall bear their own fees and costs through the conclusion of this action.

H. Representations by Defendant

61. Defendant acknowledges the following: (a) Defendant has carefully read and fully understands all of the provisions of this Settlement; (b) Defendant knowingly and voluntarily agrees to all of the terms set forth in this Settlement and has not been coerced, threatened, or intimidated into executing this Settlement; (c) Defendant was advised, and hereby is advised in writing, to consider the terms of this Settlement and consult with its attorneys before signing this Settlement; and (d) Other than the fees and costs awarded pursuant to the terms of this Settlement, Defendant acknowledges that all parties shall bear their own fees and costs through the conclusion of this action.

Dated: 07/18/2024

DocuSigned by:

 2F094777BA4740E...
 Plaintiff Fernando Nino

Defendant Premo Roofing Company

Dated: _____

By: _____
 Title: _____

Approved as to form only:

Dated: 7/18/2024

FITZPATRICK & SWANSTON

By:  _____
 B. James Fitzpatrick
 Attorneys for Plaintiff,
 Fernando Nino

to all of the terms set forth in this Settlement and has not been coerced, threatened, or intimidated into executing this Settlement; (c) Plaintiff was advised, and hereby is advised in writing, to consider the terms of this Settlement and consult with his attorneys before signing this Settlement; and (d) Other than the fees and costs awarded pursuant to the terms of this Settlement, Plaintiff acknowledges that all parties shall bear their own fees and costs through the conclusion of this action.

H. Representations by Defendant

61. Defendant acknowledges the following: (a) Defendant has carefully read and fully understands all of the provisions of this Settlement; (b) Defendant knowingly and voluntarily agrees to all of the terms set forth in this Settlement and has not been coerced, threatened, or intimidated into executing this Settlement; (c) Defendant was advised, and hereby is advised in writing, to consider the terms of this Settlement and consult with its attorneys before signing this Settlement; and (d) Other than the fees and costs awarded pursuant to the terms of this Settlement, Defendant acknowledges that all parties shall bear their own fees and costs through the conclusion of this action.

Dated: _____

Plaintiff Fernando Nino

Defendant Premo Roofing Company

Dated: 7/15/24

By: [Signature]
Title: PRESIDENT

Approved as to form only:

Dated: _____

FITZPATRICK & SWANSTON

By: _____
B. James Fitzpatrick
Attorneys for Plaintiff,
Fernando Nino

Dated: July 18, 2024

NOLAND, HAMERLY, ETIENNE & HOSS

By: Sharilyn Payne
Sharilyn Payne
Attorneys for Defendant,
Premo Roofing Company

EXHIBIT A

<<DATE>>

NOTICE OF SETTLEMENT PAYMENT

Fernando Nino v. Premo Roofing Company
Monterey County Superior Court, Case No. 23CV001620

<<FIRST NAME>> <<LAST NAME>>

<<ADDRESS>>

Dear <<FIRST NAME>> <<LAST NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Fernando Nino v. Premo Roofing Company*, Monterey County Superior Court Case No. 23CV001620 (the “Action”).

The Action was filed against Defendant Premo Roofing Company (“Defendant”) under the California Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”). The claim was brought on behalf of the State of California and all current and former non-exempt employees of Defendant who worked in California at any time from May 18, 2022, through May 9, 2024. (“Aggrieved Employees”).

The Plaintiff in the lawsuit claims Defendant owes penalties under PAGA for alleged violations of the California Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 210, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1175, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802, and 2698, and any category of violations identified in Labor Code § 2699.5, and the related applicable IWC Wage Order provision for the PAGA Period, and any other violations that were alleged or could have been alleged in Plaintiff’s letter to the LWDA or any complaint filed in this Action.

Defendant denies that it has done anything wrong. Defendant denies all allegations made against it in the Action, maintains its policies and practices are and were lawful, and maintains that all employees are and were provided with all wages and working conditions in conformance with applicable law at all times. The Court has not ruled on the merits of the lawsuit, but it has approved the settlement the Parties reached. By law, a portion of the settlement amount goes to the State of California. Another portion of the settlement amount goes to the Aggrieved Employees. This Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, which expressly denies all liability.

Although you are not a named party to this lawsuit, both you and the State are bound by the judgment that has been approved by the Court.

If you have further questions about this settlement, please contact the third-party settlement administrator at: [**ADMINISTRATOR CONTACT INFORMATION**].

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EXHIBIT B

TASKS AND HOURS

The tasks referenced below involved work by attorneys and paralegals. The amount of time spent by each is detailed below.

I. INVESTIGATION

Task

- Meetings/telephonic conferences with client and current/former employees regarding their employment and alleged violations
- Review of documents provided by client and current/former employees;
- Prepare and serve request for personnel file;
- Review personnel file;
- Numerous intra-office meetings/conferences regarding planning, results and details of investigations;
- Research for other lawsuits against defendant;
- LWDA research
- Legal research regarding IWC Wage Orders; and
- Legal research regarding claims that would be alleged in the complaint;

Attorney Hours: 25

Paralegal Hours: 5

II. PLEADINGS

Task

- Prepare and file Complaint, Civil Cover Sheet, Summons;
- Receive and review CMC and Assignment Notice;
- Prepare and File First Amended Complaint/Summons;
- Prepare and file Proof of Service of Summons;
- Receive and review Answer

Attorney Hours: 3

Paralegal Hours: 0.3

III. CASE MANAGEMENT CONFERENCES

Task

- Prepare, file and serve CMC statement; prepare for and attend 1/9/24 CMC;
- Review 1/9/24 Minute Order;
- Prepare, file and serve CMC statement; prepare for and attend 2/20/24 CMC;
- Review 2/20/24 Minute Order;
- Receive & review Joint CMC statement; prepare for and attend 6/25/24 CMC;
- Review 6/25/24 Minute Order;

Attorney Hours: 7

Paralegal Hours: 1

IV. DISCOVERY

Task

- Numerous intra-office meetings/conferences;
- Serve data request; and
- Receive and review mediation data consisting of approximately 1,400 pages.

Attorney Hours: 40

Paralegal Hours: 15

V. MEDIATION

Task

- Multiple follow up meetings with client and co-workers to prepare for mediation;
- Multiple communications with defense counsel regarding mediation;
- Legal research;

- Analysis and revision of damage models calculating damages, interest and penalties;
- Follow up intra-office meetings/conferences regarding claims, damages, and settlement;
- Review and revise mediation brief;
- Prepare for and attend mediation;
- Review and revise MOU
- Meeting with client regarding MOU

Attorney Hours: 55

Paralegal Hours: 6.5

VI. MATTERS RELATING TO MOTION FOR PRELIMINARY APPROVAL
Task

- Meetings/conferences with defense counsel regarding the stipulation for settlement; notice material and motion;
- Numerous intra-office meetings/conferences regarding the stipulation for settlement, notice material and motion;
- Prepare settlement stipulation;
- Meet with Plaintiff to review the settlement stipulation;
- Prepare notice material;
- Prepare motion;
- Prepare for and attend hearing;
- Anticipated multiple communications with Plaintiff and PAGA members regarding the PAGA payment.

Attorney Hours: 30

Paralegal Hours: 2.5

Total Attorney Hours: 160

Total Paralegal Hours: 30.3

Total Attorney and Paralegal Hours: 190.3

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EXHIBIT C

Cost/Expense Detail

Date	Code	Check #	Type	Units	Amount	Description	Date Billed	Amount Billed
N0019 Nino, Fernando								
600 Nino v. Labor & Employment								
5/18/23	102		Cost		450.56	Complaint & eFiling Fees		
9/8/23	102		Cost		24.15	Stipulation & eFiling Fees		
9/12/23	102		Cost		3.60	Odyssey Efile		
9/12/23	102		Cost		3.60	Odyssey Efile		
12/15/23	102		Cost		3.60	Odyssey Efile		
3/6/24	01	60670	Exp.		139.00	Sayler Legal Service, Inc. Court Messenger Service		
3/6/24	01	60670	Exp.		109.00	Sayler Legal Service, Inc. Court Messenger Service		
5/16/24	15	1305	Exp.		3,750.00	Fenton & Keller Mediation Fees		
7/18/24	102		Cost		1,000.00	Odyssey Efile - Complex Fee		
Matter Total					5,483.51			.00
Client Total					5,483.51			.00
Report Total:								
Total					5,483.51			.00

Types: Unbilled Costs, Unbilled Expenses, Billed Costs, Billed Expenses

Selection criteria: Client: N0019 Matter: 600

Sorted by: Client Number / Matter Number

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PROOF OF SERVICE

I am employed in the County of Monterey, State of California. I am over the age of 18 and not a party to the within action; my business address is FITZPATRICK & SWANSTON, 555 S. Main Street, Salinas, California 93901.

On the date written below, I served the foregoing document(s), described as **DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT**

on the interested parties in this action as indicated below and by the following means:

Sharilyn R. Payne, Esq. SBN: 203700
NOLAND HAMERLY ETIENNE & HOSS
333 Salinas Street
P.O. Box 2510 Salinas, CA 93902
Tel:831-424-1414
Fax: 831-424-1975
spayne@nheh.com

xx **(BY ELECTRONIC SERVICE)** Pursuant to CCP § 1010.6 and Cal. Rules of Court, Rule 2.251, I caused the document(s) to be served, addressed to the person(s) at the e-mail address(es) listed above. I did not receive within a reasonable time after e-service, any electronic message or other indication that e-service was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 18, 2024, at Salinas, California.

/s/ Josie Favila

Josie Favila