

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

shani@zakaylaw.com

Jackland K. Hom (State Bar #327243)

jackland@zakaylaw.com

Rachel Newman (State Bar #350826)

rachel@zakaylaw.com

Jennifer M. Gerstenzang (State Bar #279810)

jenny@zakaylaw.com

Jaclyn Joyce (State Bar #285124)

jaclyn@zakaylaw.com

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 255-9047

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

jlapuyade@jcl-lawfirm.com

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

FIDEL GOMEZ, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

KIRBY MANUFACTURING, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. VCU308341

**DECLARATION OF RACHEL NEWMAN,
ESQ. IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 16, 2025

Time: 8:30 a.m.

Judge: Hon. Gary Johnson

Dept.: 7

1 I, Rachel Newman, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and co-counsel
4 of record for Plaintiff Fidel Gomez (hereafter "Plaintiff") in this wage and hour class action filed against
5 Defendant Kirby Manufacturing, Inc. (hereinafter "Defendant").

6 2. This declaration is being submitted in support of Plaintiff's Motion for Preliminary
7 Approval of Class Action and PAGA Settlement.

8 3. On May 19, 2025, Plaintiff filed his Motion for Preliminary Approval ("Motion").

9 4. At the time of filing the Motion, the Stipulation of Settlement of Class and PAGA Action
10 Claims and Release of Claims ("Agreement"), was awaiting Defendant's signatures.

11 5. On May 29, 2025, Defendant's counsel provided Plaintiff's counsel with a fully executed
12 version of the Agreement.

13 6. A true and correct copy of the fully executed Agreement is attached hereto as **Exhibit #1.**

14 7. A true and correct copy of the proof of filing the fully executed Agreement with the Labor
15 and Workforce Development Agency is attached hereto as **Exhibit #2.**

16
17 I declare under the penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct. Executed this 29th day of May 2025, at San Diego, California.

19 **ZAKAY LAW GROUP, APLC**

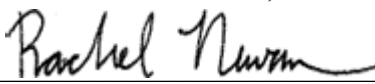
20 By: 
21 Rachel Newman, Esq.
22 Attorneys for PLAINTIFF
23
24
25
26
27
28

EXHIBIT 1

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
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JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff FIDEL GOMEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

FIDEL GOMEZ, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

KIRBY MANUFACTURING, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. VCU308341

[Complaint Filed: April 25, 2024]

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

1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is
2 entered into by and between Plaintiff FIDEL GOMEZ (hereinafter “Plaintiff”), an individual, on
3 behalf of himself, and on behalf of all persons similarly situated, and in his representative capacity
4 on behalf of the State of California and the Aggrieved Employees, and Defendant KIRBY
5 MANUFACTURING, INC. (“Defendant”) (together, the “Parties”):

6 **I. DEFINITIONS**

- 7 A. “Action” shall mean the putative class and representative action lawsuit designated
8 *Fidel Gomez v. Kirby Manufacturing, Inc.*, Tulare County Superior Court, Case No.
9 VCU308341, filed April 25, 2024.
- 10 B. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
11 Class and PAGA Action Claims and Release of Claims.
- 12 C. “Aggrieved Employees” means all current and former non-exempt employees who
13 worked for Defendant in California at any time during the PAGA Period.
- 14 D. “Aggrieved Employee Payment” shall mean the twenty-five percent (25%) of the
15 PAGA Payment (\$2,500.00) that will be distributed to the Aggrieved Employees as
16 described in this Agreement.
- 17 E. “Class” or the “Class Members” means all current and former non-exempt
18 employees who worked for Defendant in California at any time during the Class
19 Period.
- 20 F. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC,
21 and Shani O. Zakay, Esq. of Zakay Law Group, APLC.
- 22 G. “Class Counsel Award” means the award of fees and expenses that the Court
23 authorizes to be paid to Class Counsel for the services they have rendered to
24 Plaintiff, the Class Members, and the Aggrieved Employees in the Action,
25 consisting of attorneys’ fees currently not to exceed one-third of the Gross
26 Settlement Amount currently estimated to be \$76,666.66 out of \$230,000.00 plus
27 costs of up to \$25,000.00. Attorneys’ fees will be divided between Class Counsel
28

in the following percentages (50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC).

H. “Class Data” means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member’s full name; last known address; Social Security Number; start dates and end dates of employment.

I. “Class Period” means the period beginning April 25, 2020 to February 26, 2025.

J. “Class Representative” shall mean plaintiff Fidel Gomez.

K. “Court” means the Superior Court for the State of California, County of Tulare, currently presiding over the Action.

L. “Defendant” shall mean Kirby Manufacturing, Inc.

M. “Effective Date” means the date upon which: (a) the Court grants Final Approval; or (b) if there are objections to the Settlement, and if an appeal, review, or writ is not sought from the Final Approval, the day after the time period to appeal the Settlement has expired *ie.*, sixty (60) days from the date the Court enters an order granting final approval of the Settlement; or (c) if there are objections to the Settlement, and an appeal, review, or writ is timely sought from the Final Approval, the day after the Final Approval is affirmed or the appeal, review, or writ is dismissed or denied, and the Final Approval Order is no longer subject to further judicial review.

N. “Funding Date” shall be the date by which Defendant fully funds the Gross Settlement Amount by transmitting the final installment payment, in accordance with this Agreement. Defendant will pay the Gross Settlement Amount to the Settlement Administrator in ten (10) equal installment payments of \$23,000.00, on the first of each month, beginning on April 1, 2026, and ending on January 1, 2027.

O. “Gross Settlement Amount” means Two Hundred Thirty Thousand Dollars and Zero Cents (\$230,000.00) that Defendant must pay into the QSF in connection with this

Settlement, inclusive of the sum of Settlement Administration Costs, Class Counsel Award, Service Award, and the PAGA Payment. The Gross Settlement Amount is all-in with no reversion and *exclusive* of the employer's share of payroll tax, if any, triggered by any payment under this Settlement.

P. "Individual Settlement Payments" means the amount payable from the Net Settlement Amount to each Settlement Class Member and excludes any amounts distributed to Aggrieved Employees pursuant to PAGA.

Q. "LWDA" shall mean the Labor and Workforce Development Agency.

R. "LWDA Payment" shall mean the seventy-five percent (75%) of the PAGA Payment (\$7,500.00) payable to the to the LWDA.

S. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class Counsel Award, Service Award, PAGA Payment, and Settlement Administration Costs.

T. "Notice Packet" means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

U. "Operative Complaint" shall mean the First Amended Complaint filed by Plaintiff on July 25, 2024, in the Tulare County Superior Court.

V. "PAGA" means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

W. "PAGA Payment Ratio" means the respective Pay Periods during the PAGA Period for each Aggrieved Employee divided by the total Pay Periods for all Aggrieved Employees during the PAGA Period.

X. "PAGA Pay Periods," for purposes of calculating the distribution of the Aggrieved Employee Payment, as defined herein, means the number of pay periods of employment during the PAGA Period that each Aggrieved Employee worked in California.

- 1 Y. "PAGA Period" means the period beginning April 25, 2023 to February 26, 2025.
- 2 Z. "PAGA Payment" shall mean Ten Thousand Dollars and Zero Cents (\$10,000.00)
- 3 to be allocated from the Gross Settlement Amount for settlement of PAGA Claims
- 4 asserted in the Action.
- 5 AA. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
- 6 Plaintiff or Defendant, individually.
- 7 BB. "Payment Ratio" means the respective Workweeks for each Class Member divided
- 8 by the total Workweeks for all Class Members.
- 9 CC. "Plaintiff" shall mean Fidel Gomez.
- 10 DD. "QSF" means the Qualified Settlement Fund established, designated, and
- 11 maintained by the Settlement Administrator to fund the Gross Settlement Amount.
- 12 EE. "Released Class Claims" shall mean all class claims alleged or reasonably could
- 13 have been alleged based on the facts alleged, in the Operative Complaint in the
- 14 Action, which occurred during the Class Period, and expressly excluding all other,
- 15 including claims for vested benefits, wrongful termination, unemployment
- 16 insurance, disability, social security, workers' compensation, and class claims
- 17 outside of the Class Period.
- 18 FF. "Released PAGA Claims" shall mean all PAGA claims alleged in the Operative
- 19 Complaint in the Action and Plaintiff's PAGA Notice to the LWDA, which
- 20 occurred during the PAGA Period, and expressly excluding all other claims,
- 21 including claims for vested benefits, wrongful termination, unemployment
- 22 insurance, disability, social security, workers' compensation, and PAGA claims
- 23 outside of the PAGA Period.
- 24 GG. "Released Parties" shall mean Kirby Manufacturing Inc., its affiliates, subsidiaries,
- 25 or parents, and their respective current and former members, shareholders, partners,
- 26 owners, managers, directors, officers, employees, agents, attorneys, insurers, heirs,
- 27 successors and assigns.
- 28

- 1 HH. "Response Deadline" means the date forty-five (45) calendar days after the
2 Settlement Administrator mails Notice Packets to Class Members and the last date
3 on which Class Members may submit requests for exclusion or objections to the
4 Settlement.-Neither side shall encourage any Class Member to opt out.
- 5 II. "Service Award" means an award in the amount of \$10,000 or in an amount that the
6 Court authorizes to be paid to the Class Representative, in addition to his Individual
7 Settlement Payment and his individual Aggrieved Employee Payment, in
8 recognition of his efforts and risks in assisting with the prosecution of the Action.
- 9 JJ. "Settlement" means the disposition of the Action pursuant to this Agreement.
- 10 KK. "Settlement Administration Costs" shall mean the amount paid to the Settlement
11 Administrator from the Gross Settlement Amount for administering the Settlement
12 pursuant to this Agreement currently estimated not to exceed \$4,950.00
- 13 LL. "Settlement Administrator" means Apex Class Action LLC, located at 18
14 Technology Drive, Suite 154, Irvine, CA 92618 Tel: (800) 355-0700. The
15 Settlement Administrator establishes, designates, and maintains, as a QSF under
16 Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1,
17 into which the amount of the Gross Settlement Amount is deposited for the purpose
18 of resolving the claims of Settlement Class Members. The Settlement Administrator
19 shall maintain the funds until distribution in an account(s) segregated from the
20 assets of Defendant and any person related to Defendant. ***All accrued interest shall***
21 ***be paid and distributed to the Settlement Class Members as part of their respective***
22 ***Individual Settlement Payment.***
- 23 MM. "Settlement Class Members" or "Settlement Class" means all Class Members who
24 have not submitted a timely and valid request for exclusion as provided in this
25 Agreement.
- 26 NN. "Workweeks," shall mean any seven (7) consecutive days beginning on Sunday and
27 ending on Saturday, in which a Class Member is employed by Defendant during the
28 Class Period in California.

1 **II. RECITALS**

2 A. On April 25, 2024, Plaintiff filed a Class Action complaint in the Tulare Superior
3 Court, Case No. VCU308341 (“Class Action”), alleging claims for:

- 4 1. Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 *et seq*;
- 5 2. Failure To Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194,
6 1197 & 1197.1;
- 7 3. Failure To Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et*
8 *seq*;
- 9 4. Failure To Provide Required Meal Periods in Violation of Cal. Lab. Code §§
10 226.7 & 512 and the Applicable IWC Wage Order;
- 11 5. Failure To Provide Required Rest Periods in Violation of Cal. Lab. Code §§
12 226.7 & 512 and the Applicable IWC Wage Order;
- 13 6. Failure To Reimburse Employees For Required Expenses in Violation of
14 Cal. Lab. Code § 2802;
- 15 7. Failure To Provide Accurate Itemized Statements in Violation of Cal. Lab.
16 Code § 226;
- 17 8. Failure To Provide Wages When Due in Violation of Cal. Lab. Code §§ 201,
18 202 And 203.

19 B. On April 25, 2024, Plaintiff filed a Notice of Violations with the Labor and
20 Workforce Development Agency (LWDA) and served the same on Defendant.

21 C. On July 25, 2024, Plaintiff filed the operative First Amended Complaint, adding a
22 ninth cause of action for violations of PAGA.

23 D. The Class Representative believes he has claims based on alleged violations of the
24 California Labor Code, and the Industrial Welfare Commission Wage Orders, and
25 that class certification is appropriate because the prerequisites for class certification
26 can be satisfied in the Action, and this action is manageable as a PAGA
27 representative action.
28

1 E. Defendant denies any liability or wrongdoing of any kind associated with the claims
2 alleged in the Action, disputes any wages, damages and penalties claimed by the
3 Class Representative, alleged in the Operative Complaint, and/or alleged in the
4 Class Representative's PAGA notices to the LWDA are owed, and further contend
5 that, for any purpose other than settlement, the Action is not appropriate for class or
6 representative action treatment. Defendant contends, among other things, that at all
7 times it complied with the California Labor Code and the Industrial Welfare
8 Commission Wage Orders.

9 F. The Class Representative is represented by Class Counsel. Class Counsel
10 investigated the facts relevant to the Action, including conducting an independent
11 investigation as to the allegations, reviewing documents and information exchanged
12 through informal discovery, and reviewing documents and information provided by
13 Defendant pursuant to informal requests for information to prepare for mediation.
14 Defendant produced for the purpose of settlement negotiations certain employment
15 data concerning the Class, which Class Counsel reviewed and analyzed with the
16 assistance of an expert. Based on their own independent investigation and
17 evaluation, Class Counsel are of the opinion that the Settlement with Defendant is
18 fair, reasonable, and adequate, and is in the best interest of the Class considering all
19 known facts and circumstances, including the risks of significant delay, defenses
20 asserted by Defendant, uncertainties regarding class certification, and numerous
21 potential appellate issues. Although it denies any liability, Defendant agrees to this
22 Settlement solely to avoid the inconveniences and cost of further litigation. The
23 Parties and their counsel have agreed to settle the claims on the terms set forth in
24 this Agreement.

25 G. On February 26, 2025, the Parties participated in mediation presided over by Steve
26 Mehta, Esq., an experienced mediator of wage and hour class and PAGA actions.
27 The Parties accepted a Mediator's settlement proposal, which was subsequently
28 memorialized in the form of a Memorandum of Understanding.

1 H. This Agreement replaces and supersedes the Memorandum of Understanding and
2 any other agreements, understandings, or representations between the Parties. This
3 Agreement represents a compromise and settlement of highly disputed claims.
4 Nothing in this Agreement is intended or will be construed as an admission by
5 Defendant that the claims in the Action of Plaintiff or the Class Members have merit
6 or that Defendant bears any liability to Plaintiff or the Class on those claims or any
7 other claims, or as an admission by Plaintiff that Defendant's defenses in the Action
8 have merit.

9 I. The Parties believe that the Settlement is fair, reasonable, and adequate. The
10 Settlement was arrived at through arm's-length negotiations, considering all relevant
11 factors. The Parties recognize the uncertainty, risk, expense, and delay attendant to
12 continuing the Action through trial and any appeal. Accordingly, the Parties desire
13 to settle, compromise and discharge all disputes and claims arising from or relating
14 to the Action fully, finally, and forever.

15 J. The Parties agree to certification of the Class for purposes of this Settlement only.
16 If for any reason the settlement does not become effective, Defendant reserves the
17 right to contest certification of any class for any reason and reserve all available
18 defenses to the claims in the Action. The Settlement, this Agreement, and the
19 Parties' willingness to settle the Action will have no bearing on and will not be
20 admissible in connection with any litigation.

21 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

22 **III. TERMS OF AGREEMENT**

23 A. Settlement Consideration and Settlement Payments by Defendant.

- 24 1. Settlement Consideration. In full and complete settlement of the Action, and
25 in exchange for the releases set forth below, Defendant will pay the sum of
26 the Individual Settlement Payments, the Service Award, the Class Counsel
27 Award, PAGA Payment, and the Settlement Administration Costs, as
28 specified in this Agreement, equal to the Gross Settlement Amount of Two

1 Hundred Thirty Thousand Dollars and Zero Cents (\$230,000.00). The
2 Parties agree that this is a non-reversionary Settlement and that no portion of
3 the Gross Settlement Amount shall revert to Defendant. Other than the
4 Defendant's share of employer payroll taxes and as provided in Section
5 III.A.2 below, Defendant shall not be required to pay more than the Gross
6 Settlement Amount.

7 2. Class Size. Defendant represents that the Class was comprised of
8 approximately 88 individuals who collectively worked approximately 11,954
9 Workweeks during the Class Period. As of the date of execution of this
10 Agreement, Defendant has provided the Settlement Administrator with the
11 Class Data. Prior to Plaintiff filing the Motion for Preliminary Approval, the
12 Settlement Administrator will review the Class Data and provide a
13 declaration detailing the total number of Class Members and Workweeks
14 during the Class Period. Should the Workweeks increase beyond 10% of the
15 estimated 11,954 Workweeks (*i.e.*, more than 13,149.4 Workweeks), the
16 Gross Settlement Amount will increase by the percentage over 110% of the
17 increased Workweeks. For example, if the total Workweeks in the Class
18 Period are 115% of 11,954, the Gross Settlement Amount will increase by
19 5%.

20 3. Settlement Payment. Defendant shall deposit the Gross Settlement Amount
21 into the QSF, through the Settlement Administrator by the Funding Date.
22 Defendant will pay the Gross Settlement Amount in ten (10) equal
23 installment payments of \$23,000.00, on the first of each month, beginning
24 on April 1, 2026, and ending on January 1, 2027 ("Installment Payments").
25 Once sufficient Installment Payments have been made to fully fund the Net
26 Settlement Amount and PAGA Payment, Defendant will pay to the
27 Settlement Administrator the payroll taxes associated with the wage
28 payments to the Class Members. The estimated date in which Defendant will

1 pay the employer-side payroll taxes is August 1, 2026. Once sufficient
2 Installment Payments have been made to fully fund the Net Settlement
3 Amount and PAGA Payment, along with the employer-side payroll taxes,
4 the Class Members will be paid in one lump sum. Any interest accrued will
5 be added to the NSA and distributed to the Settlement Class Members except
6 that if final approval is reversed on appeal, then Defendant is entitled to
7 prompt return of the principal and all interest accrued.

8 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
9 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
10 immediately once the Net Settlement Amount is fully funded.

11 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
12 consideration set forth in this Agreement, Plaintiff and the Settlement Class
13 Members release the Released Parties from the Released Class Claims for the Class
14 Period.

15 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
16 consideration set forth in this Agreement, the Plaintiff, the LWDA, and the State of
17 California release the Released Parties from the Released PAGA Claims for the
18 PAGA Period. As a result of this release, the Aggrieved Employees shall be
19 precluded from bringing claims against Defendant for the Released PAGA Claims.

20 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth
21 in this Agreement, Plaintiff waives, releases, acquits and forever discharges the
22 Released Parties from any and all claims, whether known or unknown, which exist or
23 may exist on either Plaintiff's behalf as of the date of this Agreement, including but
24 not limited to any and all tort claims, contract claims, wage claims, wrongful
25 termination claims, disability claims, benefit claims, public policy claims, retaliation
26 claims, statutory claims, personal injury claims, emotional distress claims, invasion
27 of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any
28 and all claims arising under any federal, state or other governmental statute, law,

1 regulation or ordinance, including, but not limited to claims for violation of the Fair
2 Labor Standards Act, the California Labor Code, the Wage Orders of California's
3 Industrial Welfare Commission, other state wage and hour laws, the Americans with
4 Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
5 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the
6 California Fair Employment and Housing Act, the California Family Rights Act, the
7 Family Medical Leave Act, California's Whistleblower Protection Act, California
8 Business & Professions Code Section 17200 et seq., and any and all claims arising
9 under any federal, state or other governmental statute, law, regulation or ordinance.
10 Plaintiff also waives and relinquishes any and all claims, rights or benefits that he
11 may have under California Civil Code § 1542, which provides as follows:

12
13 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
14 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
15 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
16 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
17 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
18 ***DEBTOR OR RELEASED PARTY.***

19
20 Thus, notwithstanding the provisions of section 1542, and to implement a full and
21 complete release and discharge of the Released Parties, Plaintiff expressly
22 acknowledges this Settlement Agreement is intended to include in its effect, without
23 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
24 the time of signing this Settlement Agreement, and that this Settlement Agreement
25 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
26 has read this Settlement Agreement, including this waiver of California Civil Code
27 section 1542, and that Plaintiff has consulted with or had the opportunity to consult
28 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically

1 about the waiver of section 1542, and that Plaintiff understands this Settlement
2 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters
3 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later
4 may discover facts different from or in addition to those Plaintiff now knows or
5 believes to be true regarding the matters released or described in this Settlement
6 Agreement, and even so Plaintiff agrees that the releases and agreements contained
7 in this Settlement Agreement shall remain effective in all respects notwithstanding
8 any later discovery of any different or additional facts. Plaintiff expressly assumes
9 any and all risk of any mistake in connection with the true facts involved in the
10 matters, disputes, or controversies released or described in this Settlement Agreement
11 or with regard to any facts now unknown to Plaintiff relating thereto.

12 E. Conditions Precedent: This Settlement will become final and effective only upon the
13 occurrence of all of the following events:

- 14 1. The Court enters an order granting preliminary approval of the Settlement;
- 15 2. The Court enters an order granting final approval of the Settlement and a
16 Final Judgment;
- 17 3. If an objector appears at the final approval hearing, the time for appeal of the
18 Final Judgment and Order Granting Final Approval of Class Action
19 Settlement expires; or, if an appeal is timely filed, there is a final resolution
20 of any appeal from the Judgment and Order Granting Final Approval of
21 Class Action Settlement; and
- 22 4. Defendant fully funds the Gross Settlement Amount.

23 F. Nullification of Settlement Agreement. If the Court does not preliminarily or finally
24 approve this Settlement Agreement, fails to become effective, or is reversed,
25 withdrawn, or modified by the Court, or in any way prevents or prohibits Defendant
26 from obtaining a complete resolution of the Released Class Claims and Released
27 PAGA Claims, or if Defendant fails to fully fund the Gross Settlement Amount:
28

- 1 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
2 and shall not be admissible in any judicial, administrative, or arbitral
3 proceeding for any purpose or with respect to any issue, substantive or
4 procedural;
- 5 2. The conditional class certification (obtained for any purpose) shall be void
6 *ab initio* and of no force or effect, and shall not be admissible in any judicial,
7 administrative, or arbitral proceeding for any purpose or with respect to any
8 issue, substantive or procedural; and
- 9 3. None of the Parties to this Settlement will be deemed to have waived any
10 claims, objections, defenses, or arguments in the Action, including with
11 respect to the issue of class certification.

12 G. In the event that Defendant fails to fund the Gross Settlement Amount, Defendant
13 shall bear the sole responsibility for any cost to issue or reissue any curative notice to
14 the Settlement Class Members and all Settlement Administration Costs incurred to
15 the date of nullification.

16 H. Certification of the Class. The Parties stipulate to conditional class certification of
17 the Class for the Class Period for purposes of settlement only. In the event that this
18 Settlement is not approved by the Court, fails to become effective, or is reversed,
19 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant
20 from obtaining a complete resolution of the Released Class Claims and Released
21 PAGA Claims, the conditional class certification (obtained for any purpose) shall be
22 void *ab initio* and of no force or effect, and shall not be admissible in any judicial,
23 administrative or arbitral proceeding for any purpose or with respect to any issue,
24 substantive or procedural.

25 I. Tax Liability. The Parties make no representations as to the tax treatment or legal
26 effect of the payments called for, and Class Members and/or Aggrieved Employees
27 are not relying on any statement or representation by the Parties in this regard. Class
28 Members and/or Aggrieved Employees understand and agree that they will be

1 responsible for the payment of any taxes and penalties assessed on the Individual
2 Settlement Payments and/or Aggrieved Employees' individual shares of the
3 Aggrieved Employee Payment described and will be solely responsible for any
4 penalties or other obligations resulting from their personal tax reporting of Individual
5 Settlement Payments and/or Aggrieved Employees' individual shares of the
6 Aggrieved Employee Payment.

7 J. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
8 the "acknowledging party" and each Party to this Agreement other than the
9 acknowledging party, an "other party") acknowledges and agrees that: (1) no
10 provision of this Agreement, and no written communication or disclosure between or
11 among the Parties or their attorneys and other advisers, is or was intended to be, nor
12 shall any such communication or disclosure constitute or be construed or be relied
13 upon as, tax advice within the meaning of United States Treasury Department
14 circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has
15 relied exclusively upon his, her or its own, independent legal and tax counsel for
16 advice (including tax advice) in connection with this Agreement, (b) has not entered
17 into this Agreement based upon the recommendation of any other Party or any
18 attorney or advisor to any other Party, and (c) is not entitled to rely upon any
19 communication or disclosure by any attorney or adviser to any other party to avoid
20 any tax penalty that may be imposed on the acknowledging party, and (3) no attorney
21 or adviser to any other Party has imposed any limitation that protects the
22 confidentiality of any such attorney's or adviser's tax strategies (regardless of
23 whether such limitation is legally binding) upon disclosure by the acknowledging
24 party of the tax treatment or tax structure of any transaction, including any
25 transaction contemplated by this Agreement.

26 K. Preliminary Approval Motion. As soon thereafter as practicable after the execution of
27 this Agreement, Plaintiff shall file with the Court a Motion for Order Granting
28 Preliminary Approval and supporting papers, which shall include this Settlement

1 Agreement. Plaintiff will provide Defendant with a draft of the Motion at least three
2 (3) business days prior to the filing of the Motion to give Defendant an opportunity
3 to review and comment upon the Motion.

4 L. Settlement Administrator. The Settlement Administrator shall be responsible for:
5 establishing and administering the QSF; calculating, processing and mailing
6 payments to the Class Representative, Class Counsel, LWDA and Class Members;
7 printing and mailing the Notice Packets to the Class Members as directed by the
8 Court; receiving and reporting the objections and requests for exclusion; calculating,
9 deducting and remitting all legally required taxes from Individual Settlement
10 Payments and distributing tax forms for the Wage Portion, the Penalties Portion and
11 the Interest Portion of the Individual Settlement Payments and/or Aggrieved
12 Employees' individual shares of the Aggrieved Employee Payment; processing and
13 mailing tax payments to the appropriate state and federal taxing authorities;
14 providing declaration(s) as necessary in support of preliminary and/or final approval
15 of this Settlement; and other tasks as the Parties mutually agree or the Court orders
16 the Settlement Administrator to perform. The Settlement Administrator shall keep
17 the Parties timely apprised of the performance of all Settlement Administrator
18 responsibilities by among other things, sending a weekly status report to the Parties'
19 counsel stating the date of the mailing, the of number of opt outs from the Settlement
20 it receives (including the numbers of valid and deficient), and number of objections
21 received.

22 M. Notice Procedure.

23 1. Class Data. No later than ten (10) calendar days after the Preliminary
24 Approval Date, Defendant shall provide the Settlement Administrator with
25 the Class Data for purposes of preparing and mailing Notice Packets to the
26 Class Members.

27 2. Notice Packets.

1 a) The Notice Packet shall contain the Notice of Class Action
2 Settlement in a form substantially similar to the form attached as
3 **Exhibit A**. The Notice of Class Action Settlement shall inform Class
4 Members and Aggrieved Employees that they need not do anything
5 in order to receive an Individual Settlement Payment and/or
6 Aggrieved Employees' individual shares of the Aggrieved Employee
7 Payment and to keep the Settlement Administrator apprised of their
8 current mailing address, to which the Individual Settlement Payments
9 and/or Aggrieved Employees' individual shares of the Aggrieved
10 Employee Payment will be mailed following the date that the Net
11 Settlement Amount is fully funded. The Notice of Class Action
12 Settlement shall set forth the release to be given by all members of
13 the Class who do not request to be excluded from the Settlement
14 Class and/or Aggrieved Employees in exchange for an Individual
15 Settlement Payment and/or Aggrieved Employees' individual shares
16 of the Aggrieved Employee Payment, the number of Workweeks
17 worked by each Class Member during the Class Period, and number
18 of PAGA Periods worked by each Aggrieved Employee during the
19 PAGA Period, if any, and the estimated amount of their Individual
20 Settlement Payment if they do not request to be excluded from the
21 Settlement and each Aggrieved Employees' share of the Aggrieved
22 Employee Payment, if any. The Settlement Administrator shall use
23 the Class Data to determine Class Members' Workweeks and PAGA
24 Pay Periods. The Notice will also advise the Aggrieved Employees
25 that they will release the Released PAGA Claims and will receive
26 their share of the Aggrieved Employee Payment regardless of
27 whether they request to be excluded from the Settlement.
28

1 b) The Notice Packet's mailing envelope shall include the following
2 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
3 ENTITLED TO PARTICIPATE IN A CLASS ACTION
4 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
5 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
6 NOTICE."

7 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the
8 Settlement Administrator will perform a search based on the National
9 Change of Address Database to update and correct any known or identifiable
10 address changes. No later than twenty-one (21) calendar days after
11 preliminary approval of the Settlement, the Settlement Administrator shall
12 mail copies of the Notice Packet to all Class Members via regular First-Class
13 U.S. Mail and electronic mail. The Settlement Administrator shall exercise
14 its best judgment to determine the current mailing address for each Class
15 Member. The address identified by the Settlement Administrator as the
16 current mailing address shall be presumed to be the best mailing address for
17 each Class Member.

18 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
19 Administrator as non-delivered on or before the Response Deadline shall be
20 re-mailed to any forwarding address provided within seven (7) days of
21 receiving the returned notice. If no forwarding address is provided, the
22 Settlement Administrator shall promptly attempt to determine a correct
23 address by lawful use of skip-tracing, or other search using the name,
24 address and/or Social Security number of the Class Member involved, and
25 shall then perform a re-mailing, if another mailing address is identified by
26 the Settlement Administrator. In addition, if any Class Member who is
27 currently employed by Defendant, is returned to the Settlement
28 Administrator, as non-delivered and no forwarding address is provided, the

1 Settlement Administrator shall notify Defendant. Defendant will request
2 that the currently employed Class Member provide a corrected address and
3 transmit to the Settlement Administrator any corrected address provided by
4 the Class Member. Class Members who received a re-mailed Notice Packet
5 shall have their Response Deadline extended fifteen (15) days from the
6 original Response Deadline.

7 5. Disputes Regarding Individual Settlement Payments. Class Members will
8 have the opportunity, should they disagree with Defendant's records
9 regarding the start and end dates of employment, to provide documentation
10 and/or an explanation to show contrary dates. If there is a dispute, the
11 Settlement Administrator will consult with the Parties to determine whether
12 an adjustment is warranted. The Settlement Administrator shall determine
13 the eligibility for, and the amounts of, any Individual Settlement Payments
14 under the terms of this Agreement. The Settlement Administrator's
15 determination of the eligibility for and amount of any Individual Settlement
16 Payment shall be binding upon the Class Member and the Parties.

17 6. Disputes Regarding Administration of Settlement. Any disputes not
18 resolved by the Settlement Administrator concerning the administration of
19 the Settlement will be resolved by the Court under the laws of the State of
20 California. Before any such involvement of the Court, counsel for the
21 Parties will confer in good faith to resolve the disputes without the necessity
22 of involving the Court.

23 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
24 Packet shall state that Class Members who wish to exclude themselves from
25 the Settlement must submit a signed copy of the Request for Exclusion form
26 to the Settlement Administrator by the Response Deadline. A Request for
27 Exclusion form will be mailed together with the Notice Packet to all Class
28 Members. The Request for Exclusion will not be valid if it is not timely

submitted, if it is not signed by the Class Member, or if it does not contain the name and address and last four digits of the Social Security number of the Class Member. The date of the postmark on the mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Class Member who submits a timely Request for Exclusion shall be excluded from the Settlement Class will not be entitled to an Individual Settlement Payment and will not be otherwise bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. However, any Class Member that submits a timely Request for Exclusion that is also an Aggrieved Employee will still receive his/her pro rata share of the Aggrieved Employee Payment, as specified below, and in consideration, will be bound by the Release by the PAGA Class as set forth herein. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Court approves the Settlement. No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted timely Requests for Exclusion.

8. Objections. The Notice of Class Action Settlement contained in the Notice Packet shall state that Class Members who wish to object to the Settlement may submit to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark date of mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely. The Notice of Objection, if in writing, must be signed by the Settlement Class Member and state: (1) the case name and number; (2) the name of the Settlement Class Member; (3) the address of the

1 Settlement Class Member; (4) the last four digits of the Settlement Class
2 Member's Social Security number; (5) the basis for the objection; and (6) if
3 the Settlement Class Member intends to appear at the Final
4 Approval/Settlement Fairness Hearing. Settlement Class Members who fail
5 to make objections in writing in the manner specified above may still make
6 their objections orally at the Final Approval/Settlement Fairness Hearing
7 with the Court's permission. Settlement Class Members will have a right to
8 appear at the Final Approval/Settlement Fairness Hearing to have their
9 objections heard by the Court regardless of whether they submitted a written
10 objection. At no time shall any of the Parties or their counsel seek to solicit
11 or otherwise encourage Class Members to file or serve written objections to
12 the Settlement or appeal from the Order and Final Judgment. Class
13 Members who submit a written request for exclusion may not object to the
14 Settlement. Class Members may not object to the PAGA Payment.

15 N. Allocation of the Gross Settlement Amount.

- 16 1. Calculation of Individual Settlement Payments. Individual Settlement
17 Payments shall be paid from the Net Settlement Amount and shall be paid
18 pursuant to the formula set forth herein. Using the Class Data, the Settlement
19 Administrator shall add up the total number of Workweeks for all Class
20 Members. The respective Workweeks for each Class Member will be
21 divided by the total Workweeks for all Class Members, resulting in the
22 Payment Ratio for each Class Member. Each Class Member's Payment
23 Ratio will then be multiplied by the Net Settlement Amount to calculate each
24 Class Member's estimated Individual Settlement Payments. Each Individual
25 Settlement Payment will be reduced by any legally mandated employee tax
26 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement
27 Payments for Class Members who submit valid and timely requests for
28 exclusion will be redistributed to Settlement Class Members who do not

submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios.

2. Calculation of Individual Payments to the Aggrieved Employees. Using the Class Data, the Settlement Administrator shall add up the total number of PAGA Pay Periods for all Aggrieved Employees during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employees will be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting in the “PAGA Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved Employee’s estimated share of the Aggrieved Employee Payment.

3. Allocation of Individual Settlement Payments. For tax purposes, Individual Settlement Payments shall be allocated and treated as 30% wages (“Wage Portion”) and 70% penalties and pre-judgment interest (“Penalties and Interest Portion”). The Wage Portion of the Individual Settlement Payments shall be reported on IRS Form W-2 and the Penalty Portion and Interest Portion of the Individual Settlement Payments shall be reported on IRS Form 1099 issued by the Settlement Agreement.

4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Settlement Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

5. No Credit Toward Benefit Plans. The Individual Settlement Payments and individual shares of the PAGA Payment made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation

1 plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is
2 the Parties' intention that this Settlement Agreement will not affect any
3 rights, contributions, or amounts to which any Class Members may be
4 entitled under any benefit plans.

5 6. All monies received by Settlement Class Members under the Settlement which
6 are attributable to wages shall constitute income to such Settlement Class
7 Members solely in the year in which such monies are received by the
8 Settlement Class Members. It is the intent of the Parties that Individual
9 Settlement Payments and individual shares of the PAGA Payment provided for
10 in this Settlement agreement are the sole payments to be made by Defendant to
11 Settlement Class Members and/or Aggrieved Employees in connection with
12 this Settlement Agreement, with the exception of Plaintiff, and that the
13 Settlement Class Members and/or Aggrieved Employees are not entitled to any
14 new or additional compensation or benefits as a result of having received the
15 Individual Settlement Payments and/or their shares of the Aggrieved Employee
16 Payment.

17 7. Mailing. Individual Settlement Payments and Aggrieved Employee
18 Payments shall be mailed by regular First-Class U.S. Mail to Settlement
19 Class Members' and/or Aggrieved Employees' last known mailing address
20 no later than ten (10) calendar days after the Net Settlement Amount and
21 PAGA Payment are fully funded, which is subject to the Court granting
22 Final Approval by the time the Net Settlement Amount and PAGA Payment
23 are expected to be fully funded by August 1, 2026.

24 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
25 Employees shall remain valid and negotiable for one hundred and eighty
26 (180) days from the date of their issuance. If a Settlement Class Member
27 and/or Aggrieved Employees does not cash his or her settlement check
28 within ninety (90) days, the Settlement Administrator will send a letter to

1 such persons, advising that the check will expire after the 180th day, and
2 invite that Settlement Class Member and/or Aggrieved Employees to request
3 reissuance in the event the check was destroyed, lost, or misplaced. In the
4 event an Individual Settlement Payment and/or Aggrieved Employees'
5 individual share of the PAGA Payment check has not been cashed within
6 one hundred and eighty (180) days, all funds represented by such uncashed
7 checks, plus any interest accrued thereon, shall be transmitted to the State
8 Controller's Unclaimed Property Fund in the name of the Class Member
9 who did not claim the funds.

- 10 9. Service Award. In addition to the Individual Settlement Payment as a
11 Settlement Class Member and his individual share of the Aggrieved
12 Employee Payment, Plaintiff will apply to the Court for an award of not
13 more than \$10,000.00 as the Service Award. Defendant will not oppose a
14 Service Award of not more than \$10,000.00 for Plaintiff. The Settlement
15 Administrator shall pay the Service Award, either in the amount stated
16 herein if approved by the Court or some other amount as approved by the
17 Court, to Plaintiff from the Gross Settlement Amount no later than fifteen
18 (15) calendar days after the Gross Settlement Amount is fully funded. Any
19 portion of the requested Service Award that is not awarded to the Class
20 Representative shall be part of the Net Settlement Amount and shall be
21 distributed to Settlement Class Members as provided in this Agreement. The
22 Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff
23 for his Service Award. Plaintiff shall be solely and legally responsible to
24 pay any and all applicable taxes on his Service Award and shall hold
25 harmless the Released Parties from any claim or liability for taxes, penalties,
26 or interest arising as a result of the Service Award. Approval of this
27 Settlement shall not be conditioned on Court approval of the requested
28 amount of the Service Award. If the Court reduces or does not approve the

1 requested Service Award, Plaintiff shall not have the right to revoke the
2 Settlement, and it will remain binding.

3 10. Class Counsel Award. Defendant understands, and will not oppose, a
4 motion for Attorneys' Fees not to exceed one-third of the Gross Settlement
5 Amount currently estimated to be Seventy-six Thousand Six Hundred Sixty-
6 Six Dollars and Sixty-Six Cents (\$76,666.66) **and** Attorneys' Expenses
7 supported by declaration not to exceed Twenty-Five Thousand Dollars and
8 Zero Cents (\$25,000.00). Any awarded Class Counsel Award shall be paid
9 from the Gross Settlement Amount. Any portion of the requested Attorneys'
10 Fees and/or Attorneys' Expenses that are not awarded to Class Counsel shall
11 be part of the Net Settlement Amount and shall be distributed to Settlement
12 Class Members as provided in this Agreement. The Settlement
13 Administrator shall allocate and pay the Attorneys' Fees to Class Counsel
14 from the Gross Settlement Amount no later than fifteen (15) calendar days
15 after the Gross Settlement Amount is fully funded. Class Counsel shall be
16 solely and legally responsible to pay all applicable taxes on the payment
17 made pursuant to this paragraph. The Settlement Administrator shall issue
18 an IRS Form 1099 — MISC to Class Counsel for the payments made
19 pursuant to this paragraph. If the Court reduces or does not approve the
20 requested Attorneys' Fees, Plaintiff and Class Counsel shall not have the
21 right to revoke the Settlement, or to appeal such order, and the Settlement
22 will remain binding.

23 11. PAGA Payment. Ten Thousand Dollars and Zero Cents (\$10,000.00) shall
24 be allocated from the Gross Settlement Amount for settlement of claims for
25 civil penalties under the Private Attorneys General Act of 2004 ("PAGA
26 Payment"). The Settlement Administrator shall pay seventy-five percent
27 (75%) of the PAGA Payment (\$7,500.00) to the California Labor and
28 Workforce Development Agency no later than ten (10) calendar days after

1 Defendant has made enough Installment Payments to sufficiently fund the
2 Settlement to pay the Net Settlement Amount and PAGA Payment
3 (hereinafter "LWDA Payment"). Twenty-five percent (25%) of the PAGA
4 Payment (\$2,500.00) will be distributed to the Aggrieved Employees as
5 described in this Agreement (hereinafter "Aggrieved Employee Payment").
6 For purposes of distributing the PAGA Payment to the Aggrieved
7 Employees, each Aggrieved Employee shall receive their pro-rata share of
8 the Aggrieved Employee Payment using the PAGA Payment Ratio as
9 defined above.

10 12. Settlement Administration Costs. The Settlement Administrator shall be
11 paid for the costs of administration of the Settlement from the Gross
12 Settlement Amount. The estimate of the Settlement Administration Costs is
13 \$4,950.00. The Settlement Administrator shall be paid the Settlement
14 Administration Costs no later than fifteen (15) calendar days after the Gross
15 Settlement Amount is fully funded.

16 O. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
17 the Court a Motion for Order Granting Final Approval and Entering Judgment,
18 within twenty-eight (28) days following the expiration of the Response Deadline,
19 which motion shall request final approval of the Settlement and a determination of
20 the amounts payable for the Service Award, the Class Counsel Award, the PAGA
21 Payment, and the Settlement Administration Costs. Plaintiff will provide Defendant
22 with a draft of the Motion at least three (3) business days prior to the filing of the
23 Motion to give Defendant an opportunity to propose changes or additions to the
24 Motion.

25 1. Declaration by Settlement Administrator. No later than seven (7) calendar
26 days after the Response Deadline, the Settlement Administrator shall submit
27 a declaration in support of Plaintiff's motion for final approval of this
28 Settlement detailing the number of Notice Packets mailed and re-mailed to

1 Class Members, the number of undeliverable Notice Packets, the number of
2 timely requests for exclusion, the full names of any Class Members who opt
3 out of the Settlement, the number of objections received, the amount of the
4 average, lowest, and highest Individual Settlement Payments, the amount of
5 the average, lowest, and highest Aggrieved Employee Payments, the
6 Settlement Administration Costs, and any other information as the Parties
7 mutually agree or the Court orders the Settlement Administrator to provide.

8 2. Final Approval Order and Judgment. Class Counsel shall present an Order
9 Granting Final Approval of Class Action Settlement to the Court for its
10 approval, and Judgment thereon, at the time Class Counsel files the Motion
11 for Final Approval.

12 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
13 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
14 Final Approval, including the Order Granting Final Approval of Class Action
15 Settlement, and Judgment at least three (3) business days in advance of filing with
16 the Court. The Parties and their counsel will cooperate with each other and use their
17 best efforts to affect the Court's approval of the Motions for Preliminary and Final
18 Approval of the Settlement, and entry of Judgment.

19 O. Cooperation. The Parties and their counsel will cooperate with each other and use
20 their best efforts to implement the Settlement.

21 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
22 except such proceedings necessary to implement and complete the Settlement,
23 pending the Final Approval/Settlement Fairness Hearing to be conducted by the
24 Court.

25 Q. Amendment or Modification. This Agreement may be amended or modified only by
26 a written instrument signed by counsel for all Parties or their successors-in-interest.

27 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
28 Agreement among these Parties, and no oral or written representations, warranties or

1 inducements have been made to any Party concerning this Agreement or its Exhibit
2 other than the representations, warranties and covenants contained and memorialized
3 in this Agreement and its Exhibit.

4 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
5 and represent they are expressly authorized by the Parties whom they represent to
6 negotiate this Agreement and to take all appropriate Action required or permitted to
7 be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
8 execute any other documents required to effectuate the terms of this Agreement. The
9 persons signing this Agreement on behalf of Defendant represents and warrants that
10 he/she is authorized to sign this Agreement on behalf of Defendant. Plaintiff
11 represents and warrants that he is authorized to sign this Agreement and that he has
12 not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

13 T. Binding on Successors and Assigns. This Agreement shall be binding upon, and
14 inure to the benefit of, the successors or assigns of the Parties, as previously defined.

15 U. California Law Governs. All terms of this Agreement and the Exhibit and any
16 disputes shall be governed by and interpreted according to the laws of the State of
17 California.

18 V. Counterparts. This Agreement may be executed in one or more counterparts. All
19 executed counterparts and each of them shall be deemed to be one and the same
20 instrument provided that counsel for the Parties to this Agreement shall exchange
21 among themselves copies or originals of the signed counterparts.

22 W. This Settlement Is Fair, Adequate, and Reasonable. The Parties believe this
23 Settlement is a fair, adequate, and reasonable settlement of this Action and have
24 arrived at this Settlement after extensive arms-length negotiations, taking into
25 account all relevant factors, present and potential.

26 X. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
27 with respect to the interpretation, implementation, and enforcement of the terms of
28 this Agreement and all orders and judgments entered in connection therewith, and the

1 Parties and their counsel submit to the jurisdiction of the Court for purposes of
2 interpreting, implementing and enforcing the settlement and all orders and judgments
3 entered in connection with this Agreement.

4 Y. Invalidity of Any Provision. Before declaring any provision of this Agreement
5 invalid, the Court shall first attempt to construe the provisions valid to the fullest
6 extent possible consistent with applicable precedents so as to define all provisions of
7 this Agreement valid and enforceable.

8 Z. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
9 class certification for purposes of this settlement only.

10 AA. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
11 Released Class Claims and Released PAGA Claims have merit and give rise to
12 liability on the part of Defendant. Defendant claims that the Released Class Claims
13 and Released PAGA Claims have no merit and do not give rise to liability. This
14 Agreement is a compromise of disputed claims. Nothing contained in this
15 Agreement and no documents referred to and no action taken to carry out this
16 Agreement may be construed or used as an admission by or against the Defendant or
17 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted.
18 Other than as may be specifically set forth herein, each Party shall be responsible for
19 and shall bear its/his own attorney's fees and costs.

1 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

2 DATED: 05/20/2025


Fidel Gomez Jr (May 20, 2025 16:42 PDT)

3

4

FIDEL GOMEZ

5

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

6

7

DATED: _____

8

KIRBY MANUFACTURING, INC.

9

10

Printed Name

11

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Title

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IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: _____

FIDEL GOMEZ

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: MAY 28, 2025



KIRBY MANUFACTURING, INC.

Richard Kirby

Printed Name

President

Title

1 IT IS SO AGREED AS TO FORM BY COUNSEL:
2

3 DATED: May 21, 2025

JCL LAW FIRM, A.P.C.

4 By: 
5

6 Attorneys for Plaintiff and the Settlement Class
7 Members
8

9 DATED: May 21, 2025

ZAKAY LAW GROUP, APLC

10 By: 
11

12 Attorneys for Plaintiff and the Settlement Class
13 Members

14 DATED: 5/29/25

BERLINER COHEN, LLP

15 By: 
16

17 Kim Flores, Esq.
18 Lindsay Irene Walczak, Esq.
19 Attorneys for Defendant
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EXHIBIT A

**NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Fidel Gomez v. Kirby Manufacturing, Inc., Tulare County Superior Court Case No. VCU308341)

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement . Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Tulare (the “Court”) has been reached between Plaintiff Fidel Gomez (“Plaintiff”) and Defendant Kirby Manufacturing, Inc. The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

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

All current and former non-exempt employees who worked for Kirby Manufacturing, Inc. in California, at any time during the period beginning April 25, 2020 to February 26, 2025 (“Class Period”).

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

2. What is this class action lawsuit about?

On April 25, 2024, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Tulare. Plaintiff asserted claims that Defendant: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 *et seq*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512

and the applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation Of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; and (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203. On April 25, 2024, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant. On July 25, 2025, Plaintiff filed a First Amended Complaint adding a ninth cause of action for violations of the Private Attorneys General Act (the “Action”).

Defendant expressly denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute any wages, damages and penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times it complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.

On February 26, 2025, the Parties participated in an all-day mediation with Steven Mehta, Esq., an experienced mediator of wage and hour class and PAGA actions. The Parties accepted a Mediator’s settlement proposal and reached an agreement for settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant agreed to pay an “all in” amount of Two Hundred Thirty Thousand Dollars and Zero Cents (\$230,000.00) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments, Settlement Administration Costs, Class Counsel Award, Service Award, and the PAGA Payment.

Defendant will pay to the Settlement Administrator the Gross Settlement Amount in ten (10) equal installment payments of \$23,000, on the first of each month, beginning on April 1, 2026, and ending on January 1, 2027.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Costs. Payment to the Settlement Administrator, estimated not to exceed \$4,950.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Class Counsel Award. Payment to Class Counsel of an award of attorneys’ fees of no more than 1/3 of the Gross Settlement Amount (currently \$76,666.66) and actually incurred litigation expenses of not more than \$25,000 for all expenses incurred as documented in Class Counsel’s billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Service Award. A Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for his services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of \$10,000.00 relating to Plaintiff’s claim under the Private Attorneys General Act (“PAGA”), \$7,500.00 of which will be paid to the State of California’s Labor and

Workforce Development Agency (“LWDA”) and the remaining \$2,500.00 will be distributed to Aggrieved Employees as part of the PAGA Payment.

- Calculation of Payments to Settlement Class Members. After all the above payments of the court-approved Class Counsel Award, the Service Award, the PAGA Payment, and the Settlement Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount,” shall be distributed to class members who do **not** request exclusion (“Settlement Class Members”). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member’s workweeks that occurred during the Class Period. A “workweek” is defined as any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member is employed by Defendant during the Class Period in California.
- Calculation of Aggrieved Employees Payments to Aggrieved Employees. The PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The PAGA Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. “Aggrieved Employee” means all current and former non-exempt employees who worked for Kirby Manufacturing, Inc. in California, at any time during the period beginning April 25, 2023 to February 26, 2025 (“PAGA Period”).

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Thirty percent (30%) of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Seventy percent (70%) of each Individual Settlement Payment is allocated to penalties and pre-judgment interest (“Penalty and Interest Portion”). Each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for Penalty and Interest Portion of the Individual Settlement Payments. In addition, no taxes will be withheld from the PAGA Payment paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant’s counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

No Credit Toward Benefit Plans. The Individual Settlement Payments and Aggrieved Employee Payments made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

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

4. What Do I Release Under the Settlement?

Released Claims. Upon payment of the Gross Settlement Amount in full, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged or reasonably could have been alleged based on the facts alleged, in the Operative Complaint in the Action, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Upon payment of the Gross Settlement Amount in full, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all PAGA claims alleged in the Operative Complaint in the Action and Plaintiff's PAGA Notice to the LWDA, which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

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

5. How much will my payment be?

Defendant's records reflect that you have <<____>> Workweeks worked during the Class Period (April 25, 2020 through February 26, 2025).

Based on this information, your estimated Individual Settlement Payment is <<____>>.

Defendant's records reflect that you have <<____>> pay periods worked during the PAGA Period (April 25, 2023 through February 26, 2025).

Based on this information, your estimated Aggrieved Employee Payment is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or fifteen (15) days after the re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at <https://apexclassaction.com/>

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

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or “opt out.” **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or “opt out,” you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the PAGA Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is 18 Technology Drive, Suite 154, Irvine, CA 92618; Tel: (800) 355-0700. The request for exclusion must state in substance that the Class Member has read the Class Notice and that he or she wishes to be excluded from the settlement of the class action lawsuit entitled *Fidel Gomez v. Kirby Manufacturing, Inc.*, currently pending in Superior Court of Tulare Case No. VCU308341. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is ***Fidel Gomez v. Kirby Manufacturing, Inc., Tulare County Superior Court, Case No. VCU308341***. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is 18 Technology Drive, Suite 154, Irvine, CA 92618; Tel: (800) 355-0700.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
E-Mail: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
Email: shani@zakaylaw.com

Counsel for Defendant:

Kim Flores, Esq.
Lindsay Irene Walczak, Esq.
Berliner Cohen, LLP
548 West 21st St.
Merced, California 95340
Tel.: 209-385-0700
Fax: 209-385-3789
kim.flores@berliner.com
lindsay.walczak@berliner.com

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

The Court will hold a Final Approval Hearing at **00:00 AM/PM on** _____, at the Tulare County Superior Court, Department 7 located at 221 S Mooney Blvd, Room 124, Visalia, CA 93291, before Judge Gary Johnson. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

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

You may call the Settlement Administrator at 1-800-355-0700 or write to ***Fidel Gomez v. Kirby Manufacturing, Inc., Tulare County Superior Court, Case No. VCU308341***, Settlement Administrator, 18 Technology Drive, Suite 154, Irvine, CA 92618 c/o Apex Class Action.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the administrator's website at <https://apexclassaction.com/>.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the State Controller's Unclaimed Property Fund. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2