

KJT LAW GROUP LLP
Vache Thomassian (SBN 289053)
vache@kjtlawgroup.com
Caspar Jivalagian (SBN 282818)
caspar@kjtlawgroup.com
230 North Maryland Avenue, Suite 306
Glendale, CA 91206
Tel: 818-507-8525

ADAMS EMPLOYMENT COUNSEL

Christopher A. Adams (SBN 266440)
ca@AdmasEmploymentCounsel.com
4740 Calle Carga
Camarillo, CA 93012
Tel: 818-425-1437

Attorneys for Plaintiff

OGLETREE, DEAKINS, NASH, SMOAK & STEWART P.C.

Vince M. Verde (SBN 202472)
Email: vince.verde@ogletree.com
Robert R. Vorhees (SBN 297936)
Email: robert.vorhees@ogletree.com
695 Town Center Drive, Suite 1500
Costa Mesa, CA 92626
Telephone: (714) 800-7988
Facsimile: (714) 754-1298

Attorneys for Defendant Herbert Malarkey Roofing Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

EDGAR RODRIGUEZ-FONSECA, an
individual, on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

HERBERT MALARKEY ROOFING
COMPANY, a California Corporation, and
DOES 1 through 100,

Defendants.

Case No. 19STCV01237

CLASS ACTION

**AMENDED JOINT STIPULATION OF
CLASS ACTION AND PAGA SETTLEMENT**

[Assigned for all purposes to
The Honorable Kenneth R. Freeman,
Dept. 14, 312 N. Spring St.]

Action Filed:

Trial Date: None

1 IT IS HEREBY STIPULATED, by and between Plaintiff Edgar Rodriguez-Fonseca,
2 individually and on behalf of the Settlement Class, and Defendant Herbert Malarkey Roofing
3 Company (“Defendant”), and subject to the approval of the Court, that the Action is hereby
4 compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of
5 Class Action Settlement and Release of Claims (“Agreement”) and that the Court shall make and
6 enter judgment subject to the definitions, recitals and terms set forth herein which by this reference
7 become an integral part of this Agreement.
8

9
10 **I. DEFINITIONS**

- 11 A. “Action” or “Lawsuit” shall mean, the civil action entitled *Edgar Rodriguez-*
12 *Fonseca v. Herbert Malarkey Roofing Company, et al.*, filed on January 17, 2019, in
13 the Los Angeles County Superior Court, and assigned Case No. 19-ST-CV-01237.
14
- 15 B. “Agreement” or “Settlement Agreement” or “Settlement” means this Joint
16 Stipulation of Settlement of Class Action and Release of Claims.
17
- 18 C. “Class Counsel” means the attorneys of record for the Class Representatives and
19 Class Members, *i.e.*, KJT Law Group LLP, 230 North Maryland Avenue, Suite 306,
20 Glendale, CA 91206 and Adams Employment Counsel, 4740 Calle Carga,
21 Camarillo, CA 93012.
22
- 23 D. “Class Counsel Award” means an award of attorneys’ fees, expenses and costs
24 granted to Class Counsel in recognition of their efforts and risks in assisting with the
25 prosecution of the Action.
26
- 27 E. “Class Data” means information regarding Class Members that Defendant will
28 compile from its available, existing, electronic records and provide to the Settlement

1 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall
2 include to the extent available: (i) each Class Member's full name; (ii) each Class
3 Member's last known address; (iii) each Class Member's last known telephone
4 number; (iv) each Class Member's Social Security number; and (v) each Class
5 Member's start and end dates of employment in a non-exempt position in
6 California.

7
8 F. "Class Members" means all current and former hourly or non-exempt employees of
9 Defendant who worked in the State of California at any time from four years
10 preceding the date of filing of this action through the date of the Court's order
11 approving Plaintiff's Motion for Preliminary Approval.

12
13 G. "PAGA Class Members" means all current and former hourly or non-exempt
14 employees of Defendant who worked in the State of California at any time from
15 January 17, 2018 through the date of the Court's order approving Plaintiff's Motion
16 for Preliminary Approval.

17
18 H. "Class Period" shall mean the time period from January 17, 2015 through the date
19 of the order approving Plaintiff's Motion for Preliminary Approval of Class Action
20 Settlement.

21
22 I. "Class Representative Service Award" means the amount that the Court authorizes
23 to be paid to Plaintiff, in addition to his Individual Settlement Payment, in
24 recognition of his efforts and risks in assisting with the prosecution of the Action
25 and in exchange for executing a General Release in favor of Defendant.
26
27
28

- 1 J. “Class Representative” means the named Plaintiff in this lawsuit, Edgar Rodriguez-
2 Fonseca.
- 3
- 4 K. “Qualified Workweeks” means, for each Class Member, the number calculated by:
5 (a) the Settlement Administrator’s calculation (based on the Class Data) of the total
6 number of weeks between his or her start and end dates of employment in a non-
7 exempt position in California during the Class Period; and (b) dividing that number
8 by five. The Settlement Administrator will have sole and exclusive responsibility
9 for calculating the number of Qualified Workweeks.
- 10
- 11 L. “PAGA Qualified Workweeks” means, for each Class Member, the number
12 calculated by: (a) the Settlement Administrator’s calculation (based on the Class
13 Data) of the total number of weeks between his or her start and end dates of
14 employment in a non-exempt position in California during the period January 17,
15 2018 through the date of the Court’s order approving Plaintiff’s Motion for
16 Preliminary Approval; and (b) dividing that number by five. The Settlement
17 Administrator will have sole and exclusive responsibility for calculating the number
18 of PAGA Qualified Workweeks.
- 19
- 20
- 21 M. “Court” means the Superior Court for the State of California, County of Los
22 Angeles.
- 23
- 24 N. “Defendant” means Herbert Malarkey Roofing Company.
- 25
- 26 O. “Defense Counsel” or “Counsel for Defendant” shall mean Vince M. Verde and
27 Robert R. Vorhees of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 695 Town
28 Center Drive, 15th Floor, Costa Mesa, CA 92626.

1 P. "Effective Date" shall be the later of the following: (i) If no objections to the
2 settlement have been filed, or the timely objections have been filed and then
3 withdrawn, then the date the Court enters judgment granting Final Approval; (ii) If
4 an objection to the settlement has been filed, then the date on which time expires to
5 file an appeal of the Court's grant of Final Approval of settlement; or if an objection
6 was filed and a Notice of Appeal of the Court's grant of Final Approval of
7 settlement was timely filed, then the date the appeal is finally resolved, with the
8 final approval unaffected.
9

10 Q. "Final Approval Order" means the Court's order granting final approval of the
11 Settlement, in the form of Exhibit A to this Agreement. The Claims Administrator
12 shall give notice of the Final Approval Order by posting the Final Approval Order
13 on its website.
14

15 R. "Individual Settlement Payment" means the total amount payable to each Class
16 Member who is a Settlement Recipient.
17

18 S. "Maximum Settlement Amount" means \$300,000.00, which sum includes all
19 payments contemplated by this Agreement, including but not limited to: the
20 Individual Settlement Payments, the Class Representative Service Payment Awards,
21 the Class Counsel Award, PAGA Payment, the Settlement Administration Costs,
22 any award of costs or reimbursements to Class Counsel or Plaintiff. Defendant will
23 separately pay any required employer payroll taxes and other required employer
24 withholdings on the portion of the Individual Settlement Payments allocated to
25 wages, including but not limited to Defendant's FICA and FUTA contributions.
26 This is a non-reversionary settlement. Except as otherwise provided in this
27
28

1 Agreement, in no event shall Defendant be liable for more than \$300,000.00 plus
2 Defendant's required employer payroll taxes and other employer withholdings on
3 the portion of the Individual Settlement Payments allocated to wages as a result of
4 this Settlement.
5

6 T. "Net Settlement Amount" or "NSA" means the Maximum Settlement Amount, less
7 the Class Representative Service Payment Awards, the Class Counsel Award,
8 PAGA Payment, and the Settlement Administration Costs, any award of costs or
9 reimbursements to Class Counsel or Plaintiff, and any required employer payroll
10 taxes and other required employer withholdings on the portion of the Individual
11 Settlement Payments allocated to wages, including but not limited to Defendant's
12 FICA and FUTA contributions
13

14 U. "Notice Packet" means the Notice of Class Action Settlement in a form substantially
15 similar to the form attached hereto as Exhibit B. The Notice Packet will be
16 provided to Class Members in English and Spanish.
17

18 V. "PAGA" means the California Labor Code Private Attorneys General Act of 2004.
19

20 W. "PAGA Payment" means the payment made hereunder in satisfaction of
21 Defendant's potential liability under PAGA, and payable to the California Labor
22 and Workforce Development Agency or the PAGA Class Members, in accordance
23 with PAGA.
24

25 X. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
26 Plaintiff or Defendant, individually.
27

28 Y. "Plaintiff" shall mean the named Plaintiff in this action, Edgar Rodriguez-Fonseca.

- 1 Z. “Preliminary Approval Date” means the date the Court enters an order granting
2 preliminary approval of the Settlement.
3
- 4 AA. “Qualified Settlement Fund” or “QSF” means the qualified settlement fund set up
5 by the Settlement Administrator into which the Gross Settlement Fund shall be
6 deposited and disbursements from it shall be made.
7
- 8 BB. “Released Claims” includes all causes of action and factual or legal theories that
9 were alleged in the operative complaint or reasonably could have been alleged based
10 on the facts and legal theories contained in the operative complaint, including all of
11 the following claims for relief: (a) failure to pay minimum wages; (b) failure to pay
12 all overtime wages; (c) failure to provide, authorize or permit compliant meal
13 periods or provide proper meal period premiums; (d) failure to provide, authorize or
14 permit compliant rest breaks or provide proper rest premiums; (e) failure to furnish
15 accurate wage statements; (f) unfair business practices; (g) failure to maintain
16 required records; (h) civil penalties recoverable under the Private Attorneys General
17 Act (“PAGA”); (i) failure to pay all wages due to discharged and quitting
18 employees; (j) any other claims or penalties under the wage and hour laws pleading
19 in the Action; (k) all damages, penalties, interest and other amounts recoverable
20 under said causes of action under California and federal law, to the extent
21 permissible, including but not limited to the California Labor Code as to the facts
22 alleged in the Action, the applicable Wage Orders as to the facts alleged in the
23 complaint; and (k) the California Unfair Competition Law (collectively, the
24 “Released Claims”). The period of the Release shall extend to the limits of the
25 Covered Period. The *res judicata* effect of the Judgment will be the same as that of
26 the Release. The definition of Released Claims shall not be limited in any way by
27
28

1 the possibility that Plaintiff or Settlement Recipients may discover new facts, legal
2 theories, or legal arguments not alleged in the operative complaint but which might
3 serve as an alternative basis for pursuing the same claims, causes of action, or legal
4 theories of relief falling within the definition of Released Claims.

5
6 CC. “Released Parties” shall mean Defendant Herbert Malarkey Roofing Company and
7 any of its past, present and/or future, subsidiaries, parents, divisions, joint venturers,
8 predecessors, successors, insurers, assigns, consultants, subcontractors, their
9 employee benefit plans and the trustees, fiduciaries, and administrators of those
10 plans, and any of their current or former employees, officers, directors, servants,
11 agents, investors, representatives, attorneys, executors, administrators, and assigns,
12 and all persons acting under, by, through, or in concert with any of them, and each
13 of them.
14

15
16 DD. “Request for Exclusion” refers to a formal request to be excluded from the
17 Settlement as described in detail in Paragraph III(N)(7).
18

19 EE. “Response Deadline” means the date forty-five (45) days after the Settlement
20 Administrator mails Notice Packets to Class Members and the last date on which
21 Class Members may submit requests for exclusion, or objections to the Settlement.
22

23 FF. “Settlement” means the disposition of the Action pursuant to this Agreement.

24 GG. “Settlement Administrator” means CPT Group.
25

26 HH. “Settlement Class Members” means all Class Members that do not submit a valid
27 Request for Exclusion. Settlement Class Members will release all of the Released
28

1 Claims and be bound by all terms of the Settlement and any final judgment entered
2 in this Action.

3 4 **II. RECITALS**

5 A. Class Certification. The Parties stipulate and agree to certification for purposes of
6 this Settlement only. This Agreement is subject to the approval of the Court and is
7 made for the sole purpose of consummating settlement of the Action. Should the
8 Settlement not become final and effective as herein provided, class certification
9 shall immediately be set aside and the Settlement Class immediately decertified
10 (subject to further proceedings on motion of any party to certify or deny
11 certification thereafter). The Parties' willingness to stipulate to class certification as
12 part of the Settlement shall have no bearing on, and shall not be admissible in or
13 considered in connection with, the issue of whether a class should be certified in a
14 non-settlement context in this Action and shall have no bearing on, and shall not be
15 admissible or considered in connection with, the issue of whether a class should be
16 certified in any other lawsuit.

17
18
19 B. Procedural History. On January 17, 2019, Plaintiff filed a putative class action
20 Complaint asserting claims against Defendant for alleged violations of the
21 California Labor Code, including (a) failure to pay minimum wages; (b) failure to
22 pay all overtime wages; (c) failure to provide, authorize or permit compliant meal
23 periods or provide proper meal period premiums; (d) failure to provide, authorize or
24 permit compliant rest breaks or provide proper rest premiums; (e) failure to furnish
25 accurate wage statements; (f) unfair business practices; (g) failure to maintain
26 required records; (h) civil penalties recoverable under PAGA; (i) failure to pay all
27 wages due to discharged and quitting employees, and (j) claims for interest,
28

1 attorneys' fees and costs. The action was filed in the Superior Court of the State of
2 California for the County of Los Angeles and assigned case number 19STCV01237.

3
4 C. Mediation. On April 13, 2020, the Parties participated in a private mediation with
5 Louis Marlin, a well-respected mediator with considerable experience mediating
6 wage and hour class actions. This took place only after the Parties exchanged
7 extensive informal mediation data. That mediation was unsuccessful. The Parties
8 then participated in a second half-day mediation with Mr. Marlin on August 7, 2020.
9 That second mediation and subsequent negotiations resulted in the Settlement
10 described herein to resolve this Action in its entirety.

11
12 D. Benefits of Settlement to Settlement Class Members. Plaintiff and Class Counsel
13 recognize the expense and length of continued proceedings necessary to litigate
14 their disputes through trial and through any possible appeals. Plaintiff has also
15 taken into account the uncertainty and risk of the outcome of further litigation, and
16 the difficulties and delays inherent in such litigation, as well as the impact of the
17 COVID-19 pandemic on Defendant's business and the uncertainty of the business
18 environment given the ongoing economic effects of the pandemic. Plaintiff and
19 Class Counsel are also aware of the burdens of proof necessary to establish liability
20 for the claims asserted in the Action, both generally and in response to Defendant's
21 defenses thereto, and the difficulties in class certification and establishing damages
22 for the Class Members. Based on the foregoing, Plaintiff and Class Counsel have
23 determined that the terms set forth in this Agreement is a fair, adequate and
24 reasonable settlement, and is in the best interests of the Settlement Class Members.
25
26
27
28

1 E. Defendant's Reasons for Settlement. Defendant has concluded that any further
2 defense of this litigation would be protracted and expensive for all Parties.
3 Substantial amounts of Defendant's time and resources have been and, unless this
4 Settlement is made, will continue to be devoted to the defense of the claims asserted
5 by Plaintiff and Class Members. Furthermore, Defendant's business has been
6 impacted by the COVID-19 pandemic and Defendant has also taken into account the
7 risks of further litigation in reaching its decision to enter into this Settlement.
8 Despite continuing to contend that it is not liable for any of the claims set forth by
9 Plaintiff, Defendant has, nonetheless, agreed to settle in the manner and upon the
10 terms set forth in this Agreement to put to rest the claims as set forth in the Action.
11

12
13 F. Class Members' Claims. The Class Representative claims that his allegations have
14 merit and give rise to liability on the part of Defendant. This Agreement is a
15 compromise of disputed claims. The monies being paid as part of the settlement are
16 genuinely disputed and the Parties agree that the provisions of Labor Code section
17 206.5 are not applicable to this Settlement. Nothing contained in this Agreement
18 and no documents referred to herein and no action taken to carry out this Agreement
19 may be construed or used as an admission by or against the Class Members or Class
20 Counsel as to the merits or lack thereof of the claims asserted.
21

22
23 G. Defendant's Defenses. Defendant claims that the Released Claims have no merit
24 and do not give rise to liability. This Agreement is a compromise of disputed
25 claims. The monies being paid as part of the settlement are genuinely disputed and
26 the Parties agree that the provisions of Labor Code section 206.5 are not applicable
27 to this Settlement. Nothing contained in this Agreement and no documents referred
28 to herein and no action taken to carry out this Agreement may be construed or used

as an admission by or against Defendant as to the merits or lack thereof of the claims asserted.

III. TERMS OF AGREEMENT

- A. Settlement Consideration by Defendants. Defendant shall pay the monetary sums as specified in this Agreement, up to the Maximum Settlement Amount, unless otherwise stated in this agreement. In no event shall Defendant be required to pay more than the Maximum Settlement Amount, provided however, that in the event that future disclosures of data evidence that as of August 7, 2020 there were more than 210 putative class members, the Parties agree that Defendant shall proportionately increase the Maximum Settlement Amount to account for the additional putative class members in excess of 210 that existed as of August 7, 2020. To be clear this provision shall not limit the Class Period as defined above.
- B. Limited Release By All Settlement Class Members. As of the Effective Date and upon Defendant funding the Maximum Settlement Amount as described below, in exchange for the consideration set forth in this Settlement Agreement, Settlement Class Members will be deemed to have, and by operation of the Final Approval Order and Judgment, will have, expressly waived and released the Released Parties of the Released Claims (as defined above) to the fullest extent permitted by the law. All Settlement Class Members who do not opt out of the Settlement will be bound by a release of all claims and causes of action falling within the definition of “Released Claims” (above), whether known or unknown, and *irrespective of the factual or legal basis for such claims*. However, to be clear, the scope of the release is limited to the Released Claims. Plaintiff and the Settlement Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or

1 currently believe to be true with respect to the claims, causes of action and legal
2 theories of recovery in this Action. Regardless, the discovery of new facts or legal
3 arguments shall in no way limit the scope or definition of the Released Claims, and
4 by virtue of this Agreement, Plaintiff and the Settlement Class Members shall be
5 deemed to have, and by operation of the final judgment approved by the Court, shall
6 have, fully, finally, and forever settled and released all of the Released Claims. The
7 parties understand and specifically agree that the scope of the release described in this
8 Paragraph: is a material part of the consideration for this Agreement; was critical in
9 justifying the agreed upon economic value of this settlement and without it Defendant
10 would not have agreed to the consideration provided; and is narrowly drafted and
11 necessary to ensure that Defendant is obtaining peace of mind regarding the resolution
12 of claims that were or could have been alleged based on the facts, causes of action,
13 and legal theories contained in Plaintiffs' Complaint.
14

15
16 C. Limited Release By PAGA Class Members Who Are Not Also Settlement Class
17 Members. As of the Effective Date and upon Defendant funding the Maximum
18 Settlement Amount as described below, in exchange for the consideration set forth in
19 this Settlement Agreement, PAGA Class Members who are not also Settlement Class
20 Members (because they have excluded themselves from the Settlement) will,
21 notwithstanding such request for exclusion, be deemed to have, and by operation of
22 the Final Approval Order and Judgment, will have, to the fullest extent permitted by
23 law, expressly waived and released the Released Parties of all causes of action for
24 civil penalties recoverable under the Private Attorneys General Act ("PAGA"), and
25 factual or legal theories that were alleged in the operative complaint or reasonably
26 could have been alleged based on the facts and legal theories contained in the
27
28

operative complaint in support of such causes of action (the “Released PAGA Claims”). The period of the release of Released PAGA Claims shall extend to January 17, 2018 through the Date of Preliminary Approval. The *res judicata* effect of the Judgment will be the same as that of the release of Released PAGA Claims. The definition of Released PAGA Claims shall not be limited in any way by the possibility that Plaintiff or PAGA Class Members may discover new facts, legal theories, or legal arguments not alleged in the operative complaint but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released PAGA Claims. All PAGA Class Members who are not also Settlement Class Members will be bound by a release of all Released PAGA Claims, whether known or unknown, and *irrespective of the factual or legal basis for such claims*. However, to be clear, the scope of the release is limited to the Released PAGA Claims. Plaintiff and the Settlement Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released PAGA Claims, and by virtue of this Agreement, Plaintiff and the Settlement Class Members shall be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released PAGA Claims. The parties understand and specifically agree that the scope of the release described in this Paragraph: is a material part of the consideration for this Agreement; was critical in justifying the agreed upon economic value of this settlement and without it Defendant would not

1 have agreed to the consideration provided; and is narrowly drafted and necessary to
2 ensure that Defendant is obtaining peace of mind regarding the resolution of claims
3 that were or could have been alleged based on the facts, causes of action, and legal
4 theories contained in Plaintiffs' Complaint.
5

6 D. General Release By Plaintiff. As of the Effective Date, in consideration for the
7 consideration set forth in this Agreement, Plaintiff, for himself and his heirs,
8 successors and assigns, hereby waive, release, acquit and forever discharge the
9 Released Parties, from any and all claims, actions, charges, complaints, grievances
10 and causes of action, of whatever nature and without limitation, whether known or
11 unknown, which exist or may exist on Plaintiff's behalf as of the date of this
12 Agreement. Plaintiff hereby expressly waives and relinquishes any and all claims,
13 rights or benefits that he may have under California Civil Code § 1542, which
14 provides as follows: *A general release does not extend to claims which the creditor*
15 *does not know or suspect to exist in his or her favor at the time of executing the*
16 *release which if known by him or her must have materially affected his or her*
17 *settlement with the debtor.* Plaintiff may hereafter discover claims or facts in
18 addition to, or different from, those which he now knows or believes to exist, but he
19 expressly agrees to fully, finally and forever settle and release any and all claims
20 against the Released Parties, known or unknown, suspected or unsuspected, which
21 exist or may exist on behalf of or against the other at the time of execution of this
22 Agreement. The Parties further acknowledge, understand and agree that this
23 representation and commitment is essential to the Agreement and that this
24 Agreement would not have been entered into were it not for this representation and
25
26
27
28

1 commitment. The intent of this Agreement is to fully and forever settle the wage and
2 hour claims alleged in the instant class action.

3
4
5 E. Plaintiff Less Than 40 Years Old. Plaintiff represents and warrants that, at the time
6 his employment with Defendant ended, he was less than 40 years old. Plaintiff
7 understands that this representation is a material element of this Settlement and that,
8 had Plaintiff not provided this representation, Defendant would have required
9 additional terms to this Settlement in order to obtain an enforceable waiver of any
10 claims Plaintiff might have under the Age Discrimination in Employment Act
11 (“ADEA”), as amended by the Older Workers’ Benefit Protection Act of 1990 (29
12 U.S.C. §§ 621, et seq.). Plaintiff acknowledges all of the following:

13
14
15 F. Conditions Precedent: This Settlement will become final and effective only upon the
16 occurrence of all of the following events:

- 17
- 18 1. The Court enters an order granting preliminary approval of the Settlement;
 - 19 2. The Court enters an order granting final approval of the Settlement and a
20 Final Judgment;
 - 21 3. The Final Effective Date occurs; and
 - 22 4. Defendant does not invoke its right to revoke the Settlement as described in
23 paragraph III.R. (“Defendant’s Option to Revoke Settlement”) herein.
 - 24

25
26
27 G. Nullification of Settlement Agreement. In the event that this Settlement Agreement
28 is not preliminarily or finally approved by the Court, fails to become effective, or is

1 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
2 Defendant from obtaining a complete resolution of the claims as described herein:
3

- 4 1. This Settlement Agreement shall be void ab initio and of no force or effect,
5 and shall not be admissible in any judicial, administrative or arbitral
6 proceeding for any purpose or with respect to any issue, substantive or
7 procedural;
8
- 9 2. The conditional class certification (obtained for any purpose) shall be void
10 ab initio and of no force or effect, and shall not be admissible in any judicial,
11 administrative or arbitral proceeding for any purpose or with respect to any
12 issue, substantive or procedural; and
13
- 14 3. None of the Parties to this Settlement will be deemed to have waived any
15 claims, objections, defenses or arguments in the Action, including with
16 respect to the issue of class certification.
17

18 H. Certification of the Settlement Class. The Parties stipulate to conditional class
19 certification of the Settlement Class for the Class Period for purposes of settlement
20 only. In the event that this Settlement is not approved by the Court, fails to become
21 effective, or is reversed, withdrawn or modified by the Court, or in any way prevents
22 or prohibits Defendant from obtaining a complete resolution of the claims as
23 described herein, the conditional class certification (obtained for any purpose) shall
24 be void ab initio and of no force or effect, and shall not be admissible in any judicial,
25 administrative or arbitral proceeding for any purpose or with respect to any issue,
26 substantive or procedural.
27
28

- 1 I. Tax Liability. The Parties make no representations as to the tax treatment or legal
2 effect of the payments called for hereunder, and Settlement Recipients are not relying
3 on any statement or representation by the Parties in this regard. Settlement
4 Recipients understand and agree that they will be responsible for the payment of any
5 taxes and penalties assessed on the Individual Settlement Payments described herein
6 and will be solely responsible for any penalties or other obligations resulting from
7 their personal tax reporting of Individual Settlement Payments.
8
- 9 J. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
10 the “acknowledging party” and each Party to this Agreement other than the
11 acknowledging party, an “other party”) acknowledges and agrees that: (1) no
12 provision of this Agreement, and no written communication or disclosure between or
13 among the Parties or their attorneys and other advisers, is or was intended to be, nor
14 shall any such communication or disclosure constitute or be construed or be relied
15 upon as, tax advice within the meaning of United States Treasury Department
16 circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has
17 relied exclusively upon his, her or its own, independent legal and tax counsel for
18 advice (including tax advice) in connection with this Agreement, (b) has not entered
19 into this Agreement based upon the recommendation of any other Party or any
20 attorney or advisor to any other Party, and (c) is not entitled to rely upon any
21 communication or disclosure by any attorney or adviser to any other party to avoid
22 any tax penalty that may be imposed on the acknowledging party, and (3) no attorney
23 or adviser to any other Party has imposed any limitation that protects the
24 confidentiality of any such attorney’s or adviser’s tax strategies (regardless of
25 whether such limitation is legally binding) upon disclosure by the acknowledging
26
27
28

1 party of the tax treatment or tax structure of any transaction, including any
2 transaction contemplated by this Agreement.
3

4 K. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
5 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
6 which shall include this Settlement Agreement and shall seek approval of the
7 Preliminary Approval Order attached to this Agreement as Exhibit C. Plaintiff shall
8 provide a courtesy draft of these papers to Defense Counsel at least 5 business days
9 before filing the documents.

10 L. Settlement Administrator. By accepting the role as Settlement Administrator, the
11 Settlement Administrator is bound to all of the terms, conditions and obligations
12 described in this Settlement Agreement. Among these obligations, the Settlement
13 Administrator shall have sole and exclusive responsibility for: calculating Qualified
14 Workweeks; processing and mailing payments to the Class Representative, Class
15 Counsel, LWDA and Settlement Recipients; printing and mailing the Notice Packets
16 (in English and Spanish) to the Class Members as directed by the Court; receiving
17 and reporting objections, and opt outs; deducting all legally required taxes from
18 Individual Settlement Payments and distributing tax forms; processing and mailing
19 tax payments to the appropriate state and federal taxing authorities; providing
20 declaration(s) as necessary in support of preliminary and/or final approval of this
21 Settlement; and other tasks as the Parties mutually agree or the Court orders the
22 Settlement Administrator to perform. The Settlement Administrator shall keep the
23 Parties timely apprised of the performance of all Settlement Administrator's
24 responsibilities. Defendant and Defendant's Counsel shall have no responsibility for
25 validating or ensuring the accuracy of the Settlement Administrator's work.
26 Plaintiff, Plaintiff's Counsel, Defendant and Defendant's Counsel shall not bear any
27 responsibility for errors or omissions in the calculation or distribution of the
28

Individual Settlement Payments or any other distribution of monies contemplated by this Agreement.

M. Notice Procedure.

1. Class Data. No later than fourteen (14) calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the Class Data for purposes of preparing and mailing Notice Packets to Settlement Recipients. The Class Data shall be confidential, except as necessary to effectuate and/or enforce the terms of this Agreement and for purposes of communicating with Class Members who make inquiries about this Action. The Settlement Administrator shall not provide the Class Data to Class Counsel or Plaintiff or any third party, or use the Class Data or any information contained therein for any purpose other than to administer this Settlement. Nothing in this paragraph is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, answering questions from Class Members.

2. Notice Packets.

a) The Notice Packet shall contain the Notice of Class Action Settlement in a form substantially similar to the form attached hereto as Exhibit B. The Notice of Class Action Settlement shall also inform Class Members to keep the Settlement Administrator apprised of their current mailing addresses, to which the Settlement Payments will be mailed following the Effective Date. The Notice of Class

1 Action Settlement shall set forth the release to be given by all
2 members of the Settlement Class who do not request to be excluded
3 from the Settlement Class and/or are members of the PAGA
4 Settlement Class. The Notice of Class Action Settlement will be
5 provided to Class Members in English and Spanish.
6

- 7 b) The Notice Packet shall contain an Estimate of Qualified Workweeks
8 and PAGA Qualified Workweeks in a form substantially similar to
9 the form attached as Exhibit B and shall be individualized by
10 inclusion of the Settlement Class Member's starting and ending dates
11 of employment in a Class Position during the Settlement Class
12 Period, the number of Qualified Workweeks and PAGA Qualified
13 Workweeks calculated by the Settlement Administrator, and the
14 Settlement Administrator's calculation of their estimated Individual
15 Settlement Payment.
16
17

- 18 3. Notice By First Class U.S. Mail. Upon receipt of the Class Data, the
19 Settlement Administrator will perform a search based on the National
20 Change of Address Database to update and correct any known or identifiable
21 address changes. No later than fourteen (14) calendar days after receiving
22 the Class Data from Defendant as provided herein, the Settlement
23 Administrator shall mail copies of the Notice Packet to all Class Members
24 via regular First Class U.S. Mail. The Settlement Administrator shall
25 exercise its best judgment to determine the current mailing address for each
26 Class Member. The address identified by the Settlement Administrator as
27 the current mailing address shall be presumed to be the best mailing address
28

1 for each Class Member. A reminder postcard will be mailed out to all Settlement
2 Class Members 30 days after the Class Notice is sent to Settlement Class Members.

3
4 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
5 Administrator as non-delivered on or before the Response Deadline shall be
6 re-mailed to the forwarding address affixed thereto. The Response Deadline
7 of any Class Member who is re-mailed a Notice Packet shall be extended by
8 twenty-one (21) calendar days from the date of re-mailing or the original
9 forty-five (45) calendar day deadline, whichever is later. If no forwarding
10 address is provided, the Settlement Administrator shall promptly attempt to
11 determine a correct address by lawful use of skip-tracing, or other search
12 using the name, address and/or Social Security number of the Class Member
13 involved, and shall then perform a re-mailing, if another mailing address is
14 identified by the Settlement Administrator. In addition, if any Notice
15 Packets, which are addressed to Class Members who are currently employed
16 by Defendants, are returned to the Settlement Administrator as non-delivered
17 and no forwarding address is provided, the Settlement Administrator shall
18 notify Defendants. Defendant will request that the currently employed Class
19 Member provide a corrected address, and transmit to the Administrator any
20 corrected address provided by the Class Member.
21
22

23
24 5. Disputes Regarding Individual Settlement Payments. Class Members will
25 have the opportunity, should they disagree with the dates of employment
26 and/or the estimated number of Qualified Workweeks stated on their
27 Estimate of Qualified Workweeks or PAGA Qualified Workweeks, to
28 provide documentation and/or an explanation to show contrary employment

1 dates. Any such dispute, must be submitted to the Settlement Administrator
2 by the Response Deadline. If there is a dispute, the Settlement
3 Administrator will consult with the Parties to determine whether an
4 adjustment is warranted. The Settlement Administrator shall determine the
5 eligibility for, and the amounts of, any Individual Settlement Payments
6 under the terms of this Agreement. The Settlement Administrator's
7 determination of the eligibility for and amount of any Individual Settlement
8 Payment shall be binding upon the Settlement Class Member and the Parties.
9

10
11 6. Disputes Regarding Administration of Settlement. Any disputes not
12 resolved by the Settlement Administrator concerning the administration of
13 the Settlement will be resolved by the Court under the laws of the State of
14 California. Prior to any such involvement of the Court, counsel for the
15 Parties will confer in good faith to resolve the disputes without the necessity
16 of involving the Court.
17

18 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
19 Packet shall state that Class Members who wish to exclude themselves from
20 the Settlement must submit a written Request for Exclusion by the Response
21 Deadline. The written Request for Exclusion must state that the Settlement
22 Class Member wishes to exclude himself or herself from the Settlement and
23 (1) must contain the name, address, and the last four digits of the Social
24 Security number of the person requesting exclusion; (2) must be signed by
25 the Settlement Class Member; and (3) must be postmarked by the Response
26 Deadline and returned to the Settlement Administrator at the specified
27 address. The Request for Exclusion will not be valid if it is not timely
28

submitted, if it is not signed by the Settlement Class Member, or if it does not contain the name and address of the Settlement Class Member. The date of the postmark on the return mailing envelope for the Request for Exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon, except that Class Members who are PAGA Class Members will participate in the settlement of the PAGA claim, irrespective of whether they have requested to be excluded from the Settlement Class. Class Members who fail to submit a valid and timely written Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court. No later than five (5) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted written requests for exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Settlement Class to submit requests for exclusion from the Settlement.

8. Objections. The Notice of Class Action Settlement contained in the Notice Packet shall state that Settlement Class Members who wish to object to the Settlement must mail to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark

1 date of mailing shall be deemed the exclusive means for determining that a
2 Notice of Objection was served timely. The Notice of Objection must be
3 signed by the Settlement Class Member and state: (1) the case name and
4 number; (2) the name of the Settlement Class Member; (3) the address of the
5 Settlement Class Member; (4) the last four digits of the Settlement Class
6 Member's Social Security number and/or Employee ID number; (4) the basis
7 for the objection; and (5) if the Settlement Class Member intends to appear
8 at the Final Approval/Settlement Fairness Hearing. Settlement Class
9 Members will have a right to appear at the Final Approval/Settlement
10 Fairness hearing and present their objections to the settlement to the Court
11 even if they do not submit a written objection pursuant to this Paragraph.
12 Settlement Class Members who fail to make objections in the manner
13 specified above or during the Final Approval/Settlement Fairness hearing
14 shall be deemed to have waived any objections and shall be foreclosed from
15 making any objections (whether by appeal or otherwise) to the Settlement.
16 At no time shall any of the Parties or their counsel seek to solicit or
17 otherwise encourage Settlement Class Members to file or serve written
18 objections to the Settlement or appeal from the Order and Final Judgment.
19 Class Members who submit a written Request for Exclusion are not entitled
20 to object to the Settlement. The Settlement Administrator shall send all
21 objections to counsel for Plaintiff and Defendants. Plaintiff and/or
22 Defendant may file oppositions to any filed objections no later than nine (9)
23 court days prior to the date of the Final Approval/Settlement Fairness
24 Hearing. In the event a Class Member raises an objection, without prior
25
26
27
28

notice, during the Final Approval / Settlement Fairness Hearing, Plaintiff and / or Defendant shall have the right to oppose the objection.

N. Funding and Allocation of the Maximum Settlement Amount. This is a non-reversionary settlement in which Defendant is required to pay the entirety of the Maximum Settlement Amount. No amount of the Maximum Settlement Fund will revert to Defendant. Upon satisfaction of the preconditions described in this Settlement and pursuant to the timeline and instructions below, Defendant will deposit the Maximum Settlement Amount into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. In no event shall Defendant be responsible for any payments in excess of the Maximum Settlement Amount, except as provided in section III.A, above.

1. Funding Due Date. No later than ten (10) calendar days after the Effective Date, Defendant shall provide the Maximum Settlement Amount to the Settlement Administrator to fund the Settlement as set forth in this Agreement.

2. Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein.

a) Calculation of Individual Settlement Payments.

(i) Using the Class Data, the Settlement Administrator will calculate the total Qualified Workweeks for all Settlement Recipients (*i.e.*, all

1 Settlement Class Members who do not submit a
2 Request for Exclusion). The respective Qualified
3 Workweeks for each Settlement Class Member will be
4 divided by the total Qualified Workweeks for all
5 Settlement Class Members, resulting in the Payment
6 Ratio for each Settlement Class Member. Each
7 Settlement Class Member's Payment Ratio will then
8 be multiplied by the Net Settlement Amount to
9 calculate each Settlement Class Member's share of the
10 Net Settlement Amount. A share of the Net
11 Settlement Amount will be provided only to those
12 individuals who satisfy the definition of Settlement
13 Recipients (*i.e.*, all Settlement Class Members who do
14 not submit a Request for Exclusion).
15
16

17 (ii) Using the Class Data, the Settlement
18 Administrator will calculate the total Qualified PAGA
19 Workweeks for all PAGA Class Members. The
20 respective Qualified PAGA Workweeks for each
21 PAGA Class Member will be divided by the total
22 Qualified PAGA Workweeks for all PAGA Class
23 Members, resulting in the Payment Ratio for each
24 PAGA Class Member. Each PAGA Class Member's
25 Payment Ratio will then be multiplied by the 25% of
26 the PAGA Payment payable to the PAGA Class
27
28

Members to calculate each PAGA Class Member's share of the PAGA Payment.

(iii) Each Individual Settlement Payment (consisting of the individual share of the Net Settlement Amount and the individual share of the PAGA Payment, as applicable) will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). The settlement checks will include an endorsement confirming that by cashing the check, the Settlement Class Members and PAGA Class Members are releasing state and federal claims covered by the Released Claims.

b) Allocation. For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: (a) 1/3 as wages; and (b) 1/3 as penalties and (c) 1/3 as interest. The Settlement Administrator will be responsible for issuing to claimants a form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated to penalties and interest.

c) Mailing. Individual Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Recipients' last known mailing address no later than twenty-five (25) calendar days after the Effective Date.

d) Expiration. Any checks issued to Settlement Recipients shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. In the event an Individual Settlement Payment check has not

1 been cashed within one hundred and eighty (180) days, The Parties agree
2 that any uncashed checks or unclaimed funds shall be transferred to the
3 California State Controller's Office — Unclaimed Property Division, in
4 accordance with California's Unclaimed Property Law, California Code of
5 Civil Procedure §§ 1500, *et seq.* The Settlement Administrator shall prepare
6 a report regarding the distribution plan pursuant to California Code Civil
7 Procedure Section 384, including and not limited to the unused funds as set
8 forth in this paragraph, and the report shall be presented to the Court by
9 Class Counsel.

- 10 3. Class Representative Service Award. Defendant agrees not to oppose or
11 object to any application or motion by Plaintiff for a Class Representative
12 Service Award of up to five thousand dollars (\$5,000) to Plaintiff in
13 exchange for the Released Claims and a General Release and for his time,
14 effort and risk in bringing and prosecuting this matter. The Settlement
15 Administrator shall pay the Class Representative Service Awards to Plaintiff
16 from the Maximum Settlement Amount no later than fifteen (15) calendar
17 days after the Effective Date. Any portion of the requested Class
18 Representative Service Award that is not awarded to the Class
19 Representative shall become part of the Net Settlement Amount. The
20 Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff
21 for his Class Representative Service Award. Plaintiff shall be solely and
22 legally responsible to pay any and all applicable taxes on his Class
23 Representative Service Award and shall hold harmless Defendant from any
24 claim or liability for taxes, penalties, or interest arising as a result of the
25 Class Representative Service Award. The Class Representative Service
26 Award shall be in addition to the Plaintiff's respective Individual Settlement
27
28

1 Payment as a Settlement Class Member. In the event that the Court reduces
2 or does not approve the requested Class Representative Service Award,
3 Plaintiff shall not have the right to revoke the Settlement, and it will remain
4 binding.
5

- 6 4. Class Counsel Award. Defendant agrees not to oppose or object to any
7 application or motion by Class Counsel for attorneys' fees not to exceed
8 thirty-three and one-third percent (33.33%) of the Maximum Settlement
9 Amount (\$100,000.00 of \$300,000.00), plus costs and expenses supported
10 by declaration not to exceed Fifteen Thousand dollars (\$15,000.00), from the
11 Maximum Settlement Amount. The fee split between Class Counsel is as
12 follows: sixty-six and two-thirds percent (66.67%) to KJT Law Group LLP
13 and thirty-three and one-third percent (33.33%) to Adams Employment
14 Counsel. At the inception of this case, Plaintiff approved in writing this fee
15 splitting agreement between KJT Law Group LLP and Adams Employment
16 Counsel, and does so here again. Any portion of the requested Class Counsel
17 Award that is not awarded to Class Counsel shall be part of the Net
18 Settlement Amount and shall be distributed to Settlement Recipients as
19 provided in this Agreement. The Settlement Administrator shall pay the
20 Class Counsel Award to Class Counsel from the Maximum Settlement
21 Amount no later than fifteen (15) calendar days after the Effective Date.
22 Class Counsel shall be solely and legally responsible to pay all applicable
23 taxes on the payment made pursuant to this paragraph. The Settlement
24 Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for
25 the payments made pursuant to this paragraph. In the event that the Court
26
27
28

1 reduces or does not approve the requested Class Counsel Award, Plaintiff
2 and Class Counsel shall not have the right to revoke the Settlement, or to
3 appeal such order, and the Settlement will remain binding.
4

5 5. PAGA Payment. Ten Thousand Dollars (\$10,000) shall be allocated from
6 the Maximum Settlement Amount for settlement of claims for civil penalties
7 under the Private Attorneys General Act of 2004. The Settlement
8 Administrator shall pay seventy-five percent (75%) of the PAGA Payment,
9 or \$7,500 to the California Labor and Workforce Development Agency no
10 later than fifteen (15) calendar days after the Effective Date. Twenty-five
11 (25%) of the PAGA Payment, or \$2,500, will be distributed as described in
12 this Agreement. Defendant's Counsel will take all action required by
13 California Labor Code section 2699(I).
14

15
16 6. Settlement Administration Costs. The Settlement Administrator shall be
17 paid for the costs of administration of the Settlement from the Maximum
18 Settlement Amount. The estimate of the Settlement Administration Costs is
19 Ten Thousand dollars (\$10,000.00). The Settlement Administrator shall be
20 paid the Settlement Administration Costs no later than fourteen (14) calendar
21 days after Defendant provides funds to the Settlement Administrator for
22 disbursement under this Agreement.
23

24 O. Cooperation. The Parties agree to cooperate in the Settlement administration process.
25 The Parties each represent they do not have any financial interest in the Settlement
26 Administrator or otherwise have a relationship with the Settlement Administrator that
27 could create a conflict of interest.
28

1 P. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to
2 request the preliminary approval of the Settlement, and the entry of the Preliminary
3 Approval Order attached hereto as Exhibit C for: (i) conditional certification of the
4 Class for settlement purposes only, (ii) preliminary approval of the proposed
5 Agreement, and (iii) setting a date for a Final Approval/Settlement Fairness Hearing.
6 The Preliminary Approval Order shall provide for the Notice Packet to be sent to all
7 Class Members as specified herein. In conjunction with the Preliminary Approval
8 Hearing, Plaintiff shall submit this Agreement, which sets forth the terms of this
9 settlement, and will include the proposed Notice Packet attached hereto as ExhibitB.
10 Plaintiff shall provide a courtesy draft of all papers filed in support of preliminary
11 approval to Defense Counsel at least 7 business days before filing the documents.
12

13
14 Q. Final Approval Motion. At the earliest practicable time following the expiration of
15 the Response Deadline, Plaintiff shall file with the Court a Motion for Order
16 Granting Final Approval and Entering Judgment, which motion shall request that the
17 Court enter the Final Approval Order attached hereto as Exhibit A and a
18 determination of the amounts payable for the Class Representative Service Award,
19 the Class Counsel Award, the PAGA Payment, the Settlement Administration Costs.
20 Plaintiff shall provide a courtesy draft of these papers to Defense Counsel at least 7
21 business days before filing the documents.
22

23
24 1. Declaration by Settlement Administrator. The Settlement Administrator
25 shall submit a declaration in support of Plaintiff' motion for final approval of
26 this Settlement detailing the number of Notice Packets mailed and re-mailed
27 to Class Members, the number of undeliverable Notice Packets, the number
28 of timely requests for exclusion, the number of objections received, the

number of claims filed, the amount of the average Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

R. Option to Revoke Settlement. Defendant has the unilateral right to revoke the Settlement as follows:

1. If, after the Response Deadline, the number of Class Members who submitted timely and valid written requests for exclusion from the Settlement equals at least 5% of all Class Members, Defendant shall have, in its sole discretion, the option to terminate this Settlement. If Defendant exercises the option to terminate this Settlement, Defendant shall: (a) provide written notice to Class Counsel within seven (7) calendar days after the Response Deadline and (b) pay all Settlement Administration Costs incurred up to the date or as a result of the termination; and the Parties shall proceed in all respects as if this Agreement had not been executed.

S. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendant to review the Motions for Preliminary and Final Approval prior to filing with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to effect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

T. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement,

1 pending the Final Approval/Settlement Fairness Hearing to be conducted by the
2 Court.

3
4 U. Nullification of Settlement Agreement. In the event: (i) the Court does not grant
5 preliminary approval; (ii) the Court does not grant final approval; (iii) the Court does
6 not enter a final judgment in substantially the form of Exhibit A hereto; or (iv) the
7 Settlement does not become final for any other reason, this Agreement shall be null
8 and void and any order or judgment entered by the Court in furtherance of this
9 Settlement shall be treated as void from the beginning. In such a case, the Parties
10 and any funds to be awarded under this Settlement shall be returned to their
11 respective statuses as of the date and time immediately prior to the execution of this
12 Agreement, and the Parties shall proceed in all respects as if this Agreement had not
13 been executed, except that any costs already incurred by the Settlement
14 Administrator shall be paid by equal apportionment among the Parties. In the event
15 an appeal is filed from the Court's final judgment, or any other appellate review is
16 sought, administration of the Settlement shall be stayed pending final resolution of
17 the appeal or other appellate review, but any fees incurred by the Settlement
18 Administrator prior to it being notified of the filing of an appeal from the Court's
19 Final Judgment, or any other appellate review, shall be paid to the Settlement
20 Administrator within thirty (30) days of said notification.
21
22

23
24 V. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement
25 Class Members pursuant to this Agreement shall be deemed not to be pensionable
26 earnings and shall not have any effect on the eligibility for, or calculation of, any of
27 the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the
28 Plaintiff or Settlement Class Members.

1 W. Exhibits and Headings. The terms of this Agreement include the terms set forth in
2 the attached exhibits, which are incorporated by this reference as though fully set
3 forth herein. The exhibits to this Agreement are an integral part of the Settlement.
4 The descriptive headings of any paragraphs or sections of this Agreement are
5 inserted for convenience of reference only and do not constitute a part of this
6 Agreement.
7

8 X. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
9 except such proceedings necessary to implement and complete the Settlement, in abeyance
10 pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
11

12 Y. Amendment or Modification. This Agreement may be amended or modified only by
13 a written instrument: (1) signed by counsel for all Parties or their successors-in-
14 interest; (2) signed by the Parties or their successors-in-interest; and (3) as may be
15 approved by the Court.
16

17 Z. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
18 Agreement among these Parties, and no oral or written representations, warranties or
19 inducements have been made to any Party concerning this Agreement or its Exhibits
20 other than the representations, warranties and covenants contained and memorialized
21 in the Agreement and its Exhibits.
22

23 AA. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
24 and represent they are expressly authorized by the Parties whom they represent to
25 negotiate this Agreement and to take all appropriate actions required or permitted to
26 be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
27 execute any other documents required to effectuate the terms of this Agreement. The
28

persons signing this Agreement on behalf of Defendant represent and warrant that they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that she has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

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

CC. California Law Governs. All terms of this Agreement and the Exhibits hereto and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.

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

EE. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential.

FF. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of

1 interpreting, implementing and enforcing the settlement embodied in this Agreement
2 and all orders and judgments entered in connection therewith.

3
4 GG. Invalidity of Any Provision. Before declaring any provision of this Agreement
5 invalid, the Court shall first attempt to construe the provisions valid to the fullest
6 extent possible consistent with applicable precedents so as to define all provisions of
7 this Agreement valid and enforceable.

8
9 HH. Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the
10 Settlement, including the fact of the Settlement, its terms or contents, and the
11 negotiations underlying the Settlement, in any manner or form, directly or indirectly,
12 to any person or entity, except potential class members and as shall be contractually
13 required to effectuate the terms of the Settlement as set forth herein. For the
14 avoidance of doubt, this section means Plaintiff and Class Counsel agree not to issue
15 press releases, communicate with or respond to any media or publication entities,
16 publish information in manner or form, whether printed or electronic, on any
17 medium, or otherwise communicate, whether by print, video, website, recording or
18 any other medium, with any person or entity concerning the Settlement, including the
19 fact of the Settlement, its terms or contents and the negotiations underlying the
20 Settlement, except as shall be contractually required to effectuate the terms of the
21 Settlement as set forth herein. However, for the limited purpose of allowing Class
22 Counsel to prove adequacy as class counsel in other actions, Class Counsel may
23 disclose the name of the Parties in this action, the venue/case number of this action,
24 and the fact this action settled on a class-wide basis (but not any other settlement
25 details) for such purposes.
26
27
28

1 II. No Unalleged Claims. Plaintiff and Class Counsel represent that they, as of the date
2 of execution of this Settlement, have no current intention of pursuing any claims
3 against Defendant, other than those alleged as of October 31, 2018 in the Individual
4 Case, in any judicial, administrative, or arbitral forum, including, but not limited to,
5 any and all claims relating to or arising from Plaintiff's employment with Defendant,
6 and that Plaintiff Counsel is not currently aware of any facts or legal theories upon
7 which any claims or causes of action could be brought against Defendant, excepting
8 those facts or legal theories alleged in the operative complaint in this Action or in the
9 Individual Case as of October 31, 2018. Plaintiff and Plaintiff's Counsel further
10 represent and agree that they do not currently know of or represent any persons who
11 have expressed any interest in pursuing litigation or seeking any recovery against
12 Defendants. The Parties further acknowledge, understand and agree that this
13 representation is essential to the Agreement and that this Agreement would not have
14 been entered into were it not for this representation.
15
16

17 JJ. Waiver of Certain Appeals. The Parties agree to stipulate to class certification for
18 purposes of implementing this Settlement only and agree to waive all appeals from
19 the Court's final approval of the Settlement, unless the Court modifies the
20 Settlement.
21

22 KK. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
23 Released Claims have merit and give rise to liability on the part of Defendant.
24 Defendant claims that the Released Claims have no merit and do not give rise to
25 liability. This Agreement is a compromise of disputed claims. Nothing contained in
26 this Agreement and no documents referred to herein and no action taken to carry out
27 this Agreement may be construed or used as an admission by or against the
28

1 Defendant or Plaintiff or Class Counsel as to the merits or lack thereof of the claims
2 asserted.

3
4 LL. Notice of Settlement to LWDA. Plaintiff's Counsel hereby represents that at the
5 same time as filing the Motion for Preliminary Approval, it will provide notice of
6 this Agreement and proposed settlement to the Labor Workforce Development
7 Agency ("LWDA") as required by Labor Code Section 2699(l)(2).

8
9 The Parties indicate by signing below their approval of the form of this Settlement Agreement
10 (and exhibits thereto).

11
12 IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement is
13 executed by the Parties and their duly authorized attorneys as of the day and year herein set forth.

14
15 **IT IS SO AGREED:**

16
17
18
19 Dated: _____, 2021

HERBERT MALARKEY ROOFING COMPANY.

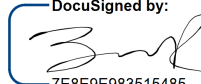
21 _____
22 Name:

23 Title

24 On Behalf of Defendant

25 10/19/2021
26 Dated: _____, 2021

EDGAR RODRIGUEZ-FONSECA

27 DocuSigned by:

7F8E9E983515485

28 Edgar Rodriguez-Fonseca, Plaintiff

1 Defendant or Plaintiff or Class Counsel as to the merits or lack thereof of the claims
2 asserted.

3
4 LL. Notice of Settlement to LWDA. Plaintiff's Counsel hereby represents that at the
5 same time as filing the Motion for Preliminary Approval, it will provide notice of
6 this Agreement and proposed settlement to the Labor Workforce Development
7 Agency ("LWDA") as required by Labor Code Section 2699(l)(2).
8

9 The Parties indicate by signing below their approval of the form of this Settlement Agreement
10 (and exhibits thereto).
11

12 IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement is
13 executed by the Parties and their duly authorized attorneys as of the day and year herein set forth.
14

15 **IT IS SO AGREED:**
16
17
18

19 Dated: October 19, 2021

HERBERT MALARKEY ROOFING COMPANY.

20
21 

22 Name: Pamela Blackwell
23 Title General Counsel
24 On Behalf of Defendant

25 Dated: _____, 2021

EDGAR RODRIGUEZ-FONSECA

26
27 _____
28 Edgar Rodriguez-Fonseca, Plaintiff

1
2 **APPROVED AS TO FORM:**

3 Dated: _____, 2021

KJT LAW GROUP, LLP

4
5
6 Vache Thomassian
7 Caspar Jivalagian
Counsel for Plaintiff and Proposed Class Counsel

8 Dated: _____, 2021

ADAMS EMPLOYMENT COUNSEL

9
10
11 Christopher Adams
Counsel for Plaintiff and Proposed Class Counsel

12 DATED: October 19,_____, 2021

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

13
14
15 By: 

Vince M. Verde
Robert R. Vorhees

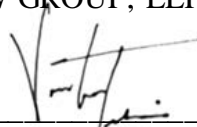
16
17 Attorneys for Defendant
18 HERBERT MALARKEY ROOFING
COMPANY.

19
20 44753543.1
21
22
23
24
25
26
27
28

APPROVED AS TO FORM:

Dated: October 19, 2021

KJT LAW GROUP, LLP



Vache Thomassian
Caspar Jivalagian
Counsel for Plaintiff and Proposed Class Counsel

Dated: October 19, 2021

ADAMS EMPLOYMENT COUNSEL



Christopher Adams
Counsel for Plaintiff and Proposed Class Counsel

DATED: _____, 2021

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: _____
Vince M. Verde
Robert R. Vorhees

Attorneys for Defendant
HERBERT MALARKEY ROOFING
COMPANY.

44753543.1

VACHE A. THOMASSIAN (S.B. #289053)

vache@kjtlawgroup.com

CASPAR JIVALAGIAN (S.B. #282818)

caspar@kjtlawgroup.com

KJT LAW GROUP LLP

230 N. Maryland Ave., Suite 306

Glendale, CA 91206

Telephone: 818.507.8525

CHRISTOPHER A. ADAMS (S.B. #266440)

ca@AdamsEmploymentCounsel.com

ADAMS EMPLOYMENT COUNSEL

230 N. Maryland Ave., Suite 306

Glendale, CA 91206

Telephone: 818.425.1437

Attorneys for Plaintiff Edgar Rodriguez-Fonseca, on
behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

EDGAR RODRIGUEZ-FONSECA, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

HERBERT MALARKEY ROOFING
COMPANY, a Corporation; and DOES 1-20,
inclusive,

Defendants.

Case No.: 19STCV01237

Assigned For All Purposes To:

Judge: Hon. Kenneth R. Freeman

Dept.: 14

**PLAINTIFF'S SUPPLEMENTAL BRIEFING
ADDRESSING ISSUES PRESENTED BY
THE COURT IN ITS MARCH 19, 2021
ORDER REGARDING PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND COLLECTIVE ACTION
SETTLEMENT; SUPPLEMENTAL
DECLARATION OF CHRISTOPHER A.
ADAMS**

Hearing Information:

Location: Dept. 14

Date: October 12, 2021

Time: 11:00 a.m.

Action Filed: January 17, 2019

Trial Date: None Set

EXHIBIT A

VACHE A. THOMASSIAN (S.B. #289053)

vache@kjtlawgroup.com

CASPAR JIVALAGIAN (S.B. #282818)

caspar@kjtlawgroup.com

KJT LAW GROUP LLP

230 N. Maryland Ave., Suite 306

Glendale, CA 91206

Telephone: 818.507.8525

CHRISTOPHER A. ADAMS (S.B. #266440)

ca@AdamsEmploymentCounsel.com

ADAMS EMPLOYMENT COUNSEL

4740 Calle Carga

Camarillo, CA 93012

Telephone: 818.425.1437

Attorneys for Plaintiff Edgar Rodriguez-Fonseca

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

EDGAR RODRIGUEZ-FONSECA, an
individual, on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

HERBERT MALARKEY ROOFING
COMPANY, a California Corporation, and
DOES 1 through 100,

Defendants.

Case No.: 19STCV01237

Assigned For All Purposes To:

Judge: Kenneth R. Freeman

Dept.: Spring Street 14

**[PROPOSED] ORDER AND JUDGMENT
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Information:

Location: Dept. 14

Date: TBD

Time: TBD

Action Filed: January 17, 2019

Trial Date: None Set

1 This matter came on for hearing on _____ in Department 14 of the above-captioned
2 Court on Plaintiff's Unopposed Motion for Order Granting Final Approval of Class Action
3 Settlement and Entering Judgment pursuant to California Rule of Court 3.769.

4 In accordance with the Order Granting Preliminary Approval, Class Members were given
5 notice of the terms of the Settlement, of their right to object to the Settlement or to any of its terms,
6 of their right to opt-out of the Settlement, and of the date, time and place set for the final
7 approval/fairness hearing. Having received and considered the Settlement Agreement, the
8 supporting papers filed by Plaintiff, and the evidence and argument received by the Court in
9 conjunction with the Motion for Order Granting Preliminary Approval of Class Action Settlement
10 and the instant Motion for Order Granting Final Approval, the Court grants final approval of the
11 Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:**

12 1. Pursuant to the Orders Granting Preliminary Approval, a Notice of Class Action
13 Settlement ("Notice") were mailed to each member of the Class by first-class U.S. mail. The Notice
14 informed the Class of the terms of the Settlement, of their right to receive their proportionate share
15 of the Settlement automatically, without a claims process, of their right to object to the Settlement, of
16 their right to request exclusion from the Settlement and of their right to appear in person or by
17 counsel at the final approval hearing and to be heard regarding approval of the Settlement, and were
18 informed of the date, time and place set for the Final Approval hearing. The Court finds that
19 adequate time has been provided for Class Members to respond to the Class Notice, including by
20 requesting exclusion from the Settlement or objecting to the Settlement.

21 2. The Court finds and determines that this notice procedure afforded adequate
22 protections to Class Members and provides the basis for the Court to make an informed decision
23 regarding final approval of the Settlement based on the response of the Class Members. The Court
24 finds and determines that the Notice provided the best notice practicable and satisfied the
25 requirements of law and due process.

26 3. The Court hereby approves the Settlement Agreement and finds that the Settlement
27 is, in all respects, fair, adequate, and reasonable, and directs the Parties to effectuate the Settlement
28

1 according to its terms. The Court finds that the Settlement was reached as a result of informed and
2 non-collusive arms'-length negotiations with the assistance of a neutral mediator. The Court further
3 finds that the Parties conducted sufficient investigation, research, and informal discovery and that
4 their attorneys were able to reasonably evaluate their respective positions. The Court also finds that
5 the Settlement will enable the Parties to avoid additional and potentially substantial litigation costs, as
6 well as delay and risks if the Parties were to continue to litigate the case. The Court has reviewed the
7 monetary recovery provided as part of the Settlement and recognizes the significant value accorded
8 to the Class.

9 4. The Court further finds and determines that the terms of the Settlement are fair,
10 reasonable and adequate to the Class and to each Class Member and that the Settlement is ordered
11 finally approved, and that all terms and provisions of the Settlement shall be and hereby are ordered
12 to be performed as set forth in the Agreement.

13 5. With respect to the Class and for purposes of approving this Settlement only, this
14 Court confirms the certification of the Class, as that term is defined in the Settlement Agreement
15 and the Court deems this definition sufficient for purposes of California Rule of Court 3.765(a).

16 6. The Court hereby confirms KJT Law Group LLP and Adams Employment Counsel
17 as Class Counsel.

18 7. The Court hereby confirms Plaintiff Sevada Yaghobimasihi as Class Representative
19 in this Action.

20 8. The Court hereby awards Class Counsel attorneys' fees in the amount of \$100,000
21 and litigation costs of \$_____. This award of attorneys' fees and litigation costs fully satisfies
22 all fees and litigation costs incurred by Class Counsel which represented Plaintiff and the Class in
23 this proceeding. No other attorneys or law firms shall be entitled to any award of attorneys' fees
24 from Defendant in any way connected with this Action.

25 9. The Court hereby approves as fair and reasonable the Class Representative Service
26 Payment to the Plaintiff and Class Representative Edgar Rodriguez-Fonseca of \$5,000. The Court
27 hereby orders the Settlement Administrator to distribute the Class Representative Service Payment
28

1 to the Plaintiff in accordance with the provisions of the Settlement Agreement.

2 10. The Court hereby approves as fair and reasonable the administration fees of
3 \$_____ to CPT Group, the appointed Settlement Administrator.

4 11. The Court hereby approves the payment to the California Labor and Workforce
5 Development Agency of \$7,500 representing 75% of PAGA penalty of \$10,000, as its share of the
6 settlement of civil penalties under the Private Attorneys Generals Act, is fair, reasonable, and
7 appropriate. The Court hereby orders the Settlement Administrator this amount paid in accordance
8 with the Settlement Agreement.

9 12. The Court hereby orders the Settlement Administrator to distribute the individual
10 Settlement Award payments to Class Members in accordance with the provisions of the Settlement
11 Agreement.

12 13. The Court hereby enters final judgment in this case in accordance with the terms of
13 the Settlement Agreement, the Orders Granting Preliminary Approval, and this Order.

14 14. The Parties are hereby ordered to comply with the terms of the Settlement
15 Agreement.

16 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
17 expressly set forth in the Settlement Agreement and this Order.

18 16. In the event the effective date of the Settlement does not occur, this Order Granting
19 Final Approval Order and Entering Judgment shall be null and void and shall be vacated, nunc pro
20 tunc, except insofar as expressly provided to the contrary in the Settlement Agreement, and without
21 prejudice to the status quo ante rights of the Plaintiffs, Class Members and Defendants.

22 18. Without affecting the finality of this Order in any way, the Court retains jurisdiction
23 of all matters relating to the interpretation, administration, implementation, effectuation and
24 enforcement of this order and the Settlement Agreement.

25 **JUDGMENT**

26 19. This document shall constitute a judgment for purposes of California Rules of Court,
27 Rule 3.769(h). In accordance with, and for the reasons stated in this Order, judgment shall be
28

1 entered within the meaning and for purposes of Code of Civil Procedure sections 577 and 904.1(a),
2 and named Plaintiff and Class Representative and all Class Members shall take nothing from
3 Defendant Herbert Malarkey Roofing Company except as expressly set forth in the Agreement.

4 **IT IS SO ORDERED.**

5
6
7 Dated: _____

_____ **Honorable Kenneth R. Freeman**

EXHIBIT B

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

EDGAR RODRIGUEZ-FONSECA, an
individual, on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

HERBERT MALARKEY ROOFING
COMPANY., an Oregon Corporation; and
DOES 1 through 100,

Defendants.

Case No. 19STCV01237

Assigned to: The Hon. Kenneth R. Freeman
Dept. 14, Spring Street Courthouse

**STIPULATION AND SETTLEMENT OF
CLASS ACTION AND
REPRESENTATIVE CLAIMS**

Complaint Filed: January 17, 2019

Trial Date: None set

DATE:

To: All current and former non-exempt employees of Defendant who worked in the State of California at any time from January 17, 2015, through October 12, 2021.

**PLEASE READ THIS NOTICE CAREFULLY: IT MAY AFFECT YOUR LEGAL RIGHTS.
YOU MAY BE ENTITLED TO COMPENSATION FROM THIS SETTLEMENT**

I. INTRODUCTION

You received this Notice because the records of Herbert Malarkey Roofing Company. (“Malarkey” or “Defendant”) shows that you are or were a non-exempt employee within the State of California for Malarkey at some point from January 17, 2015 to the date of the Preliminary Approval Order (the “Class Period”). All individuals who fall within that description are considered “Class Members.”

We provide this Notice to make you aware that a proposed class action settlement (the “Settlement”) of the above-noted lawsuit (the “Action”) has been reached by the parties and has been granted preliminary approval by the Court.

Malarkey’s records indicate that you are entitled to compensation under the Settlement. The Settlement affects your legal rights unless you “opt-out” of the Settlement. The purpose of this Notice is to: (1) describe the Action; (2) inform you of the terms of the Settlement; and (3) inform you of your options in connection with the Settlement. Malarkey will not retaliate against any employee because he or she chooses to participate (or not participate) in this Settlement, or because he or she objects to the Settlement.

II. SUMMARY OF THE ACTION

Named Plaintiff Edgar Rodriguez-Fonseca alleges that Malarkey failed to pay overtime wages, failed to pay minimum wages, failed to provide meal and rest breaks, failed to pay waiting time penalties, failed to provide compliant wage statements, committed unfair business practices, and violated the Private Attorneys General Act (“PAGA”). Named Plaintiff seeks allegedly unpaid wages and civil penalties

related to these claims. Named Plaintiff also seeks to bring these claims as a class and representative action on behalf of others.

Malarkey denies wrongdoing of any kind in connection with the claims and contends that Class Members were treated lawfully at all times. Malarkey does not believe that Named Plaintiff or Class Members are entitled to any recovery.

The Court granted preliminary approval of the Settlement on October 12, 2021 on behalf of a Settlement class defined as:

All current and former hourly or non-exempt employees of Defendant who worked in the State of California at any time from January 17, 2015, through the date of the Court's order approving Plaintiff's Motion for Preliminary Approval.

At that time, the Court also preliminarily approved Named Plaintiff to serve as Class Representative, and Christopher Adams of Adams Employment Counsel and Vache A. Thomassian and Caspar Jivalagian of KJT Law Group to serve as Class Counsel.

The Court also scheduled a Final Approval Hearing on the Settlement at 10:00 a.m. on April 26, 2022, in Department 14 of the Los Angeles County Superior Court located at 312 North Spring Street, Los Angeles, CA 90012, at which time the Court will decide whether to grant final approval of the Settlement. The Hearing may be continued without further notice. Also, as a result of the need for social distancing, you may be required to appear telephonically for the Final Approval Hearing using the Court's LACourtConnect service. This service is found at the Court's website at lacourt.org/lacc/, clicking the "Civil" button, and following the directions to create an account. If you require further assistance, you may contact the LACourtConnect Service Desk at 213-830-0400 during normal Court business hours (Monday-Friday (except holidays) between 7:30 a.m. and 5:30 p.m. You are not required to attend the Final Approval Hearing, although you are welcome to do so. The Claims Administrator shall give notice of the Final Judgment by posting the Final Judgment on its website.

III. SUMMARY OF SETTLEMENT TERMS

Settlement Amount. Malarkey has agreed to pay a maximum amount not to exceed \$300,000 (the "Gross Settlement Amount") to fully resolve this Action and obtain a release of claims as described below. The Court has tentatively approved payments to be made from the Gross Settlement Amount as follows:

- Claims Administration. Payment to the Claims Administrator of no more than \$10,000 for the expense of notifying the Class Members of the Settlement, processing claims and opt-outs submitted by Class Members, and distributing settlement payments.
- Attorneys' Fees and Expenses. Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third of the Gross Settlement Fund (\$100,000) and costs not to exceed \$15,000, as reasonable compensation for the work Class Counsel performed in this Action. The fee split between Class Counsel is as follows: sixty-six and two-thirds percent (66.67%) to KJT Law Group LLP and thirty-three and one-third percent (33.33%) to Adams Employment Counsel.
- Service Award to Named Plaintiff. A Service Award not to exceed \$5,000 to Named

Plaintiff to compensate her for services on behalf of the Class in prosecuting the Action and in return for executing a General Release of all Claims. This payment is in addition to whatever payment the Named Plaintiff is otherwise entitled to as a Participating Settlement Class Member.

- PAGA Payment. 75%, or \$7,500 of the amount attributable to settlement of the PAGA Claim (\$10,000) to the Labor and Workforce Development Agency pursuant to Labor Code §2699(i).

Calculation of Individual Settlement Payments to Participating Class Members. Each Class Member who *does not* submit a Request for Exclusion (“Participating Settlement Class Member”) will be eligible to receive a share of the Net Class Settlement Fund. The share distributed to each Participating Settlement Class Member is referred to as the “Individual Settlement Payment” and is calculated as follows:

The Net Settlement Amount shall be divided among all Participating Class Members, based on the total number of Qualifying Workweeks of the Participating Class Members divided by the total Qualified Workweeks for all Class Members, resulting in the Payment Ratio for each Participating Class Member.

Each Participating Class Member’s Payment Ratio will then be multiplied by the Net Class Settlement Fund to calculate each Participating Class Member’s share of the Net Settlement Amount.

Any checks issued to Settlement Recipients shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. In the event an Individual Settlement Payment check has not been cashed within one hundred and eighty (180) days, all funds represented by uncashed checks shall be allocated pursuant to California Code of Civil Procedure section 384, as amended.

Tax Withholding. For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: (a) 1/3 as wages; and (b) 1/3 as penalties and (c) 1/3 as interest. The Settlement Administrator will be responsible for issuing to claimants a form W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties and interest. Aside from any payroll taxes for which Gilead is responsible, any and all tax obligations arising from any payments to Participating Settlement Class Members will be the sole responsibility of the individual receiving such payment(s).

None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Participating Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Participating Settlement Class Member.

Releases. Released Claims includes all causes of action and factual or legal theories that were alleged in the operative complaint or reasonably could have been alleged based on the facts and legal theories contained in the operative complaint, including all of the following claims for relief: (a) failure to pay all overtime wages; (b) minimum wage violations; (c) failure to provide, authorize or permit compliant meal periods or provide proper meal period premiums; (d) failure to provide, authorize or permit compliant rest breaks or provide proper rest premiums; (e) waiting time penalties; (f) wage statement violations; (g) unfair competition/unfair business practices; (h) civil penalties recoverable under the Private Attorneys General Act (“PAGA”); (i) any other claims or penalties under the wage and hour

laws pleading in the Action; (j) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the complaint; and (k) the California Unfair Competition Law (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Covered Period. The res judicata effect of the Judgment will be the same as that of the Release. The definition of Released Claims shall not be limited in any way by the possibility that Plaintiff or Settlement Recipients may discover new facts, legal theories, or legal arguments not alleged in the operative complaint but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Claims. This release excludes the release of claims not permitted by law. Class Members who worked during the applicable PAGA Period (i.e., January 17, 2018 to October 12, 2021 (“PAGA Employees”)) shall release any claim under PAGA regardless of whether the PAGA Employee has timely and validly opted-out of the Settlement. As a result, PAGA Employees will receive a portion of the PAGA Payment as described in the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an Order finally approving the Settlement at or following the Final Approval Hearing. Notice of Final Judgment will be posted on the Settlement Administrator’s website.

IV. RIGHT TO COMPENSATION FROM THE SETTLEMENT

YOUR ESTIMATED SHARE OF THE SETTLEMENT IS \$<< >>. This amount is based on the number of weeks you worked during the Class Period, or Qualifying Workweeks. If you believe the number of weeks is incorrect, you can dispute that information by submitting the following no later than [45 days from date notice is mailed]: (i) a written, signed statement describing your challenge to the weeks identified; and (ii) providing documentation to support your challenge to the Claims Administrator.

Unless you inform the Claims Administrator of an updated address, your settlement check will be mailed to the address this Notice was mailed to. The Claims Administrator may be contacted at:

Fonseca v. Malarkey Roofing Claims Administration
CPT Group, Inc.
50 Corporate Park, Irvine CA 92606
(800) 542-0900
www.cptgroup.com

V. RIGHT TO OPT-OUT

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or “opt-out.” **If you opt-out, you will receive no compensation from the Settlement, and you will not be bound by its terms.** To opt-out, you must submit a signed, written request to the Claims Administrator for exclusion from the Settlement post marked no later than [45 days from date notice is mailed]. The request for exclusion must: (a) state your full name, address, telephone number, and last four digits of your Social Security number; and (b) be signed by you.

VI. RIGHT TO OBJECT

If you are a Class Member who has not opted out and believe that the Settlement should not be finally approved by the Court for any reason, you may object to the proposed Settlement by submitting a

written statement of objection (“Notice of Objection”) or by appearing at the Final Approval hearing. The Notice of Objection must contain a statement of the your objections, a statement advising if you plan to address the Court at the Final Approval Hearing, and any legal briefs, papers or memoranda you propose to submit to the Court. Regardless of whether Class Members submit written objections or notices of intention to appear, they may appear at the Final Approval Hearing to have their objections heard by the Court. **You cannot object to the Settlement if you request exclusion from the Settlement.**

To be considered timely, the Notice of Objection must be filed with the Court and post-marked no later than **[45 days from date notice is mailed]**. If you wish to appear and be heard at the Final Approval Hearing, you may do so at your own expense.

Any attorney who intends to represent an individual objecting to the Settlement must submit a notice of appearance with the Court and serve counsel for all parties, at the below addresses, at least five calendar days before the Final Approval Hearing.

<u>Class Counsel</u>	<u>Counsel for Malarkey</u>
KJT LAW GROUP Vache Thomassian (SBN 289053) vache@kjtlawgroup.com Caspar Jivalagian (SBN 282818) caspar@kjtlawgroup.com 230 North Maryland Avenue, Suite 306 Glendale, CA 91206 Tel: 818-507-8525 ADAMS EMPLOYMENT COUNSEL Christopher A. Adams (SBN 266440) ca@AdmasEmploymentCounsel.com 230 North Maryland Avenue, Suite 306 Glendale, CA 91206 Tel: 818-425-1437	OGLETREE, DEAKINS, NASH, SMOAK & STEWART P.C. VINCE M. VERDE, Cal. Bar No. 202472 Vince.Verde @ogletree.com Robert.Vorhees@ogletree.com 695 Town Center Drive, Ste. 1500 Costa Mesa, CA 92626 Telephone: 714.800.7988 Facsimile: 714.754.1298

If you object to the Settlement, you will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not timely object — whether in writing or in person at the Final Approval Hearing — in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

VII. ADDITIONAL INFORMATION

This Notice is only a summary of the Action and the Settlement. The pleadings and other records in the lawsuit may can be reviewed online at the Los Angeles County Superior Court’s website at www.lacourt.org. Click on the “Online Services” tab, then click on the “Access Now” button next to “Case Access – Civil.” Next, enter Case Number “19STCV01237.” Class Members can also contact the Claims Administrator or Class Counsel at the addresses and telephone numbers listed above, with any questions regarding the Settlement.

**PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT
OR THE JUDGE WITH QUESTIONS.**

EXHIBIT C

VACHE A. THOMASSIAN (S.B. #289053)
vache@kjtlawgroup.com
CASPAR JIVALAGIAN (S.B. #282818)
caspar@kjtlawgroup.com
KJT LAW GROUP LLP
230 N. Maryland Ave., Suite 306
Glendale, CA 91206
Telephone: 818.507.8525

CHRISTOPHER A. ADAMS (S.B. #266440)
ca@AdamsEmploymentCounsel.com
ADAMS EMPLOYMENT COUNSEL
230 North Maryland Avenue, Suite 306
Glendale, CA 91206
Tel: 818.425.1437

Attorneys for Plaintiff Edgar Rodriguez-Fonseca

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

EDGAR RODRIGUEZ-FONSECA, an
individual, on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

HERBERT MALARKEY ROOFING
COMPANY, a California Corporation, and
DOES 1 through 100,

Defendants.

Case No.: 19STCV01237

Assigned For All Purposes To:

Judge: Kenneth R. Freeman
Dept.: Spring Street 14

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Action Filed: January 17, 2019
Trial Date: None Set

1 This matter came on for hearing on October 12, 2021 at 11:00 a.m. in Department 14 of the
2 above-captioned court on the Motion for an Order Granting Preliminary Approval of Class Action
3 Settlement.

4 The Court, having fully reviewed the Motion for Preliminary Approval of Class Action
5 Settlement; the Points and Authorities and Declarations filed in support thereof; and the Joint
6 Stipulation of Class Action and PAGA Settlement ("Settlement Agreement") and all exhibits
7 attached thereto, including the Notice of Proposed Settlement of Class Action ("Class Notice"); and
8 in recognition of the Court's duty to make a preliminary determination as to the reasonableness of
9 any proposed class action settlement, and if preliminarily determined to be reasonable, to ensure
10 proper notice is provided to class members in accordance with due process requirements, and to set
11 a Final Fairness Hearing to consider the proposed settlement as to the good faith, fairness, adequacy
12 and reasonableness of any proposed settlement, **HEREBY MAKES THE FOLLOWING**
13 **DETERMINATIONS AND ORDERS:**

14 The Court finds on a preliminary basis that the Settlement Agreement, incorporated in full
15 by this reference and made part of this Order Granting Preliminary Approval of Class Action
16 Settlement, appears to be in the range of reasonableness of a settlement which could ultimately be
17 given final approval by this Court. The Court notes that Defendant Herbert Malarkey Roofing
18 Company ("Defendant") has agreed to create a Qualified Settlement Fund in the amount of
19 \$300,000 which amount will be fully funded and paid out by Defendant provided certain conditions
20 of the Settlement Agreement are met. Included within the Qualified Settlement Fund is a Net
21 Settlement Fund in the amount of approximately \$162,500. Defendant will pay out the entirety of
22 the Net Settlement Fund to Participating Class Members. It appears to the Court on a preliminary
23 basis that the settlement amount is fair and reasonable to the Class when balanced against the
24 probable outcome of further litigation relating to class certification, liability and damages issues and
25 potential appeals. It further appears that significant investigation, research, and litigation has been
26 conducted such that counsel for the parties at this time are able to reasonably evaluate their
27 respective positions. It further appears that settlement at this time will avoid substantial costs, delay,
28

1 and risks that would be presented by the further prosecution of the litigation. It further appears that
2 the proposed settlement has been reached as the result of intensive, serious, and non-collusive
3 negotiations between the parties.

4 **ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR AN ORDER**
5 **GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS HEREBY**
6 **GRANTED, AND AS A PART OF SAID PRELIMINARY APPROVAL, THE COURT HEREBY**
7 **ORDERS THAT THE CLASS BE CONDITIONALLY CERTIFIED FOR SETTLEMENT**
8 **PURPOSES ONLY, AND THAT VACHE A. THOMASSIAN AND CASPAR JIVALAGIAN OF**
9 **KJT LAW GROUP LLP, AND CHRISTOPHER A. ADAMS OF ADAMS EMPLOYMENT**
10 **COUNSEL BE CONDITIONALLY AND PRELIMINARILY APPOINTED CLASS COUNSEL.**

11 **MORE SPECIFICALLY, THE COURT FINDS AS FOLLOWS:**

12 The Class provisionally certified by this Order for settlement purposes is as follows:

13 “Class” and “Class Members” means all persons who, at any time between January 17, 2015
14 and October 12, 2021 (the date of the Court’s Minute Order Conditionally Granting Preliminary
15 Approval of Class Action Settlement), worked in a non-exempt position for Defendant in the State
16 of California.

17 The Court finds that (a) the Class is so numerous that joinder of all Class Members is
18 impracticable; (b) The claims of Plaintiff Edgar Rodriguez-Fonseca are typical of the Class
19 Members’ claims; (c) there are questions of law and fact common to the Class, which predominate
20 over any questions affecting only individual Class Members; and (d) class certification is superior to
21 other available methods for the fair and efficient adjudication of the controversy and to effectuate
22 the Settlement.

23 The Court finds that the Class Notice (attached as Exhibit B to the Settlement Agreement)
24 comports with all constitutional requirements including those of due process.

25 The Court further finds that the proposed Class Notice adequately advises the Class about:
26 (a) the terms of the proposed Settlement and the benefits available to each Class Member; (b) each
27 Class Member’s right to object to and/or opt out of the Settlement and the timing and procedures
28

1 for doing so; (c) the temporary and conditional certification of the Class for settlement purposes
2 only; (d) preliminary Court approval of the proposed Settlement; (e) timing and procedures for
3 distributing the settlement funds to the Participating Class Members; and (f) the date of the Final
4 Fairness Hearing as well as the rights of members of the Class to file documentation in support of or
5 in opposition to and appear in connection with said hearing.

6 **ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES**
7 **THE PROPOSED NOTICE TO THE CLASS AND FINDS** that mailing to the last known address
8 to members of the Class, as specifically described within the Settlement Agreement, constitutes an
9 effective method of notifying Class Members of their rights with respect to the Class Action and
10 proposed Settlement.

11 **ACCORDINGLY, IT IS HEREBY ORDERED** that:

12 The Class is provisionally certified as a class as defined above.

13 **IT IS FURTHER ORDERED** that Defendant shall within 14 calendar days after entry and
14 service of this Preliminary Order, provide the Settlement Administrator with Class DATA with (i)
15 each Class Member's full name; (ii) each Class Member's last known address; (iii) each Class
16 Member's last known telephone number; (iv) each Class Member's Social Security number; and (v)
17 each Class Member's start and end dates of employment in a non-exempt position in California.

18 **IT IS FURTHER ORDERED** that the Settlement Administrator shall, within 14 calendar
19 days after receiving the Class Data, and pursuant to the terms of the Settlement Agreement, exercise
20 its best judgment to determine the current mailing address for each Class Member and then mail the
21 Class Notice to the Class by First Class, regular U.S. mail, postage pre-paid, using the most current
22 mailing address available. In the event that a Class Notice is returned to the Settlement
23 Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice
24 to the forwarding address affixed thereto. If no forwarding address is provided, then the Settlement
25 Administrator will promptly conduct a "standard search," sometimes called, "Skip Traces" or
26 "Credit Header" searches, to locate a better address. If a better address is found, the Settlement
27 Administrator will promptly re-send the Class Notice. If, at any time prior to the opt out deadline,
28

1 a Class Member contacts the Settlement Administrator, or if Class Counsel does so on his or her
2 behalf, to advise of a change in address, the Class Notice will be re-mailed to the address the Class
3 Member (or Class Counsel) provides. In the event the procedures set forth herein are followed and
4 the intended recipient of a Class Notice still does not receive the Class Notice, the intended
5 recipient will be a Class Member and will be bound by all terms of the Settlement and the Order of
6 Final Approval entered by the Court.

7 **IT IS FURTHER ORDERED** that any Request for Exclusion must be postmarked or
8 delivered no later than 45 calendar days after the Class Notice is first mailed to the Class (or re-
9 mailed to the Class Member), and must be received by the Settlement Administrator to be valid.

10 **IT IS FURTHER ORDERED** that any dispute submitted by a Class Member regarding the
11 weeks of employment credited to that Class Member under the proposed Settlement must be
12 postmarked no later than 45 calendar days after the date when the Class Notice is first mailed to the
13 Class (or re-mailed to the Class Member), to be considered.

14 **IT IS FURTHER ORDERED** that Class Notice will provide that Class Members who wish to
15 object to the Settlement must send to the Settlement Administrator a written statement objecting to
16 the Settlement, no later than 45 calendar days after the date the Class Notice is first mailed by the
17 Settlement Administrator. Such objection must: contain a statement of the Class Member's
18 objections, a statement advising if the objecting Class Member plans to address the Court at the
19 Settlement Fairness Hearing, and any legal briefs, papers or memoranda the objecting Class
20 Member proposes to submit to the Court. The Settlement Administrator shall file all such
21 objections with the Court prior to the Final Fairness Hearing.

22 **IT IS FURTHER ORDERED** that the Final Fairness Hearing shall be held before the
23 undersigned on April 26, 2022 at 10:00 a.m. , in Department 14 of the Superior Court for the State
24 of California County of Los Angeles, located at 312 N Spring Street, Los Angeles, CA 90012 or via
25 LACourtConnect, to consider the fairness, adequacy and reasonableness of the proposed
26 Settlement preliminarily approved by this Order of Preliminary Approval, and to consider the
27 application of Class Counsel for an award of reasonable attorneys' fees and costs, and the Class
28

Representative Service Award.

IT IS FURTHER ORDERED that pending final determination of whether this proposed Settlement should be granted final approval, no member of the Class, either directly or representatively, or in any other capacity, shall commence or prosecute any action or proceeding asserting any of the Released Claims against the Released Parties, as defined in the Settlement Agreement.

IT IS FURTHER ORDERED that any Party to this case, including any Class Member, in person or by counsel, may be heard, to the extent allowed by the Court, in support of, or in opposition to, the Court's determination of the good faith, fairness, reasonableness and adequacy of the proposed Settlement, the requested attorneys' fees and costs, the requested Class Representative Service Award, the payment to the California Labor & Workforce Development Agency ("LWDA Payment"), and any Order of Final Approval and Judgment regarding such Settlement, LWDA Payment, fees, costs and enhancement.

IT IS FURTHER ORDERED that all briefs regarding the Settlement shall be served and filed in accordance with the following briefing schedule: All briefs and materials in support of an Order of Final Approval and application for attorneys' fees and costs shall be filed with this Court by March 25, 2022. Response briefs, if any, in opposition to objections shall be filed with this Court no later than nine court days before the Final Fairness Hearing, which in this case is April 13, 2022. The Settlement Administrator's report shall be filed with this Court by March 25, 2022. Any objections to the Settlement and briefs regarding such objections shall be filed with this Court and served in accordance with the Settlement Agreement no later than 45 days, after the first mailing of the Class Notices.

In summary, the relevant dates with regard to this Preliminary Order are as follows

Event	Date
Defendant provide Class Data to Administrator	14 calendar days after entry of Preliminary Approval Order
Administrator Mail Class Notice	14 calendar days after receiving Class Data
Deadline to opt-out, object, or dispute information on Class Notice	45 calendar days after mailing of Class Notice
Motion for Final Approval of Class Action Settlement, including Administrator's Report	March 25, 2022
Deadline for Response Briefs	April 13, 2022
Final Fairness Hearing	April 26, 2022 at 10:00 a.m.

IT IS FURTHER ORDERED that, in the event of final approval and the occurrence of the Effective Settlement Date, all Participating Class Members, and their successors, shall conclusively be deemed to have given full releases of the Released Claims against the Released Parties, and all Class Members (other than opt outs) and their successors, shall be permanently enjoined and forever barred from asserting any Released Claims against any Released Party as described by the Settlement Agreement.

IT IS FURTHER ORDERED that, if for any reason the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Settlement Date does not occur for any reason whatsoever, the Settlement Agreement and the proposed Settlement which is the subject of this Order and all evidence and proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the parties to the litigation as more specifically set forth in the Settlement Agreement.

IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are stayed.

1 The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing
2 from time to time without further notice to the Class.

3 **IT IS SO ORDERED.**

4
5 Dated: _____

6 Honorable Kenneth R. Freeman
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28