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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SACRAMENTO**  
10

11 KIJANA WICKER, individually, and on  
12 behalf of other members of the general public  
13 similarly situated, and on behalf of aggrieved  
14 employees pursuant to the Private Attorneys  
General Act ("PAGA");

15 Named Plaintiff,

16 v.

17 ASC PROFILES LLC dba ASC BUILDING  
18 PRODUCTS, ASC STEEL DECK, AND AEP  
19 SPAN, a Delaware limited liability company;  
20 BLUESCOPE STEEL AMERICAS, LLC, a  
21 Delaware limited liability company;  
22 BLUESCOPE BUILDINGS NORTH  
23 AMERICA, INC., a Delaware corporation;  
24 BLUESCOPE STEEL LIMITED, an unknown  
25 business entity; NS BLUESCOPE COATED  
26 PRODUCTS – NORTH AMERICA, a  
27 Delaware limited liability company;  
28 STEELSCAPE, LLC, a California limited  
liability company; and DOES 1 through 100,  
inclusive;

Defendants.

Case No.: 34-2019-00270803-CU-OE-GDS

Honorable Shama H. Mesiwala  
Department 53

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING NAMED  
PLAINTIFF'S MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT, CONDITIONAL  
CERTIFICATION, APPROVAL OF CLASS  
NOTICE, SETTING OF FINAL APPROVAL  
HEARING DATE**

[Reservation ID: 2581207]

Hearing Date: September 14, 2021  
Hearing Time: 1:30 p.m.  
Hearing Place: Department 53

Complaint Filed: December 6, 2019  
FAC Filed: February 14, 2020  
SAC Filed: June 4, 2021  
Trial Date: None Set



1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 The Motion for Preliminary Approval of Class Action Settlement came before this Court, the  
3 Honorable Shama H. Mesiwala presiding, on September 14, 2021. The Court having considered the  
4 papers submitted in support of the Motion, HEREBY ORDERS THE FOLLOWING:

5 1. The following Class is conditionally certified for purposes of settlement only: all current  
6 and former nonexempt employees who were employed in California either directly and/or jointly by  
7 Defendants or the Released Parties during the Class Period and who are releasing claims against  
8 Defendants ASC Profiles LLC, SteelScape LLC, and BlueScope Building, NA ("Defendants") or the  
9 Released Parties during the Class Period ("Class Members" and "Class"). The Class Period is the period  
10 from October 30, 2015, to June 30, 2021 ("Class Period").

11 2. The Court grants preliminary approval of the settlement based upon the terms set forth in  
12 the Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement") attached hereto as  
13 **Exhibit A**. Capitalized terms shall have the definitions set forth in the Settlement Agreement.

14 3. The Settlement appears to be fair, adequate, and reasonable to the Class. The Settlement  
15 falls within the range of reasonableness and appears to be presumptively valid, subject only to any  
16 objections that may be raised at the final approval hearing and final approval by this Court.

17 4. Plaintiff Kijana Wicker ("Named Plaintiff") is conditionally approved as the class  
18 representative for the Class.

19 5. The proposed enhancement payment of \$10,000 to Named Plaintiff for his services as  
20 class representative is conditionally approved.

21 6. Douglas Han, Shunt Tatavos-Gharajeh, Arsine Grigoryan, and Phillip Song of Justice  
22 Law Corporation are conditionally approved as Class Counsel for the Class.

23 7. The proposed payment of the attorneys' fees to Class Counsel in an amount not to exceed  
24 thirty-eight percent (38%) of the Gross Settlement Amount or \$1,900,000 and litigation costs to Class  
25 Counsel in the amount not to exceed \$30,000 are conditionally approved.

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1           8.       A Final Approval Hearing on the question of whether the Settlement Agreement, the  
2 attorneys' fees, the litigation costs, and the enhancement payment should be finally approved as fair,  
3 reasonable, and adequate as to all Class Members who do not submit a timely and valid Request for  
4 Exclusion and who will be bound by the terms of the Settlement Agreement, including the Release of  
5 Claims and any Final Judgment entered in the Action ("Settlement Class Members" or "Settlement  
6 Class"), is scheduled on the date and time set forth in Paragraph 15 below.

7           9.       The Court confirms CPT Group, Inc. ("CPT Group") as the Settlement Administrator.

8           10.      The proposed payment of Administrative Costs currently estimated at \$13,500 but to not  
9 exceed \$15,000 to CPT Group for its services is conditionally approved.

10          11.      The Court also hereby approves and orders payment from the Gross Settlement Amount  
11 the Private Attorneys General Act of 2004 ("PAGA") Penalties of \$200,000, seventy-five percent (75%)  
12 of which (\$150,000) will be paid to the California Labor and Workforce Development Agency  
13 ("LWDA") and twenty-five percent (25%) of which (\$50,000) will be distributed to all current and  
14 former nonexempt employees who were employed in California either directly and/or jointly by  
15 Defendants or the Released Parties during the period from September 18, 2018, to June 30, 2021  
16 ("PAGA Penalties," "Aggrieved Employees," and "PAGA Period").

17          12.      The Court approves, as to form and content, the Notice of Class Action and PAGA  
18 Settlement ("Class Notice") as attached as **Exhibit 1** to the Settlement Agreement. The Court also  
19 approves the procedure for Class Members to participate in, to opt out of, and to object to the Settlement  
20 as set forth in the Class Notice. The Court approves, as to the form and content, of the Request for  
21 Exclusion Form the Class Members may use to opt out of the Settlement attached as **Exhibit 3** to the  
22 Settlement Agreement.

23          13.      The Court directs the mailing of the Class Notice to all identified Class Members via  
24 first-class regular U.S. Mail in accordance with the implementation schedule set forth in paragraph 15  
25 below. The Court finds the dates selected for the mailing and distribution of the Class Notice, as set  
26 forth in the Implementation Schedule, meet the requirements of due process and provide the best notice  
27 practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled  
28 thereto.

1 14. To facilitate administration of the Settlement Agreement pending final approval, the  
2 Court hereby enjoins Named Plaintiff and all Settlement Class Members from filing or prosecuting any  
3 claims, suits or administrative proceedings (including, but not limited to, filing claims with the Division  
4 of Labor Standards Enforcement of the California Department of Industrial Relations) released by the  
5 Settlement Agreement (Released Claims and Release of PAGA Claims) unless and until such Settlement  
6 Class Members have filed valid Requests for Exclusion with the Settlement Administrator and the time  
7 for filing valid requests for exclusion with the Settlement Administrator has not elapsed.

8 15. The Court orders the following **Implementation Schedule** for further proceedings:

a.	Deadline for Defendants to submit Class List to Settlement Administrator	No later than twenty (20) calendar days after the entry of the Preliminary Order
b.	Deadline for Settlement Administrator to mail the Class Notice to Class Members	Within fifteen (15) calendar days of the receipt of the Class List from Defendants
c.	Deadline for Class Members to Request for Exclusion from Settlement or postmark objections to Settlement to the Settlement Administrator	No later than sixty (60) calendar days after the date Class Notices are initially mailed
e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement	Sixteen (16) Court days before Final Approval Hearing in conformity with Code of Civil Procedure § 1005
f.	Deadline for Class Counsel to file Motion for attorneys' fees, litigation costs, and the enhancement payment	Sixteen (16) Court days before Final Approval Hearing in conformity with Code of Civil Procedure § 1005
g.	Final Approval Hearing and Final Approval	January 22, 2022 at 1:30 p.m. in Department 53

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21 **IT IS SO ORDERED.**

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23 Dated:

24 BY \_\_\_\_\_  
25 Honorable Shama H. Mesiwala  
26 Judge of the Superior Court  
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# **EXHIBIT A**

## SETTLEMENT AGREEMENT

Through this Settlement Agreement (“Agreement”), which is subject to Court approval, Plaintiff Kijana Wicker (“Named Plaintiff”), on his own behalf and on behalf of all members of the Settlement Class and PAGA Aggrieved Employees, as defined below, on the one hand, and Defendants ASC Profiles LLC, SteelScape LLC, and BlueScope Building, NA (collectively the “Defendants”), on the other hand (collectively the “Parties”), by and through their respective counsel, hereby stipulate and agree as follows:

This Agreement resolves all claims that were asserted or could have been asserted against Defendants, based on or arising from the facts alleged, in two actions: *Wicker v. ASC Profiles LLC, et al.*, United States District Court for the Eastern District of California, No. 2:19-cv-02443-TLN-KJN, which was filed on October 30, 2019, including any and all amended complaints; and *Wicker v. ASC Profiles LLC, et al.*, Superior Court of the State of California for the County of Sacramento, No. 34-2019-00270803-CU-OE-GDS, which was filed on December 6, 2019, including any and all amended complaints.

### **I. DEFINITIONS**

**A. Administrative Costs.** The term “Administrative Costs” means all administrative costs of settlement, including cost of notice to the Settlement Class, claims administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Settlement Agreement.

**B. Aggrieved Employees.** The term “Aggrieved Employees” means all current and former nonexempt employees who were employed in California either directly and/or jointly by Defendants or the Released Parties during the PAGA Period.

**C. Class Member.** The term “Class Member” means all current and former nonexempt employees who were employed in California either directly and/or jointly by Defendants or the Released Parties during the Class Period and who are releasing claims against Defendants or the Released Parties during the Class Period.

**D. Class Counsel.** The term “Class Counsel” means Douglas Han, Shunt Tatavos-

Gharajeh, Arsine Grigoryan and Phillip D. Song of Justice Law Corporation, who are counsel for and acting on behalf of Named Plaintiff, the Settlement Class, and Aggrieved Employees. The term Class Counsel will be used synonymously with the term Plaintiff's Counsel.

**E. Class Notice.** The term "Class Notice" means the Notice of Class Action and PAGA Settlement in a form substantially similar to the form attached as **Exhibit 1**.

**F. Class Period.** The term "Class Period" means the period from October 30, 2015, to June 30, 2021.

**G. Court.** The term "Court" means the Superior Court of the State of California for the County of Sacramento.

**H. Date of Final Approval.** The terms "Date of Final Approval" or "Date of Final Judgment" mean the date when the Court enters the Order and Judgment Granting Final Approval of the Settlement Agreement

**I. Defendants.** The term "Defendants" means ASC Profiles LLC, SteelScope LLC, and BlueScope Building, NA.

**J. Defense Counsel.** The term "Defense Counsel" means Todd L. Nunn and Patrick M. Madden of K&L GATES, LLP.

**K. Eligible Employee Class Work Weeks.** The term Eligible Employee Class Work Weeks means any workweeks occurring during the Class Settlement Period during which a member of the Settlement Class worked.

**L. Eligible Employee PAGA Pay Periods.** The term "Eligible Employee PAGA Pay Periods" means any pay periods occurring during the PAGA Period during which an Aggrieved Employee worked.

**M. Final Approval and Judgment.** The term "Final Approval and Judgment" means the Court's order and judgment granting final approval of the Settlement Agreement requesting that the Court enter judgment and retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement, anticipated to be substantially in the form of **Exhibit 2**.

**N. Final or Effective Date.** The terms “Final” and “Effective Date” mean the date by which this Agreement is finally approved as provided herein and the Final Approval and Judgment becomes final. For purposes of this paragraph, the Final Approval and Judgment “becomes final” when the Court signs the Final Approval and Judgment. If there are objectors or Plaintiff-in-interventions, upon the latter of (1) expiration of the time for filing an appeal of the Final Approval and Judgment or otherwise seeking appellate review; or (2) if an appeal is timely filed or other appellate review sought, the date that the Final Approval and Judgment is finally affirmed and all means of appellate review have been exhausted or have expired.

**O. Gross Settlement Amount.** The term “Gross Settlement Amount” or “GSA” means the full, complete, and maximum sum of Five Million Dollars (\$5,000,000.00) to be paid by Defendants pursuant to this Settlement. The Gross Settlement Amount shall include Defendants’ share of taxes on the wage portion of the Individual Settlement Payments, which will be paid out of the Gross Settlement Amount.

**P. Individual Settlement Payment.** The term “Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member.

**Q. Litigation.** The terms “Litigation” and “Action” mean *Wicker v. ASC Profiles LLC, et al.*, United States District Court for the Eastern District of California, No. 2:19-cv-02443-TLN-KJN, and *Wicker v. ASC Profiles LLC, et al.*, Superior Court of the State of California for the County of Sacramento, No. 34-2019-00270803-CU-OE-GDS.

**R. Named Plaintiff.** The term “Named Plaintiff” means Kijana Wicker.

**S. Net Settlement Amount.** The term “Net Settlement Amount” or “NSA” means the Gross Settlement Amount minus any Court-approved attorneys’ fees and litigation costs, settlement administration costs, enhancement payment to Named Plaintiff, payment to California’s Labor Workforce and Development Agency (“LWDA”), and taxes due and owing as a result of the Settlement. The NSA includes two components: the Class Settlement Amount, and the PAGA Settlement Amount.

**T. PAGA.** The term “PAGA” means the Private Attorneys General Act of 2004,



California Labor Code §§ 2698.

**U. PAGA Penalties.** The term “PAGA Penalties” means the amount of \$200,000 allocated from the GSA to resolve penalty claims under PAGA, 75% of which will be distributed to the LWDA and 25% of which will be distributed to the Aggrieved Employees.

**V. PAGA Period.** The term “PAGA Period” means the period from September 18, 2018, to June 30, 2021.

**W. Parties.** The term “Parties” means the Named Plaintiff, Settlement Class, Aggrieved Employees, and Defendants.

**X. Released Parties.** “Released Parties” or a “Released Party” means Defendants, their respective current and former parents, subsidiaries, affiliates, predecessors or successors in interest, including specifically, but not limited to, ASC Profiles LLC, SteelScape LLC, Steelscape Washington LLC, BlueScope Building, NA, and the officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, and re-insurers of any of them.

**Y. Settlement Administrator.** The term “Settlement Administrator” means CPT Group, Inc. which will be responsible for the administration of the Settlement and distribution of the Gross Settlement Amount, as defined herein, and all related settlement matters.

**Z. Settlement Agreement.** The terms “Settlement Agreement” and “Agreement” are used synonymously to mean this settlement and agreement between the Parties.

**AA. Settlement Class and Settlement Class Member.** The terms “Settlement Class” and “Settlement Class Member” mean all Class Members who do not submit a timely and valid Request for Exclusion and who will be bound by the terms of the Settlement Agreement, including the Release of Claims and any Final Judgment entered in the Action.

## **II. BACKGROUND**

**A.** Named Plaintiff filed a class action complaint in state court on October 30, 2019, and served Defendants on November 5, 2019. Defendants removed the class action to the United States District Court for the Eastern District of California on December 5, 2019. Named Plaintiff served a PAGA notice letter on LWDA and Defendants on September 18, 2019, and filed a

complaint in state court alleging claims under PAGA on December 6, 2019.

B. In the Litigation, Named Plaintiff alleges, *inter alia*, on behalf of himself and all others similarly situated, that Defendants violated California Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512(a), 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802; California Code of Regulations, Title 8, section 11010 *et seq.* and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders or provisions therein; the California *Business and Professions Code* section 17200 *et seq.*; and PAGA, as a result of Defendants’ California wage and hour policies and practices. Specifically, Named Plaintiff alleges that Defendants failed to pay lawful wages, including failing to pay minimum wages, bonuses, and overtime correctly; failed to provide legally compliant meal and rest breaks each day based on the hours worked by each employee (*i.e.*, the proper number of properly scheduled, full-length, uninterrupted periods required by section 226.7 and section 11010 *et seq.*); failed to provide complete and accurate wage statements; failed to pay timely wages during employment and/or upon termination and/or resignation; failed to compensate correctly for paid sick leave; and failed to reimburse for necessary business expenses.

C. Class Counsel conducted discovery that yielded information and documentation concerning the claims set forth in the Litigation, such as Defendants’ policies and procedures regarding the payment of wages; the provision of rest and meal breaks; time keeping policies, including recording of all hours worked; issuance of wage statements; and providing all wages owed at separation; as well as information regarding the number of putative class members and the mix of current versus former employees, the average number of hours worked, the wage rates in effect, and the duration of employment for the average putative class member. More specifically, Class Counsel collected and analyzed the following: (1) relevant policies for all Defendants; (2) a random sample of payroll data for all Defendants; (3) wage statements for a sample of employees from across all Defendants and for different date ranges; (4) time records for a sample of employees that corresponded with the wage statement sample; and (5) detailed workweek data.

D. Named Plaintiff and Class Counsel have engaged in good faith, arms-length negotiations with Defendants concerning possible resolution of the claims asserted in the

Litigation. On February 11, 2021, the Parties participated in a mediation before David A. Rotman. The mediation did not yield an immediate settlement but, through a mediator's proposal, the parties were able to reach a tentative settlement of the Litigation, subject to the approval of the Court.

E. The Parties are settling two actions, one in federal court and one in state court. The Parties anticipate the process of obtaining approval of the settlement will take many months. The Parties believe that it is more efficient for the courts and for the parties to seek approval of the settlement in one court, and have agreed to proceed with that process in state court. The Parties believe that maintaining the action in federal court during the process of obtaining approval in state court may burden the federal court and the Parties and that dismissing the action in federal court will minimize that burden for the federal court and the Parties. The Parties entered into an agreement to maintain the status quo during the settlement approval process and to return the Parties back in their original position (as of April 1, 2021) if the settlement as reflected in this Agreement is not finally approved for any reason. The parties entered into a stipulation to dismiss voluntarily the action pending in the Eastern District of California and successfully dismissed that action. The Parties also agreed to stipulate to Plaintiff filing a Second Amended Complaint to add class claims, previously pending in federal court, to the PAGA only case pending in state court.

F. Class Counsel have conducted an investigation of the law and facts relating to the claims asserted in the Litigation and have concluded, taking into account the sharply contested issues involved, the defenses asserted by Defendants, the expense and time necessary to pursue the Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be received by the Named Plaintiff, the Settlement Class, Aggrieved Employees, and the State pursuant to this Agreement, that a settlement with Defendants on the terms and conditions set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class, Aggrieved Employees, and the State. Named Plaintiff, on his own behalf and on behalf of the Settlement Class, Aggrieved Employees, and the State, has agreed to settle the Litigation with Defendants on the terms set forth herein.

G. Defendants have concluded that, because of the substantial expense of defending against the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to its business operations, it is in Defendants' best interests to accept the terms of this Agreement. Defendants deny each of the allegations and claims asserted against them in the Litigation. However, Defendants nevertheless desire to settle the Litigation in order to avoid the burden, expense, and uncertainty of continuing litigation and to resolve fully and finally all claims that were asserted or could have been asserted against Defendants based on or arising from the facts alleged in the Litigation.

H. This Agreement is intended to and does effectuate the full, final, and complete resolution of all allegations and claims that were asserted, or could have been asserted, in the Litigation by Named Plaintiff and members of the Settlement Class as outlined in Section V.

### **III. JURISDICTION**

The Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendants deny them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted Final Judgment approving the Settlement Agreement, the Court will retain jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing this Settlement Agreement consistent with the terms set forth herein.

### **IV. STATEMENT OF NO ADMISSION**

A. Defendants deny liability to Named Plaintiff, the Settlement Class, Aggrieved Employees, and the State on any and all claims, theories, and/or causes of action asserted or that could have been asserted. This Agreement does not constitute, and is not intended to constitute, an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims made against them in the Litigation.

B. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement is intended by the Parties to

constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding for the purpose of interpreting, implementing, or enforcing its terms or any orders or judgments of the Court entered in connection with the Agreement. The Parties may also submit the motion for preliminary approval and the Settlement Agreement to the LWDA for the purpose of securing approval of the settlement.

C. None of the documents produced or created by Named Plaintiff or the Settlement Class in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendants of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

D. The Parties agree that class certification pursuant to California Code of Civil Procedure Section 382 under the terms of this Agreement is for settlement purposes only. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any class should be certified or given collective treatment in the Litigation or in any other action or proceeding. Further, neither this Agreement nor the Court's actions with regards to this Agreement will be admissible in any court or other tribunal regarding the propriety of class certification or collective treatment. In the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or remedies in the Litigation, and

Defendants will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Litigation.

**V. RELEASE OF CLAIMS**

**A. Release as to All Settlement Class Members.**

Upon the Effective Date and for the Class Period, Named Plaintiff and all members of the Settlement Class waive, release, discharge, and promise never to assert in any forum any and all claims against Defendants and Released Parties that were alleged in the Litigation or that could have been alleged in the Litigation based on or arising from the facts asserted in the Litigation (*i.e.*, all wage-related claims), including but not limited to claims for (1) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2) violation of California Labor Code §§ 226.7 & 512(a) (unpaid meal period premiums); (3) violation of California Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor Code §§ 1194 and 1197 (unpaid minimum wages); (5) violation of California Labor Code §§ 201, 202, 203 & 204 (wages not timely paid); (6) violation of California Labor Code § 226(a) (non-compliant wage statements); (7) violation of California Labor Code §§ 2800 & 2802 (unreimbursed business expenses); (8) violation of California Labor Code § 246 (paid sick leave); (9) violation of California Labor Code § 1174 (recordkeeping); (10) violation of California Business and Professions Code §§ 17200, *et seq.*; (11) breach of contract; and (12) violation of any and all other applicable provisions of state or federal law, including the applicable IWC wage orders, based on or arising from the facts alleged in the Litigation (“Released Claims”).

**B. Settlement and Release of PAGA Claims.**

Upon the Effective Date, and for the PAGA Period, Named Plaintiff, the LWDA, and the Aggrieved Employees release, discharge, and are forever barred from pursuing against Defendants and Released Parties any and all claims for civil penalties under PAGA, California Labor Code §2698 *et seq.*, for any and all claims or violations that were alleged in the Litigation or that could have been alleged in the Litigation based on or arising from the facts asserted in the Litigation or PAGA Letter, including but not limited to the Released Claims and related violations.

**C. General Release by Named Plaintiff Only.**

In addition to the foregoing releases, Named Plaintiff makes the following general release of all claims, known or unknown, as of and through the Effective Date: Named Plaintiff releases Defendants and Released Parties, from all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted prior to the Effective Date, whether in tort, contract, or for violation of any local, state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any and all Defendants or Released Parties.

With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the Effective Date, Named Plaintiff will be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

Accordingly, if the facts relating in any manner to this Settlement Agreement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein will be effective as to all unknown claims.

**VI. SETTLEMENT AMOUNT, COMPUTATION, AND DISTRIBUTION OF PAYMENTS**

**A. Settlement Amount.**

Defendants agree to pay in full and final settlement of the Litigation and the claims of the Settlement Class and Aggrieved Employees as set forth in this Agreement the Gross Settlement Amount of Five Million Dollars (\$5,000,000.00). The Gross Settlement Amount is inclusive of all Attorneys' Fees/Cost Awards; Incentive Awards; Administrative Costs; LWDA payments; taxes

associated with the payments to the Settlement Class (including employer-side payroll taxes); and any other fees or costs associated with settlement of the Litigation. Defendants will not be responsible for making any other payment of any kind to the Named Plaintiff, the Settlement Class, Aggrieved Employees, Class Counsel, LWDA, or otherwise in connection with this matter. Defendants will provide the Gross Settlement Amount to the Settlement Administrator by wire or check within thirty (30) calendar days following the Effective Date.

**B. Class Settlement Amount Payments.**

Settlement Class Members will receive a lump sum payment as good and valuable consideration for their release of claims, in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement. Each Class Member's pro-rata payment from the Class Settlement Amount will be calculated as follows:

- The Class Settlement Amount will be calculated by subtracting from the Gross Settlement Amount the court-approved amounts for the enhancement to the Named Plaintiff, the attorneys' fees and litigation costs awarded to Class Counsel, Administrative Costs, and PAGA Penalties;
- The Class Settlement Amount will be divided by the Eligible Employee Class Work Weeks to determine a pro-rata amount for each work week; and
- The pro-rata amount for each work week will be multiplied by each Settlement Class Member's workweek count (*i.e.*, the number of work weeks in the Class Period during which that Class Member worked).

Each Settlement Class Member's workweek count and estimated share of the Class Settlement Amount will be listed in the Class Notice or available from the Settlement Administrator.

**C. PAGA Penalties and PAGA Settlement Amount Payments.**

The amount of \$200,000 shall be allocated from the GSA for the release of claims for civil penalties under PAGA. The Settlement Administrator will pay 75% (\$150,000) of this amount to the LWDA and will distribute the remaining 25% (\$50,000) or PAGA Settlement Amount on a pro-rata basis to Aggrieved Employees. Each Aggrieved Employee's pro-rata payment from the



PAGA Settlement Amount will be calculated as follow:

- The PAGA Settlement Amount will be divided by the Eligible Employee PAGA Pay Periods to determine a pro-rata amount for each pay period; and
- The pro-rata amount for each pay period will be multiplied by each Aggrieved Employee's pay period count (*i.e.*, the number of pay periods in the PAGA Period during which that Class Member worked).

Each Aggrieved Employee's pay period count and estimated share of the PAGA Settlement Amount will be listed in the Class Notice or available from the Settlement Administrator.

**D. Funding of Settlement.**

Within fifteen (15) calendar days following the Effective Date, Defendants will provide the Gross Settlement Amount to the Settlement Administrator by wire or check. At no time prior to the Effective Date will Defendants be required to escrow any part of the Gross Settlement Amount.

**E. Time for Distribution.**

The Settlement Administrator will cause the Individual Settlement Payments, any Court-approved attorney's fees, litigation costs, enhancement to Named Plaintiff, and LWDA's PAGA payment to be mailed within thirty (30) calendar days following the Effective Date.

The settlement checks issued to each employee will remain valid for one hundred and eighty (180) days. Any settlement checks remaining uncashed after one hundred and eighty (180) days will cause that employee's payment to be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 et seq., for the benefit of that employee. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code section 384, as the entire Net Settlement Amount will be paid out to the Settlement Class. Therefore, Defendants will not be required to pay any interest on said amount. In the event that a Settlement Class member's payment is distributed to the Controller of the State of California, the terms of the Final Judgment and the release of claims will nevertheless be binding upon that Settlement Class member.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly perform a skip trace search and use other contact information, if any, in an attempt to obtain a valid mailing address. If another address is identified, the Settlement Administrator will mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the monies represented by the check will be turned over to the Controller according to the above procedures.

## **VII. PUBLICITY**

Named Plaintiff and Class Counsel agree that they will not publish or publicize information regarding the Litigation or Settlement Agreement. Named Plaintiff will state that “the case was resolved confidentially” in response to any inquiries. Class Counsel will not report the Litigation or the Settlement Agreement in any medium or in any publication, will not post or report anything regarding the claims of Named Plaintiff or the Settlement Class or the Settlement Agreement on their website, and will not contact any reporters or media regarding the Settlement Agreement. Despite this provision, Class Counsel can discuss the Settlement Agreement with the court and LWDA for purposes of obtaining preliminary and final approval.

## **VIII. STIPULATION FOR CLASS CERTIFICATION**

The Parties stipulate to the certification of this Settlement Class for purposes of the Settlement Agreement only. This Stipulation is contingent upon the preliminary and final approval and certification of the Settlement Class only for purposes of the Settlement Agreement. Should the Settlement Agreement not become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification as part of the Settlement Agreement will have no bearing on, and will not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in the Litigation. Defendants expressly reserve the right to oppose class certification and/or proactively move to deny certification if the court denies preliminary or final approval, this Settlement Agreement is modified or reversed on appeal, or the Settlement Agreement otherwise does not become final.

## **IX. SETTLEMENT ADMINISTRATOR**

Named Plaintiff and Defendants, through their respective counsel, have selected CPT Group, Inc. as the Settlement Administrator to administer the Settlement Agreement, which includes but is not limited to distributing and responding to inquiries about the settlement notice, determining the validity of any disputes and opt-outs, and calculating all amounts to be paid from the NSA. Charges and expenses of the Settlement Administrator, estimated to be \$13,500.00 but not to exceed \$15,000, will be paid from the Settlement Amount. If the actual Settlement Administrator fees are more or less than the Parties' estimation, the difference between the actual and estimated Settlement Administrator fees will be taken from the Settlement Amount or revert to the participating Settlement Class members.

**X. COURT APPROVAL**

This Agreement is contingent upon final approval by the Court and the entry of the Final Judgment. The Parties agree to take all steps reasonably necessary to secure both preliminary and final approval of the Settlement Agreement to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining Court approval, and, if necessary, appellate approval of the Settlement Agreement in all respects. The Parties and their counsel expressly agree that they will not file any objection to the terms of the Settlement Agreement or assist or encourage any person or entity to file any such objection.

**XI. PROCEDURES FOR APPROVAL**

The Parties agree to the following procedures for obtaining preliminary approval of this Agreement, notifying the Settlement Class, submitting objections, obtaining final approval of this Agreement and dismissal of the Action, and making and administering the settlement payments:

**A. Preliminary Approval Hearing.**

Plaintiff will file a motion for preliminary approval and schedule a hearing before the Court to seek an order providing the stipulated class action certification(s) necessary to effectuate this Agreement; appointing Named Plaintiff as class representative; appointing Plaintiff's Counsel as counsel for the Settlement Class; preliminarily approving this Agreement; authorizing the Settlement Administrator to send appropriate notices of the settlement to the Settlement Class

Members; and setting a date for a final settlement approval hearing. Class Counsel will take the lead in drafting necessary pleadings that will be in the form of a Plaintiffs' motion. Defendants will cooperate in this process and will stipulate to the filing of Plaintiffs' motion after having a reasonable opportunity to review and reach agreement upon the contents of such motion, and reserving its right to deny or defend itself against what it deems to be disparaging or unfair comments in relation to the settlement.

**B. Notice to the Class.**

The Parties, through their respective counsel, will jointly prepare a Class Notice that will be provided to the members of the Settlement Class as follows. As soon as practicable following the entry of the Preliminary Order, but no later than twenty (20) calendar days after the entry of the Preliminary Order, Defendants will provide the Settlement Administrator with a list or spreadsheet containing the following information about each Settlement Class Member ("Class List"): (1) name; (2) last known home address; and (3) social security number (if necessary for skip trace); (4) number of Eligible Employee Class Work Weeks; and (5) number of Eligible Employee PAGA Pay Periods. Defendants further agree to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator.

The Settlement Administrator will run all the addresses provided through the U.S. Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information, and will mail the Notice to the members of the Settlement Class via first-class regular U.S. Mail using the most current mailing address information available within fifteen (15) calendar days of the receipt of the Class List from Defendants. The Notice will provide the members of the Settlement Class with notice of all applicable dates and deadlines.

The Notice will also include information regarding the nature of the Litigation; a summary of the terms of the Settlement Agreement; the definition of the Settlement Class and the PAGA Aggrieved Employees; a statement that the Court has entered a Preliminary Order approving the

Settlement Agreement; the nature and scope of the claims being released; the procedure and time period for objecting to the Settlement Agreement, except for the PAGA Penalties; the date and location of the final approval hearing; and information regarding the opt-out procedure.

If a Notice is returned from the initial notice mailing, the Settlement Administrator will submit the applicable and available information, including name, Social Security number, and original mailing address, to a company that specializes in address skip tracing in an attempt to locate a more current address. The Settlement Administrator may also request alternative contact information from Class Counsel and/or Defendants that may be used to contact the Settlement Class Member in an effort to obtain a new mailing address. If the Settlement Administrator is successful in locating a new address, it will re-mail the Notice to the Settlement Class Member. Further, any Notices returned to the Settlement Administrator before the Opt-Out Deadline with a forwarding address will be sent to the forwarding address affixed thereto.

**C. Procedure for Opting Out.**

Any Settlement Class Member may request exclusion from this Litigation and this settlement. The Notice will provide that individuals who wish to exclude themselves from the Settlement Class must send to the Settlement Administrator by first class regular United States mail the Request for Exclusion Form (**Exhibit 3**) that must be postmarked on or before sixty (60) calendar days from the date Notices are initially mailed (the “Opt-Out Deadline”). In order for an individual to be validly excluded from this settlement (*i.e.*, to opt out), he or she must provide all of the information requested on the Request for Exclusion form (*i.e.* individual’s name, address, last four digits of Social Security number and/or Employee ID number, and signature.) For completed Request for Exclusion Forms delivered to the Settlement Administrator, the postmark on the return-mailing envelope will be the exclusive means used to determine whether an Opt-Out Request has been timely submitted. Individuals who are validly excluded from this settlement as provided in this Paragraph will not receive any payment under this Agreement, will have no right to object to this Agreement, and will not be bound by any release set forth in this Agreement. Individuals who fail to submit a valid and timely Opt-Out Request on or before the Opt-Out

Deadline will be deemed members of the Settlement Class and will be bound by all terms of the Agreement and any Final Judgment if the Agreement is approved by the Court and becomes Final.

**D. Procedure for Objecting to Settlement.**

Members of the Settlement Class who do not opt out and who wish to object to any aspect of this Agreement must file with the Court and serve on counsel for all parties a written statement containing their objection no later than sixty (60) calendar days after the date Notices are initially mailed (as will be specified in the Notice).

A written Objection should: (1) be signed by the Settlement Class Member; (2) state the case name and number of the Action, the name and address of the Settlement Class Member, and the last four digits of the Settlement Class Member's Social Security number and/or Employee ID number; (3) contain the basis and/or grounds for the objection; and (4) state whether the Settlement Class Member intends to appear at the Final Approval Hearing. If they provide the Parties with notice of their intent to appear, Settlement Class Members may also appear at the Final Approval Hearing to have their objections heard by the Court.

**E. No Solicitation of Opt-Outs or Objections to Settlement.**

Neither Party, nor their respective counsel, will directly or indirectly solicit or otherwise encourage members of the Settlement Class to opt out or submit written objections to this Agreement.

**F. Settlement Administrator's Report.**

The Settlement Administrator will provide periodic updates regarding returned notices, Opt-Out Requests, and objections to counsel for the parties. Within ten (10) days after the Opt-Out Deadline, the Settlement Administrator will provide a written report to counsel for the parties (the "Settlement Administrator's Report") that will include information regarding the Settlement Administrator's Notice mailing process, the number of returned Notices, efforts to obtain new addresses in relation to returned Notices, a list of any Opt-Outs received, and a corresponding list of all remaining Settlement Class Members who have not opted out. Within five (5) days after providing the Settlement Administrator's Report, the Settlement Administrator will provide to the

Parties the exact amount of each Settlement Class Member's respective Individual Settlement Award (the "Award Amounts List"). Within ten (10) days of providing the Award Amounts List, the Settlement Administrator will provide the parties with a sworn declaration attesting to the information from the Settlement Administrator's Report and the Individual Settlement Awards as specified in the Award Amounts List. This declaration will be filed with the Court by Class Counsel in support of the motion for final approval of the settlement described below.

**G. Final Settlement Approval Hearing and Entry of Final Judgment.**

Class Counsel will take the lead in drafting a motion for final approval of the settlement together with a proposed order and Final Judgment approving the settlement and dismissing the Action with prejudice. The motion will be filed within thirty (30) days after the Opt-Out Deadline and will be in the form of a Plaintiffs' motion. Defendants will cooperate in this process, but reserve their right to deny or defend themselves against what they deem to be disparaging or unfair comments in relation to the settlement. A final settlement approval hearing will be conducted to determine whether the Court should grant final approval of the Agreement. At that hearing, the parties will present the Final Approval Order and Judgment to the Court for its approval and entry substantially in the form of **Exhibit 2**. After entry of the Final Judgment, the Court will have continuing jurisdiction over the Action solely for the purposes of addressing (i) Settlement Administration matters, and (ii) such post-Final Judgment matters as may be appropriate under court rules.

**H. Nullification of Settlement.**

This Agreement will be null and void if (i) the Court does not enter the Preliminary Order as provided above, (ii) more than three percent (3%) of individuals who would otherwise be members of the Settlement Class choose to opt out of the Settlement Class and Defendants, in their sole and absolute discretion, elect to void this Agreement, (iii) the Court does not enter the Final Approval Order, (iv) the Court does not enter a Final Judgment that becomes Final, or (v) the settlement does not become final for any other reason. In such a case, the Parties will be returned to their respective positions and status as of April 1, 2021, and will proceed in all respects as if this

Agreement had not been executed (including, if and as applicable, that class claims will be dismissed in state court and refiled in federal court, and any settlement class conditionally certified by stipulation of the parties in connection with this Agreement will be considered null and void). Moreover, in such case, nothing in this Agreement may be used by or against any party under California Rules of Evidence or otherwise. In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought prior to the Effective Date, administration of this Agreement will be stayed pending final resolution of the appeal or other appellate review. Notwithstanding the above, in the event any of the circumstances identified in this Paragraph that could render this Agreement null and void occur, the Parties may mutually agree to attempt to renegotiate the settlement and/or this Agreement for purposes of reaching a further settlement.

## **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy, or bonus program sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under benefit plans (self-insured or not) sponsored by Defendants, policies, or bonus programs. Any payments made under the terms of this Settlement Agreement will not be applied retroactively, currently, or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendants' benefit plans, policies, or bonus programs. Defendants retain the right to modify the language of their benefit plans, policies, and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

## **XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

Defendants will not oppose an application by Class Counsel for, and Class Counsel will not seek or receive, an amount in excess of \$1,900,000 (38% of the GSA) for all past and future



attorneys' fees necessary to prosecute, settle, and administer the Litigation and this Settlement Agreement. Additionally, Defendants will not oppose an application by Class Counsel for, and Class Counsel will not seek or receive, an amount in excess of \$30,000, which represents all past and future costs and expenses necessary to prosecute, settle, and administer the Litigation and this Settlement Agreement. Any attorneys' fees or costs awarded to Class Counsel by the Court will be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Class Counsel in defending the Settlement Agreement and securing preliminary and final approval (including any appeals therein). There will be no additional charge of any kind to either the members of the Settlement Class or request for additional consideration from Defendants for such work. This amount will include all attorneys' fees, costs, and expenses for which Named Plaintiff and Class Counsel could claim under any legal theory whatsoever. Within thirty (30) calendar days following the Effective Date, the Settlement Administrator will disburse payment from the Gross Settlement Amount for the amount of attorneys' fees and costs approved by the Court to Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or costs than the amount that Class Counsel ultimately seeks, then the unapproved portion or portions will revert into the NSA to be distributed to the participating Settlement Class Members on a pro-rata basis.

#### **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

Defendants will not oppose an application by Named Plaintiff for, and he will not seek or receive, an amount in excess of \$10,000, for his participation in and assistance with the Litigation and in consideration for the General Release of all claims against Defendants. Any enhancement awarded to Named Plaintiff by the Court will be deducted from the Gross Settlement Amount for the purpose of determining the NSA, and will be reported on IRS Form 1099. If the Court approves a lesser enhancement to Named Plaintiff, then the unapproved portion will revert into the NSA to be distributed to the participating Settlement Class Members on a pro-rata basis.

## **XV. TAXATION AND ALLOCATION**

Each Settlement Class Member's pro-rata share of the NSA will be allocated, for tax, withholding, and all other purposes, and paid as follows:

- (1) 20% as wages, subject to payroll taxes and withholdings at the supplemental rate;
- (2) 40% as penalties; and
- (3) 40% interest.

The Settlement Administrator will pay applicable payroll taxes and withholdings to relevant taxing authorities and distribute relevant tax forms, including IRS Forms W-2 and/or Forms 1099, at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and California law, and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law changes after the date of this Agreement, the processes set forth in this section may be modified in a manner to bring Defendants into full compliance with any such changes.

Any and all payroll taxes will be paid from the Gross Settlement Amount and the amount paid to each Settlement Class Member for his or her pro-rata share of the NSA will be adjusted to account for required withholdings, deductions, or other adjustments necessary to account for all required taxes.

## **XVI. CIRCULAR 230 DISCLAIMER**

EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE

ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

**XVII. MISCELLANEOUS PROVISIONS**

**A. Stay of Litigation.**

The Parties agree to the stay of all activity in the Litigation, pending final approval of the Settlement Agreement by the Court.

**B. Interpretation of the Agreement.**

This Agreement constitutes the entire agreement between the Parties. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms will modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved

solely and exclusively in the Superior Court of the State of California for the County of Sacramento, and Named Plaintiff and Defendants hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. Named Plaintiff, on his own behalf and on behalf of the Settlement Class and the PAGA Aggrieved Employees, as well as Defendants participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Named Plaintiff nor Defendants may claim that any ambiguity in this Agreement should be construed against the other.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between the Parties with respect to the Settlement of the Litigation. The Agreement may be modified only by a writing signed by Class Counsel and Defense Counsel with the authorization of the Parties.

**C. Further Cooperation.**

The Parties and their respective attorneys will proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

**D. Confidentiality of Documents.**

After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator, and Class Counsel will maintain the confidentiality of all documents, deposition transcripts, declarations, and other information obtained in the lawsuit, unless necessary for appeal or such documents are ordered to be disclosed by the Court or by a subpoena. After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator, and Class Counsel will return or destroy all documents and other information obtained from Defendants as part of informal discovery in the lawsuit.

**E. Counterparts.**

The Agreement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals.

**F. Authority.**

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or which that individual signs.

**G. No Third Party Beneficiaries.**

Named Plaintiff, members of the Settlement Class, and Defendants are direct beneficiaries of this Agreement, but there are no third party beneficiaries.

**H. Deadlines Falling on Weekends or Holidays.**

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline will be continued until the following business day.

**I. Pro Rata Increase/Escalator Clause.**

If the number of Settlement Class members workweeks during the Class Period exceeds 95,000 by more than 10%, the Gross Settlement Amount will increase in the exact proportionate amount as any increase in additional workweeks beyond the 10% (i.e., 12% increase = 2% proportionate increase in GSA), whichever is greater.

In the event that any one or more of the provisions contained in this Agreement will for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

Date 08/10/2021

**Attorneys for Plaintiff**

Date \_\_\_\_\_

Name

# Title

**ASC Profiles LLC, Steelscape, LLC,  
Defendants**

Date \_\_\_\_\_

**Todd L. Nunn**

K&L Gates, LLP

### Attorneys for Defendants

Date \_\_\_\_\_

## Dale Smith

## Senior Litigation Counsel

**Bluescope Buildings North America, Inc.,  
Defendant**

Date \_\_\_\_\_

**J. Severability.**

In the event that any one or more of the provisions contained in this Agreement will for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

\_\_\_\_\_  
Kijana Wicker, Plaintiff

Date \_\_\_\_\_

\_\_\_\_\_  
Douglas Han

Shunt Tatavos-Gharajeh

Justice Law Corporation

Attorneys for Plaintiff

Date \_\_\_\_\_



Sarah Deukmejian

President

ASC Profiles LLC, Steelscape, LLC,  
Defendants

Date 8/16/2021



Todd L. Nunn

K&L Gates, LLP

Attorneys for Defendants

Date 8/16/2021

\_\_\_\_\_  
Dale Smith

Senior Litigation Counsel

Bluescope Buildings North America, Inc.,  
Defendant

Date \_\_\_\_\_

**J. Severability.**

In the event that any one or more of the provisions contained in this Agreement will for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

\_\_\_\_\_  
Kijana Wicker, Plaintiff

Date \_\_\_\_\_

\_\_\_\_\_  
Douglas Han

Shunt Tatavos-Gharajeh

Justice Law Corporation

Attorneys for Plaintiff

Date \_\_\_\_\_

\_\_\_\_\_  
Name

Title

ASC Profiles LLC, Steelscape, LLC,  
Defendants

Date \_\_\_\_\_



Dale Smith

Senior Litigation Counsel

Bluescope Buildings North America, Inc.,  
Defendant

Date Aug 6, 2021

\_\_\_\_\_  
Todd L. Nunn

K&L Gates, LLP

Attorneys for Defendants

Date \_\_\_\_\_



# **EXHIBIT 1**

## NOTICE OF CLASS ACTION SETTLEMENT

If you were employed by ASC Profiles LLC, SteelScape LLC, or BlueScope Building, NA in California in a non-exempt position at any time from October 30, 2015 to June 30, 2021, you may be entitled to money from a class action settlement.

*The Sacramento Superior Court authorized this notice.  
This is not a lawsuit against you, and you are **not** being sued.  
This is not a solicitation from a lawyer.*

**ATTN: [FullName]**

- The Parties in the action entitled *Wicker v. ASC Profiles LLC, et al.*, Superior Court of the State of California for the County of Sacramento, No. 34-2019-00270803-CU-OE-GDS (“Action”), have reached a Settlement and it has been granted Preliminary Approval by the Court supervising the lawsuit.
- The proposed Settlement will resolve all claims in this lawsuit. The Court has ordered that this Notice be sent to you because you may be a member of the Settlement Class.
- The purpose of this Notice is to inform you of the Settlement of the class action and your legal rights and options under the Settlement:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
RECEIVE YOUR PAYMENT	<p>You may be entitled to receive approximately <b>[TotalAmount]</b> for the Class Settlement.</p> <p>You may be entitled to receive approximate [Total Amount] for the PAGA Penalties Settlement.</p> <p><b>To receive your payment, you do not need to do anything – it will automatically be sent to you.</b></p>
REQUEST EXCLUSION	<p>If you wish to exclude yourself from the Settlement and get no payment, you must submit a timely and valid Request for Exclusion within 60 days, the process for which is described in Section 16 below.</p> <p><b>If you exclude yourself, you will not receive any payment from the Settlement.</b></p> <p>If will not have an option to exclude yourself from receiving the PAGA Penalties.</p>
OBJECT TO THE SETTLEMENT	<p>If you believe the terms of the Settlement are unfair or unreasonable, then you may notify the Settlement Administrator that you object within 60 days or you may appear at the Final Approval Hearing to object, the process for which is described in Section 18 below.</p>

QUESTIONS? CALL [REDACTED] TOLL FREE

**DEFENDANTS CANNOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING, EXCLUDING YOURSELF, OR OBJECTING TO THIS SETTLEMENT**

**PLEASE READ THIS NOTICE CAREFULLY**  
**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR NOT**

**1. Why did I get this notice?**

You received this notice because you were employed by ASC Profiles LLC, SteelScape LLC, or BlueScope Building, NA (“Defendants” or “ASC”) in a non-exempt position in California at some point between October 30, 2015 to June 30, 2021 (“Class Period”).

The Court ordered that this notice be sent to you and all other Class Members in order to: (1) inform you of the settlement of this class action lawsuit; (2) inform you of your legal rights under the Settlement; and (3) explain how you may receive your Settlement Payment, exclude yourself, or object to the Settlement.

**2. What is this lawsuit about?**

Plaintiffs’ Second Amended Complaint (“Operative Complaint”) alleges that Defendants failed to pay lawful wages, including failing to pay minimum wages, bonuses, and overtime correctly; failed to provide legally compliant meal and rest breaks each day based on the hours worked by each employee (i.e., the proper number of properly scheduled, full-length, uninterrupted periods required by section 226.7 and section 11010 et seq.); failed to provide complete and accurate wage statements; failed to pay timely wages during employment and/or upon termination and/or resignation; failed to compensate correctly for paid sick leave; and failed to reimburse for necessary business expenses.

Defendants deny they did anything wrong and assert that they have fully complied with all of their legal obligations, including that they timely and properly paid Class Members all wages owed; provided them compliant meal and rest periods; provided all necessary reimbursements; properly issued accurate, itemized wage statements; timely paid wages; and maintained accurate records, all as required by law. Defendants also deny that they engaged in any unfair competition, violations of PAGA, and contend that none of the claims alleged by Plaintiffs will succeed in Court.

The Court did not decide in favor of Plaintiffs or Defendants. Instead, Plaintiffs, Defendants, and their respective attorneys have concluded that the Settlement is advantageous to all parties considering the risks and uncertainties of continued litigation and trial.

**3. What is a class action?**

In a class action lawsuit, a person called a class representative sues on behalf of people who have similar claims. The people with similar claims are called class members and together they make up the class. In a class action, one court resolves the issues for all class members, except for those who

choose to exclude themselves from the class. A class member is bound by the determination or judgment entered in the case whether the class wins or loses, and the class member may not file a new lawsuit with the same claims that were decided in the class action, unless he or she excludes themselves from the class. Here, on September 14, 2021 Judge Shama H. Mesiwala of the Sacramento Superior Court, issued an order preliminarily approving the Settlement and appointing Plaintiff Kijana Wicker as the Class Representative.

#### **4. Why is there a settlement?**

The Court did not hold a trial to decide in favor of Plaintiff or Defendants. The Court has made no ruling on the merits of the Class Members claims and has determined that certification of the Settlement Class for settlement purposes only is appropriate under California law. Instead, all parties agreed to the Settlement because they believe it is fair, reasonable, and adequate under the circumstances. Plaintiff believes his claims have merit and that he would have been successful at trial. On the other hand, Defendants deny all liability and believe that Plaintiff would not have won anything at trial. In agreeing to settle this lawsuit, the parties avoided the risks and significant costs of a trial and potential appeals, and Class Members will be entitled to receive compensation without any determination of wrongdoing by Defendants.

#### **WHO IS INCLUDED IN THE SETTLEMENT?**

To receive a portion of the Settlement, you must be a Class Member.

#### **5. How do I know if I am a Class Member?**

You are a Class Member if you were employed by Defendants in California as a non-exempt employee at any time between October 30, 2015 to June 30, 2021.

#### **THE LAWYERS REPRESENTING THE PARTIES**

#### **6. Do I have a lawyer in this case?**

The Court appointed Douglas Han, Shunt Tatavos-Gharajeh, Arsine Grigoryan and Phillip D. Song of Justice Law Corporation to serve as Class Counsel and represent you and other Class Members. Class Counsel may be reached at:

JUSTICE LAW CORPORATION  
751 N. Fair Oaks Avenue, Suite 101  
Pasadena, California 91103  
Telephone: (818) 230-7502  
Facsimile: (818) 230-7259

*You will not be charged for their services.* Instead, Class Counsel will request to be compensated directly from the Settlement Amount, as discussed below. If you want to be represented by your own lawyer, you may hire one at your own expense.

7. How will Class Counsel be paid?

Class Counsel undertook this case on a contingency basis, that is, without receiving any payment up front. Now, having resolved this Action on behalf of the Class, Class Counsel will ask the Court to approve a payment of up to 38% of the Settlement Amount for attorney's fees to be taken out of the Settlement Amount, or \$1,900,000. Class Counsel will also ask the Court to approve payment of up to \$30,000 in reasonable litigation costs to be taken out of the Settlement Amount. Defendants will not oppose these requests.

8. Who are the lawyers representing Defendants?

Patrick Madden and Todd L. Nunn of the firm K&L Gates LLP.

**WHAT ARE THE TERMS OF THE SETTLEMENT?**

9. What does the Settlement provide?

Subject to Court approval, Defendants agreed to pay up to \$5,000,000.00 (the "Settlement Amount"). Before any payments will be made to Class Members, however, the following deductions will be made from the Settlement Amount:

- Settlement Administration Costs: For its work administering the Settlement, the Settlement Administrator will charge an amount currently estimated not to exceed \$15,000.
- Class Representative Service Awards: Class Counsel will petition the Court for a service award to be paid to the Class Representative, Kijana Wicker, to compensate him for his time and efforts spent serving the Class and actively participating in the Action. Class Counsel's application for a service award for Plaintiff shall not exceed a total amount of \$30,000.
- Attorney's Fees and Costs: Class Counsel will request a payment up to 38% of the Settlement Amount for attorney's fees and reimbursement of reasonable litigation costs, not to exceed \$1,900,000. ***Class Members are not personally responsible for paying Class Counsel's attorney's fees or costs.***
- PAGA Payment: \$200,000 will be paid to the Labor and Workforce Development Agency ("LWDA") for civil penalties under PAGA.



#### 10. How will my payment be calculated?

After deducting the items listed in Section 9 from the Settlement Amount, the amount remaining will be the "Net Settlement Amount," the full amount of which will be allocated to Class Members who *do not* request exclusion from the Class. Your share of the Net Settlement Amount will depend upon your membership in the Class and/or Subclass and will be determined as follows:

**Participating Class Members:** Each Class Member who does not request exclusion will receive a pro rata portion of the Net Settlement Amount based upon the respective number of Workweeks that he or she worked during the Class Period as compared to the total number of Workweeks that all other Participating Class Members worked during the Class Period. Workweeks include any weeks a Class Member worked at least one day of the week and was not on vacation or a leave of absence. Workweeks of Class Members who exclude themselves from the Settlement will not be included in the total number of Workweeks for purposes of the Settlement Administrator's calculation and distribution of Individual Settlement Payments to Participating Class Members.

#### 11. How much will I receive?

Defendants' records show that you are a member of the Settlement Class and worked a total of [REDACTED] Eligible Workweeks as a non-exempt employee for Defendants during the Class Period. This means you will receive a settlement amount that is currently estimated to be: \$ [REDACTED], less applicable taxes and payroll deductions. (You may have worked additional Workweeks for Defendants prior to the Class Period or in another position, but those Workweeks are not included for purposes of this Settlement).

**Please note:** The actual amount of your Individual Settlement Payment may increase or decrease based on several factors, including, but not limited to, the number of individuals who exclude themselves from the settlement.

The Settlement Administrator will calculate all Individual Settlement Payments to Participating Class Members. In the event there is a dispute regarding an Individual Settlement Payment calculation, counsel for the parties will agree to allow the Settlement Administrator to make the final decision regarding its resolution.

If you believe in good faith that your total number of Workweeks listed above is incorrect, you must contact the Settlement Administrator and provide documentation that you believe demonstrates that this number is incorrect and authorize the Settlement Administrator to review your records and related documents. A Class Member challenging the total number of Workweeks bears the burden of proof, i.e., a Class Member who fails to provide written documentation supporting a different number of Workweeks will have his or her challenge denied. The total number of your Workweeks listed above is presumed to be correct unless the documents you submit (such as wage statements and paystubs from Defendants) demonstrate otherwise.

If you intend to challenge the total number of Workweeks listed above, your dispute letter and supporting documents must be mailed to the Settlement Administrator postmarked no later than [REDACTED] at the designated address for the Settlement Administrator – see Sections 16 and 18.

The Settlement Administrator will review the pertinent records showing the total number of Workweeks that you worked during the Class Period, which Defendants have agreed to make available for this purpose, and make a determination. If you do not provide any documents or other evidence to support your challenge, the Settlement Administrator will reject it.

Under the terms of the Settlement, \$200,000 has been set aside as a PAGA Penalties. This portion is the total amount of civil penalties collected on behalf of the State of California. \$150,000 will be sent to the State of California. Aggrieved Employees will share \$50,000 based on the number of pay periods they worked.

You are an “aggrieved employee” eligible (“Aggrieved Employee”) to share the PAGA Penalties under the Settlement if you are a current or former non-exempt employee employed by Defendants in California between September 18, 2018, and June 30, 2021 (“PAGA Period”).

The individual share will be calculated by determining the total number of pay periods the Eligible Aggrieved Employees were employed by Defendants during the PAGA Period (i.e., the sum of all pay periods of employment for each eligible aggrieved employee) and dividing that number into the \$50,000 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual Eligible Aggrieved Employee’s total number of pay periods employed during the PAGA Period to determine that individual’s Individual PAGA Payment. Individual PAGA Payments shall be designated as 100% penalties, for which an IRS Form 1099 will issue.

Based on your total number of pay periods, your Individual PAGA Payment is \$ [REDACTED].

You are responsible for paying any federal, state, or local taxes owed as a result of this Individual PAGA Payment.

Because these penalties can only be sought by the State of California, you cannot exclude yourself from the PAGA Penalties portion of the settlement if the Court gives final approval. Even if you exclude yourself from the class action portion of the settlement, you will still be paid your portion of the civil penalties described above.

If you are not an Eligible Aggrieved Employee, this Section does not apply to you.

## 12. How do I receive my payment?

To receive your Individual Settlement Payment, ***you do not have to do anything.*** Only if the Settlement receives final approval by the Court, the Settlement Administrator will automatically send you your Individual Settlement Payment check as long as you do not request to be excluded.

## 13. When do I get my payment?

If no objections to the Settlement are filed, Defendants will deposit the full Settlement Amount into the account set up by the Settlement Administrator [REDACTED] calendar days after the Effective Date of

Settlement, which is (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Superior Court's Judgment; (ii) if an appeal is filed, the date affirmance of an appeal of the Judgment becomes final under the California Rules of Court; or (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.

No later than [REDACTED] calendar days after Defendants make the payment described above, the Settlement Administrator will disburse: (a) the Individual Settlement Payments to Participating Class Members; (b) the Class Representative Service Awards; (c) the payment to the LWDA; (d) the Settlement Administrator's Costs; and (e) Class Counsel's Fees and Costs.

It is strongly recommended that upon receipt of your Individual Settlement Payment check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will pay the amount of the Individual Settlement Share to the California State Controller in accordance with California Unclaimed Property Law.

To check on the progress of the Settlement, you may call the Settlement Administrator at [REDACTED].

**14. Are there taxes consequences if I receive my payment?**

Individual Settlement Payments to Participating Class Members will be allocated as: 20% wages; 80% penalties and interest.

Individual Settlement Payments to Participating Class Members that are attributable to wages will be subject to normal tax withholding and will be reported to the taxing authorities on an IRS Form W-2. Portions attributable to penalties and interest will not be subject to tax withholding and an IRS Form 1099 will be issued if the payment is above the minimum threshold required for the issuance of a Form 1099.

You are ***strongly encouraged*** to consult with a tax advisor concerning the tax consequences of the payments that you receive under the Settlement.

**15. What am I giving up to get a payment or stay in the Class?**

Unless you exclude yourself from the Class, you will remain a Class Member, which means you will not be able to sue or be part of any other lawsuit against Defendants about the legal issues in this case. It also means that you will agree to the "Release" set forth below:

**RELEASE**

Upon the Effective Date and for the Class Period, Named Plaintiff and all members of the Settlement Class waive, release, discharge, and promise never to assert in any forum any and all claims against Defendants and Released Parties that were alleged in the Litigation or that could have been



alleged in the Litigation based on or arising from the facts asserted in the Litigation (*i.e.*, all wage-related claims), including but not limited to claims for (1) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2) violation of California Labor Code §§ 226.7 & 512(a) (unpaid meal period premiums); (3) violation of California Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor Code §§ 1194 and 1197 (unpaid minimum wages); (5) violation of California Labor Code §§ 201, 202, 203 & 204 (wages not timely paid); (6) violation of California Labor Code § 226(a) (non-compliant wage statements); (7) violation of California Labor Code §§ 2800 & 2802 (unreimbursed business expenses); (8) violation of California Labor Code § 246 (paid sick leave); (9) violation of California Labor Code § 1174 (recordkeeping); (10) violation of California Business and Professions Code § 17200, *et seq.*; (11) breach of contract; and (12) violation of any and all other applicable provisions of state or federal law, including the applicable IWC wage orders, based on or arising from the facts alleged in the Litigation.

You will be bound by this release whether or not you are fully aware of the nature or extent of these kinds of claims or aware of whether you even have such claims. Whether or not you cash your Individual Settlement Payment check, the Settlement will be binding. Even if you do not cash your check, you will be deemed to have waived irrevocably any right in or claim to your settlement share and will be bound by the terms of the settlement and the release.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you exclude yourself, you **will not get payment** from the Settlement and will not be bound by the Settlement. If you ask to be excluded, you cannot object to the Settlement.

#### **16. How do I get out of the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail to the Settlement Administrator with a statement that you wish to be excluded from the Settlement of the case entitled: *Wicker v. ASC Profiles LLC, et al.*, Case No. 34-2019-00270803-CU-OE-GDS. You must also include your full name (and former names, if any), current address, telephone number, the last four digits of your Social Security Number, and you must sign the written statement. You must mail or fax your Request for Exclusion no later than [REDACTED] to the Settlement Administrator at the following address:

***Wicker v. ASC Profiles LLC, et al.***  
***Settlement Administrator***

[REDACTED]  
Fax Number: [REDACTED]

You may also submit an Election Not to Participate In Class Action Settlement Form enclosed with this notice. To be valid, the Exclusion Form must be completed, signed, and submitted to the Settlement Administrator prior the response deadline.

If you request to be excluded, **you will not receive any money** from the Settlement, you cannot object to the Settlement, and Class Counsel will not represent your interests in this lawsuit.

#### **17. If I exclude myself, can I get money from this Settlement?**

QUESTIONS? CALL [REDACTED] TOLL FREE

No. If you exclude yourself, you will not receive any money from this Settlement.

### **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

#### **18. How do I object to the Settlement?**

If you are a Class Member and you wish to object to the Settlement, you may either submit a written objection to the Settlement Administrator no later than [REDACTED] or object at the Final Approval Hearing. You may object at the Final Approval Hearing even if you do not submit a written objection. Your objection cannot ask the Court to order a larger Settlement; the Court can only approve or deny the Settlement. If the Court rejects your objection, you will still be bound by the terms of the Settlement. If you choose to object to the Settlement, you may enter an appearance at the Final Approval Hearing *in propria persona* (meaning you choose to represent yourself), or through an attorney that you hire and pay for yourself.

If submitting an objection, include your full name (and former names, if any), address, telephone number, your signature, the last four digits of your Social Security Number, and the factual basis for the objection with any supporting legal arguments, documents, or evidence to be submitted to the Court. The objection must also identify the correct department, Department 53, and the time of the Final Approval hearing, January 25, 2022, at 1:30 p.m. You can mail or fax your objection to the Settlement Administrator no later than [REDACTED]. The Settlement Administrator's address is:

***Wicker v. ASC Profiles LLC, et al.***  
***Settlement Administrator***

[REDACTED]  
Fax Number: [REDACTED]

### **THE FINAL APPROVAL HEARING**

The Court will hold a Final Approval Hearing to decide whether to grant final approval of the Settlement. You may attend this hearing and you may ask to speak, but you do not have to. Class Counsel will appear at the hearing to advocate for the approval of the Settlement.

#### **19. When will the court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at [REDACTED] on [REDACTED] in Department [REDACTED], before Judge \_\_\_\_\_ of the Sacramento Superior Court, located at \_\_\_\_\_. At this hearing, the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate. If you or other Class Members object to the Settlement, the Court will consider the objections. The Judge will listen to people who have asked to speak at the hearing. At or after the hearing, the Court will decide whether to grant final approval of the Settlement.

QUESTIONS? CALL [REDACTED] TOLL FREE

Regardless of whether you object in writing, the Court will hear from any Class Member who attends the final approval hearing and requests to speak regarding his or her objection. If you wish to appear in person.

**20. Do I have to come to the Final Approval Hearing?**

No, you do not have to attend the Final Approval Hearing, but you are welcome to come at your own expense. If you file an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.

If you wish to appear remotely at the Final Approval Hearing you may appear by Zoon, which includes telephonic or video options. For telephonic appearances, the Zoom call-in number is (888) 475-4499 and the Zoom ID is 841 204 6267. For video appearances, the Zoom link is <http://saccourt.zoom.us/my/dept53.54a>

**GETTING MORE INFORMATION**

**21. How can I get more details about this lawsuit or the Settlement?**

This Notice only summarizes the Settlement. You may view a complete copy of the Settlement Agreement and any of the papers filed in this lawsuit during regular business hours at:

**[Court Address]**

You may also access the case file online through the Court's Public Case Access System website at: **[URL]**

You may also access the case files through the administrator's website [www.cptgroup.com/INSERT NAME](http://www.cptgroup.com/INSERT NAME).

***PLEASE DO NOT TELEPHONE OR CONTACT THE COURT, THE JUDGE, OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.***

# **EXHIBIT 2**

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SACRAMENTO**  
10

11 KIJANA WICKER, individually, and on  
12 behalf of other members of the general public  
13 similarly situated, and on behalf of aggrieved  
14 employees pursuant to the Private Attorneys  
15 General Act ("PAGA");

16  
17 Named Plaintiff,

18 v.

19 ASC PROFILES LLC dba ASC BUILDING  
20 PRODUCTS, ASC STEEL DECK, AND AEP  
21 SPAN, a Delaware limited liability company;  
22 BLUESCOPE STEEL AMERICAS, LLC, a  
23 Delaware limited liability company;  
24 BLUESCOPE BUILDINGS NORTH  
25 AMERICA, INC., a Delaware corporation;  
26 BLUESCOPE STEEL LIMITED, an unknown  
27 business entity; NS BLUESCOPE COATED  
28 PRODUCTS – NORTH AMERICA, a  
Delaware limited liability company;  
STEELSCAPE, LLC, a California limited  
liability company; and DOES 1 through 100,  
inclusive;

Defendants.

Case No.: 34-2019-00270803-CU-OE-GDS

Honorable Shama H. Mesiwala  
Department 53

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING NAMED  
PLAINTIFF'S MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT, CONDITIONAL  
CERTIFICATION, APPROVAL OF CLASS  
NOTICE, SETTING OF FINAL APPROVAL  
HEARING DATE**

[Reservation ID: 2581207]

Hearing Date: September 14, 2021  
Hearing Time: 1:30 p.m.  
Hearing Place: Department 53

Complaint Filed: December 6, 2019  
FAC Filed: February 14, 2020  
SAC Filed: June 4, 2021  
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 The Motion for Preliminary Approval of Class Action Settlement came before this Court, the  
3 Honorable Shama H. Mesiwala presiding, on September 14, 2021. The Court having considered the  
4 papers submitted in support of the Motion, HEREBY ORDERS THE FOLLOWING:

5 1. The following Class is conditionally certified for purposes of settlement only: all current  
6 and former nonexempt employees who were employed in California either directly and/or jointly by  
7 Defendants or the Released Parties during the Class Period and who are releasing claims against  
8 Defendants ASC Profiles LLC, SteelScape LLC, and BlueScope Building, NA ("Defendants") or the  
9 Released Parties during the Class Period ("Class Members" and "Class"). The Class Period is the period  
10 from October 30, 2015, to June 30, 2021 ("Class Period").

11 2. The Court grants preliminary approval of the settlement based upon the terms set forth in  
12 the Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement") attached hereto as  
13 **Exhibit A**. Capitalized terms shall have the definitions set forth in the Settlement Agreement.

14 3. The Settlement appears to be fair, adequate, and reasonable to the Class. The Settlement  
15 falls within the range of reasonableness and appears to be presumptively valid, subject only to any  
16 objections that may be raised at the final approval hearing and final approval by this Court.

17 4. Plaintiff Kijana Wicker ("Named Plaintiff") is conditionally approved as the class  
18 representative for the Class.

19 5. The proposed enhancement payment of \$10,000 to Named Plaintiff for his services as  
20 class representative is conditionally approved.

21 6. Douglas Han, Shunt Tatavos-Gharajeh, Arsine Grigoryan, and Phillip Song of Justice  
22 Law Corporation are conditionally approved as Class Counsel for the Class.

23 7. The proposed payment of the attorneys' fees to Class Counsel in an amount not to exceed  
24 thirty-eight percent (38%) of the Gross Settlement Amount or \$1,900,000 and litigation costs to Class  
25 Counsel in the amount not to exceed \$30,000 are conditionally approved.

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27 ///

1           8.       A Final Approval Hearing on the question of whether the Settlement Agreement, the  
2 attorneys' fees, the litigation costs, and the enhancement payment should be finally approved as fair,  
3 reasonable, and adequate as to all Class Members who do not submit a timely and valid Request for  
4 Exclusion and who will be bound by the terms of the Settlement Agreement, including the Release of  
5 Claims and any Final Judgment entered in the Action ("Settlement Class Members" or "Settlement  
6 Class"), is scheduled on the date and time set forth in Paragraph 15 below.

7           9.       The Court confirms CPT Group, Inc. ("CPT Group") as the Settlement Administrator.

8           10.      The proposed payment of Administrative Costs currently estimated at \$13,500 but to not  
9 exceed \$15,000 to CPT Group for its services is conditionally approved.

10          11.      The Court also hereby approves and orders payment from the Gross Settlement Amount  
11 the Private Attorneys General Act of 2004 ("PAGA") Penalties of \$200,000, seventy-five percent (75%)  
12 of which (\$150,000) will be paid to the California Labor and Workforce Development Agency  
13 ("LWDA") and twenty-five percent (25%) of which (\$50,000) will be distributed to all current and  
14 former nonexempt employees who were employed in California either directly and/or jointly by  
15 Defendants or the Released Parties during the period from September 18, 2018, to June 30, 2021  
16 ("PAGA Penalties," "Aggrieved Employees," and "PAGA Period").

17          12.      The Court approves, as to form and content, the Notice of Class Action and PAGA  
18 Settlement ("Class Notice") as attached as **Exhibit 1** to the Settlement Agreement. The Court also  
19 approves the procedure for Class Members to participate in, to opt out of, and to object to the Settlement  
20 as set forth in the Class Notice. The Court approves, as to the form and content, of the Request for  
21 Exclusion Form the Class Members may use to opt out of the Settlement attached as **Exhibit 3** to the  
22 Settlement Agreement.

23          13.      The Court directs the mailing of the Class Notice to all identified Class Members via  
24 first-class regular U.S. Mail in accordance with the implementation schedule set forth in paragraph 15  
25 below. The Court finds the dates selected for the mailing and distribution of the Class Notice, as set  
26 forth in the Implementation Schedule, meet the requirements of due process and provide the best notice  
27 practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled  
28 thereto.

1 14. To facilitate administration of the Settlement Agreement pending final approval, the  
2 Court hereby enjoins Named Plaintiff and all Settlement Class Members from filing or prosecuting any  
3 claims, suits or administrative proceedings (including, but not limited to, filing claims with the Division  
4 of Labor Standards Enforcement of the California Department of Industrial Relations) released by the  
5 Settlement Agreement (Released Claims and Release of PAGA Claims) unless and until such Settlement  
6 Class Members have filed valid Requests for Exclusion with the Settlement Administrator and the time  
7 for filing valid requests for exclusion with the Settlement Administrator has not elapsed.

8 15. The Court orders the following **Implementation Schedule** for further proceedings:

9 a.	Deadline for Defendants to submit Class List to Settlement Administrator	No later than twenty (20) calendar days after the entry of the Preliminary Order
10 b.	Deadline for Settlement Administrator to mail the Class Notice to Class Members	Within fifteen (15) calendar days of the receipt of the Class List from Defendants
11 c.	Deadline for Class Members to Request for Exclusion from Settlement or postmark objections to Settlement to the Settlement Administrator	No later than sixty (60) calendar days after the date Class Notices are initially mailed
12 e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement	Sixteen (16) Court days before Final Approval Hearing in conformity with Code of Civil Procedure § 1005
13 f.	Deadline for Class Counsel to file Motion for attorneys' fees, litigation costs, and the enhancement payment	Sixteen (16) Court days before Final Approval Hearing in conformity with Code of Civil Procedure § 1005
14 g.	Final Approval Hearing and Final Approval	January 22, 2022 at 1:30 p.m. in Department 53

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21 **IT IS SO ORDERED.**

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23 Dated:

24 BY \_\_\_\_\_  
25 Honorable Shama H. Mesiwala  
26 Judge of the Superior Court  
27  
28



# **EXHIBIT 3**

**ELECTION NOT TO PARTICIPATE IN ("OPT OUT" FROM) CLASS ACTION SETTLEMENT**

Superior Court of the State of California, County of Sacramento

*Wicker v. ASC Profiles LLC, et al.*

Case No. 34-2019-00270803-CU-OE-GDS

**ONLY SIGN AND MAIL THIS DOCUMENT IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS ACTION SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE A PAYMENT FROM THE CLASS ACTION SETTLEMENT.**

**This document must be postmarked no later than \_\_\_\_\_, 2021 and sent via U.S. Mail to:**

ASC Profiles, Settlement Administrator, C/O CPT GROUP, INC. [Insert Administrator Address]  
[City, State ZIP]

**By signing and mailing this form to exclude yourself from the class action settlement, you are agreeing to and confirming the following:**

It is my decision not to participate in the class action settlement in *Wicker v. ASC Profiles LLC, et al.*, and I understand that by excluding myself I will not receive a settlement payment from the class action settlement. However, I also understand that, if I qualify for a portion of the PAGA Penalties, I will receive that payment regardless of whether I exclude myself from the class action settlement.

I confirm that I am and/or was employed by ASC Profiles LLC, SteelScope LLC, or BlueScope Building, NA as an hourly-paid and/or non-exempt employee in California during any part of the period of October 30, 2015 and June 30, 2021. I confirm that I have received and reviewed the Notice of Class Action Settlement in this action. I have decided to excluded myself from the class, and I have decided **not** to participate in the proposed settlement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Last Four Digits of Social Security Number)

\_\_\_\_\_  
(Type or print name and former name(s))

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address continued)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On September 16, 21, I served the foregoing document described as


Todd L Nunn  
Matthew G Ball  
**K&L GATES LLP**  
4 Embarcadero Center, Suite 1200  
San Francisco, California 94111-5994

/ / /

1 **[X] STATE**

2 I declare under penalty of perjury under the laws of the State of California that the above  
3 is true and correct.

4 Executed on September 16, 2021, at Pasadena, California.

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6 Anna Okada  
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