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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF CONTRA COSTA

14 JAVIER VEGA TOVAR and EDGAR  
15 RAMIRES, individually, and on behalf of all  
16 others similarly situated,

17 Plaintiff,

18 v.

19 NIR WEST COAST, INC., dba NORTHERN  
20 CALIFORNIA ROOFING CO., GREGORY  
T. LYNN, and DOES 1 through 50, inclusive,

21 Defendants.

**Case No. MSC17-01600**

**CLASS ACTION**

**JOINT STIPULATION OF CLASS  
SETTLEMENT**

22  
23 This Joint Stipulation of Settlement and Release (“Stipulation of Settlement” or  
24 “Settlement”) is made and entered into by and between Plaintiff Javier Vega Tovar (“Plaintiff” or  
25 “Class Representative”), individually and on behalf of all others similarly situated and Defendants  
26 NIR WEST COAST, INC. dba NORTHERN CALIFORNIA ROOFING CO. and GREGORY  
27 LYNN (collectively “Defendants” or “NIR”). Subject to the terms and conditions hereof and the  
28 approval of the Court, this Settlement shall be binding on the Class Representative and those  
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1 persons he represents, and on Defendants and their present and former parent companies,  
2 shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns.

3 **THE PARTIES STIPULATE AND AGREE** as follows:

4 1. Plaintiff and Defendants are collectively referred to herein as “the Parties.”

5 2. On August 25, 2017, Nicolas Delgado, Javier Vega Tovar, and Jose Alfaro filed a  
6 Class Action Complaint (“the Action”) in Contra Costa County Superior Court, Case No. C17-  
7 01600, captioned *Delgado et al. v. NRI West Coast, Inc. DBA Northern California Roofing et al.*  
8 several alleged wage and hour violations.

9 3. On September 12, 2017, Nicolas Delgado and Jose Alfaro withdrew as named  
10 plaintiffs and a First Amended Complaint captioned *Tovar et al. v. NIR West Coast, Inc. DBA*  
11 *Northern California Roofing Co. et al.* was filed. The operative complaint is the Second Amended  
12 Complaint, which was filed on October 30, 2017, to add a cause of action for penalties under the  
13 Private Attorney General’s Act. (the “Second Amended Complaint”) and includes claims for unpaid  
14 wages and overtime, meal period violations, rest period violations, waiting time penalties, and  
15 itemized wage statements penalties.

16 4. On March 5, 2018, plaintiff Edgar Ramires entered into an individual settlement  
17 agreement and general release of his claims against Defendants.

18 5. On December 5, 2018, the Parties and their counsel of record participated in a  
19 mediation session with experienced employment law mediator Francis J. Ortman in Oakland,  
20 California. The negotiation discussion was vigorous and conducted at arm’s length, but the Parties  
21 were unable to resolve the matter. The Parties engaged in further settlement discussions at various  
22 points following the mediation. After lengthy negotiations and review of financial statements of  
23 Defendant and its officers, the Parties reached an agreement.

24 6. For Settlement purposes only, the Parties hereby stipulate and agree to the following:

- 25 a. “Class Members,” “Plaintiff Class,” and “Settlement Class” mean the  
26 following: “all hourly construction workers performing roofing work for NIR West  
27 Coast, Inc. dba Northern California Roofing Co. in the state of California who were  
28 employed by NIR West Coast, Inc. at any time from August 25, 2013 through

November 1, 2019.” A list of Class Members and their dates of employment is attached hereto as **Exhibit 1**. The parties agree that the class size of 204 class members is a material term of this Agreement.

b. The Plaintiff Class is ascertainable and so numerous as to make it impracticable to join all Class Members.

c. There are common questions of law and fact, including the following: whether NIR complied with all applicable federal, state, and local laws affecting Plaintiff and the Plaintiff Class regarding unpaid wages, unpaid overtime, record-keeping violations, meal and rest breaks, wage statements and as to all claims alleged in the Second Amended Complaint, and whether Plaintiff and the Plaintiff Class are entitled to the alleged damages, and injunctive or declaratory relief.

d. Plaintiff’s claims are typical of the claims of the members of the Plaintiff Class.

e. Plaintiff and Class Counsel, as defined below, will fairly and adequately protect the interests of the Plaintiff Class.

f. The prosecution of separate actions by individual members of the Plaintiff Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

g. With respect to the Plaintiff Class, questions of law and fact common to the Class Members predominate over any questions affecting any individual member in such Class, and a class action and/or representative action is superior to other available means for the fair and efficient adjudication of the controversy.

7. Defendants deny any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Second Complaint and further deny that, for any purpose other than settling this Lawsuit, this Action is appropriate for class or representative treatment. In the event this Stipulated Settlement Agreement is not approved or is otherwise deemed void, Defendants expressly withdraw their agreements set forth in sections 6a-g. With respect to Plaintiff’s claims, Defendant NIR contends, among other things, that it has complied with all applicable state, federal,

1 and local laws affecting Plaintiff and the Settlement Class regarding hours worked, unpaid wages,  
2 unpaid overtime, unpaid minimum wages, meal and rest periods, record-keeping violations, wage  
3 statements, and as to all claims alleged or could have been alleged in the Action.

4       8.       It is the intention of the Parties that this Stipulation of Settlement shall constitute a  
5 full and complete settlement and release of all claims arising from or related to the allegations of  
6 this class action case against Defendants, which release includes in its effect all present and former  
7 parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors,  
8 employees, agents, attorneys, insurers, and successors and assigns of Defendants, and any  
9 individual or entity that could be jointly liable with Defendants. The Parties acknowledge that this  
10 Stipulation of Settlement shall not be construed as an admission of liability whatsoever by any  
11 Party, or by any officers, directors, agents, or employees of Defendants.

12       9.       Counsel for the Plaintiff Class has conducted a thorough investigation into the facts  
13 of this Action, including a review of relevant documents and data, and have diligently pursued an  
14 investigation of Class Members' claims against Defendants. In addition, counsel for the Plaintiff  
15 Class has reviewed tax returns and financial information of Defendant NIR. Based on her own  
16 independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with  
17 Defendants for the consideration and on the terms set forth in this Stipulation of Settlement is fair,  
18 reasonable and adequate and is in the best interest of the Plaintiff Class in light of all known facts  
19 and circumstances, including the risk of significant delay, the risk the Plaintiff Class will not be  
20 certified by the Court, defenses asserted by Defendants, and numerous potential appellate issues.  
21 Defendants and Defendants' counsel also agree that the Settlement is fair and reasonable.

22       10.       The Parties agree to cooperate and to take all steps necessary and appropriate to  
23 consummate this Settlement and to enter a judgment in this Action after all Settlement sums have  
24 been paid out in accordance with this Stipulation of Settlement.

25       11.       This Stipulated Settlement Agreement has the following requirements:

- 26           a. Defendants will pay four hundred eighty five thousand dollars (\$485,000) in a non-  
27           reversionary settlement fund (the "Total Settlement Amount"). The Total Settlement  
28           Amount of \$485,000 consists of (1) \$480,000 of newly-contributed money to be paid

1 by Defendants (“Settlement Sum for Distribution”) and (2) a credit of \$5,000 in  
2 checks that Defendants have already issued to three Class Members who signed  
3 release agreements during the pendency of and because of this litigation. As  
4 described in further detail below, the Settlement Sum for Distribution will be paid  
5 through an initial lump-sum payment and installment payments over a maximum  
6 period of 40 months. The Total Settlement Amount will cover payments to the class;  
7 attorney’s fees; reasonable litigation expenses; fees and expenses of the Settlement  
8 Administrator, service payment for the Class Representative; PAGA penalties; and  
9 the employees’ share of payroll taxes. Defendant NIR’s corporate payroll tax  
10 obligation shall be paid separately and in addition to the Total Settlement Amount.

11 b. Defendants will provide training for human resources, superintendents and  
12 foremen about wage-and-hour and prevailing wage laws by a third party before final  
13 approval of this class action settlement;

14 c. Defendants will provide a copy of Industrial Welfare Commission, Wage  
15 Order 16-2001 (“Wage Order 16”) in English and Spanish to their workforce at  
16 hiring. In addition, Defendants agree to provide such document to all current  
17 workers before the final approval of the settlement.

18 12. It is further understood and agreed that Defendants shall have no obligation to pay  
19 any person, entity or organization more than the Total Settlement Amount, except for Defendant  
20 NIR’s share of the employer payroll taxes, which shall be paid separately and in addition to the  
21 Total Settlement Amount. Defendants’ total liability under the Settlement, therefore, shall never  
22 exceed the sum equal to the Total Settlement Amount plus Defendant NIR’s share of the employer  
23 payroll taxes payable under this Stipulation of Settlement.

24 13. This Settlement provides that a check payment shall be made to each Class Member.  
25 Settlement Checks will go directly to all Class Members without the need to file a claim form. In  
26 other words, no Class Member will have to fill out and submit a claim form in order to receive a  
27 payment under this Settlement. The amount in each Settlement Check will be calculated using the  
28 specified workweek formula described in paragraph 14.f (1), below.

1 **TERMS OF THE SETTLEMENT**

2 14. NOW THEREFORE, in consideration of the mutual covenants, promises, and  
3 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

4 a. It is agreed by and among Plaintiff and Defendants that the Action, and any claims,  
5 damages, or causes of action arising out of the facts, circumstances and disputes which are the  
6 subject of this Action, be fully and finally settled and compromised as between Plaintiff and  
7 Defendants, subject to the terms and conditions set forth in this Stipulation of Settlement and the  
8 approval of the Superior Court of California, Contra Costa County.

9 b. Effective Date: The Settlement embodied in this Stipulation of Settlement shall  
10 become effective when all of the following events have occurred: (1) this Stipulation of Settlement  
11 has been executed by all Parties and by counsel for the Plaintiff Class and Defendant; (2) the Court  
12 has given preliminary approval to the Settlement; (3) notice has been given to the Class Members,  
13 as provided herein; (4) the Court has held a Final Fairness Hearing and entered a final order  
14 approving this Settlement Agreement, certifying the Class for settlement purposes only, entering a  
15 non-monetary judgment which allows the Court to retain jurisdiction over the parties and the case  
16 to enforce the terms of the Settlement Agreement, as necessary; (5) all payments are made to the  
17 Settlement Fund by Defendants as described in Paragraph 14.d., below; and (6) the following  
18 events occurs: (a) the order containing the Court's Final Approval of this settlement ("Final  
19 Approval Order") is filed, if no objections by Class Members have been filed or if any objections  
20 by Class Members have been withdrawn in writing prior to, or on the record at the Final Fairness  
21 Hearing; (b) the time for appeal expires, if an objection has been filed and not withdrawn; or (c) the  
22 final resolution of any appeal of objections occurs, if an appeal has been filed and not dismissed. In  
23 this regard, it is the Parties' intention that the Settlement shall not become effective until the Court  
24 issues its Final Approval Order, and there is no further recourse by an appellant or objector who  
25 seeks to contest the Settlement.

26 c. Total Settlement Amount: To implement the terms of this Settlement, Defendant  
27 agrees to pay four hundred eighty five thousand dollars (\$485,000), the "Total Settlement Amount."  
28 The Total Settlement Amount of \$485,000 consists of (1) \$480,000 of newly-contributed money to  
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1 be paid by Defendants (“Settlement Sum for Distribution” or “Settlement Fund”) and (2) a credit of  
2 \$5,000 in checks that Defendants have already issued to three Class Members who signed release  
3 agreements during the pendency of and because of this litigation. Defendants represent that 204  
4 persons worked as hourly construction workers performing roofing work for NIR West Coast, Inc.  
5 dba Northern California Roofing Co. in the state of California from August 25, 2013 through  
6 November 1, 2019. The number of Class Members is a material term to this Settlement Agreement.  
7 In addition, if further information reveals that the number of workweeks calculated by the  
8 Settlement Administrator based on dates of employment of the Class members is 5% higher than  
9 the 11,089 total workweeks used in the mediation, Plaintiff may void the agreement unless  
10 Defendants agree to increase the Settlement Sum for Distribution by the same percentage  
11 differential.

12 d. Settlement Consideration: Subject to the provisions hereof, no later than October 1,  
13 2020, Defendants will pay a lump sum of forty thousand dollars (\$40,000) in cash by wire transfer  
14 to the Settlement Administrator using wire instructions provided by the Settlement Administrator.  
15 After preliminary approval is entered, Defendants will also deposit thirty (36) monthly payments of  
16 ten thousand dollars (\$10,000) that will be paid by the 15<sup>th</sup> of each month starting the month after  
17 preliminary approval is entered. In other words, if preliminary approval is entered in November  
18 2019, the first installment will be due on December 15, 2019. These monies will be made by wire  
19 transfer to the Settlement Administrator using wire instructions provided by the Settlement  
20 Administrator and into an interest-bearing escrow account, held and administered by the Settlement  
21 Administrator. The Settlement Administrator will be responsible for any tax filings required under  
22 the law and will make any required tax payments out of the Settlement Fund. In the event that  
23 Defendants do not make the monthly payment on the scheduled date as explained on this section  
24 and section 14.d(1)(b) below, the Settlement Administrator will give notice to the Parties and their  
25 respective counsel within five (5) days. Plaintiff will have the option to file a Stipulation of  
26 Judgment with the Court if Defendant has failed to make timely payments of the monthly  
27 settlement amount for three (3) consecutive months and after Plaintiff have given 14 days’ written  
28 notice to Defendants of the default.



1           (1)     Additional Installments: In addition to the amounts described above, Defendants  
2 will pay eighty thousand dollars (\$80,000) as follows:

3           (a)     In the event that Defendant NIR West Coast, Inc.'s total income for any of the fiscal  
4 years of 2019, 2020, or 2021 is equal or higher than \$10,000,000, according to the IRS Form  
5 1120S, line 6, Defendant NIR West Coast will pay the outstanding \$80,000 in two installments of  
6 \$40,000 each. Defendants will pay those installments in cash by wire transfer to the Settlement  
7 Administrator 30 days and 180 days after filing its tax returns with IRS. Said filing shall occur no  
8 later than October 15, 2020 (FY2019), October 15, 2021 (FY2020), and October 17, 2022  
9 (FY2021).

10          (b)     If Defendant NIR West Coast, Inc.'s total income for any of the fiscal years 2019,  
11 2020, and 2021 is less than \$10,000,000, according to the IRS Form 1120S, line 6, the outstanding  
12 \$80,000 will be paid in four monthly installments of \$20,000 each after the 36 monthly payments  
13 stated in section 14.d above, by the 15<sup>th</sup> of each month following the last installment of section 14.d  
14 above.

15          (c)     Subject to the Court's protective order entered into in this action, which shall remain  
16 in force throughout the duration of the execution of the terms set forth in this Stipulated Settlement  
17 Agreement, Defendant NIR will produce to Plaintiff's counsel a copy of the IRS Form 1120S for  
18 the fiscal years 2019, 2020, and 2021, certified under penalty of perjury by the paid preparer or  
19 accountancy firm that prepared such form. The IRS Form 1120S for each fiscal year shall be  
20 produced to Plaintiff's counsel within seven (7) days after being filed with the IRS. In the event  
21 that Defendant NIR requests an extension of time to file the IRS Form 1120S, Defendant NIR will  
22 produce to Plaintiff's Counsel a copy of the form filed requesting the extension seven (7) days after  
23 being filed with the IRS.

24          (d)     Defendant NIR may waive the production of the IRS Form 1120S for any of the  
25 fiscal years 2019, 2020, and 2021 as explained above, if it pays the additional two installments of  
26 forty thousand dollars (\$40,000) each on or before the seventh (7<sup>th</sup>) day after filing the IRS Form  
27 1120S with the IRS. That amount will be paid in cash by wire transfer to the Settlement  
28 Administrator using wiring instructions provided by the Settlement Administrator.



1           (2)    Injunctive Relief: In addition to the amounts described above, Defendants agree to  
2 the following:

3           (a)    Training on Wage-and-Hour and Prevailing Wage Laws: Defendants agree to engage  
4 a third party to provide training for its management personnel, including human resources,  
5 superintendents, and foremen to educate them about wage-and-hour laws and prevailing wage laws.  
6 Such training should be provided before the final approval hearing and a declaration should be filed  
7 regarding such training.

8           (b)    Wage Order 16: Defendants agree to provide a copy of Industrial Welfare  
9 Commission, Wage Order 16-2001 (“Wage Order 16”) in English and Spanish to their workforce at  
10 hiring. In addition, Defendants agree to provide such document to all current workers before the  
11 final approval of the settlement. A declaration should be filed regarding the provision of this  
12 document to the workers.

13           e.    Net Settlement Amount and Settlement Payments: All settlement checks, all  
14 attorney’s fees and costs, any service award to the Class Representative, the fees and expenses of  
15 the Settlement Administrator, the PAGA payments, and any other payments provided by this  
16 Settlement shall be paid out of the Total Settlement Amount. Defendant’s share of the employer  
17 payroll taxes will be paid separately, according to the percentages set forth below, and shall be paid  
18 in addition to the Total Settlement Amount. The Net Settlement Amount shall be calculated by  
19 deducting from the Total Settlement Amount all attorney’s fees and litigation costs, as approved by  
20 the Court, the service award to the Class Representative, in an amount to be decided by the Court,  
21 but which shall not exceed \$10,000 (ten thousand dollars) for Plaintiff Tovar, the PAGA payment  
22 (estimated to be \$24,000), and the fees and expenses of the Settlement Administrator (estimated to  
23 be \$20,000 (twenty thousand dollars)) (“Net Settlement Amount”).

24           f.    The amounts in the Class Members’ settlement payments will be calculated by the  
25 Settlement Administrator and paid out of the Net Settlement Amount, as set forth below. Ninety  
26 (90) days after the third set of Settlement Checks have been issued and dispersed, any uncashed  
27 Settlement Checks will be cancelled, and the unclaimed sum will be distributed as described below  
28 in sections 25-27. Thirty days prior to the 90-day deadline, the Settlement Administrator will send a

1 reminder postcard to all Class Members who have not yet cashed their settlement checks, reminding  
2 them of the deadline for doing so.

3           (1)     Settlement Awards to Class Members: Settlement Awards to Class Members  
4 will be disbursed by the Settlement Administrator on a *pro rata* basis based on the number of weeks  
5 worked (adjusted as described in this subsection g) by the individual Class Member for Defendant  
6 in a covered position during the Class Period. Because of NIR's change of employment practices  
7 during the class period, the weeks worked by Class Members before 12/31/2018 will be valued at  
8 1X and the workweeks between 1/1/2019 and 11/1/2019 will be valued at 0.25X. The settlement  
9 amount shall be paid from the "Net Settlement Amount" according to the following formula: a *pro*  
10 *rata* share of the Net Settlement Amount shall be paid to each Class Member, based on the total  
11 number of work weeks worked during the Class Period (multiplied by 0.25 or 1 as described  
12 above)) by each Class Member divided by the total number of weeks worked during the Class  
13 Period (multiplied by 0.25 or 1, as described above) by all Class Members. In other words, each  
14 Class Member's *pro rata* share of the Net Settlement Amount is a fraction, with the individual  
15 Class Member's adjusted weeks worked as the numerator and the total number of adjusted weeks  
16 worked by all Class Members as the denominator.

17           The number of weeks actually worked by individual Class Members during the Class Period  
18 will be calculated by reference to Defendant's records, which will be presumed to be correct unless  
19 the Class Member timely disputes those records telephonically or in writing to the Settlement  
20 Administrator, in which case the Settlement Administrator will make a decision regarding the  
21 number of weeks worked by the Class Member based on the information provided to it. The  
22 amount of time worked will be rounded to the nearest workweek. Class Members who worked at  
23 least one day will be treated as working one workweek for purposes of their settlement share  
24 calculation. The Settlement Administrator will determine both the number of adjusted weeks  
25 worked by the individual Class Members and the estimated individual settlement awards to be paid  
26 to each Class Member. The Settlement Administrator will provide these initial estimates to the  
27 Class in the Class Member Information Form ("Information Form"), which will be included as a  
28

1 part of the proposed Notice of Pendency of Class Action, Proposed Settlement, and Final Fairness  
2 Hearing Date for Court Approval (“Class Notice” or “Notice”).

3       Following receipt of the Class Notices and Information Forms, Class Members may review  
4 the number of workweeks and Settlement Check amount estimates and send any proposed  
5 corrections back to the Settlement Administrator. Class Members may either postmark their  
6 corrected Information Forms and/or place a telephone call to the Settlement Administrator with  
7 their proposed correction within ninety (90) calendar days after the mailing of the Class Notices and  
8 Information Forms. Class Members may—but are not required to—submit evidence to the  
9 Settlement Administrator demonstrating that the Class Members’ corrections are accurate. All  
10 disputes regarding weeks worked will be resolved and decided by the Settlement Administrator, and  
11 the Settlement Administrator’s decision on all such disputes will be final, binding, and non-  
12 appealable.

13       (2)   Allocation of Settlement Awards: All Class Members will be paid a settlement  
14 award (divided into three installments) based on the formula identified in the paragraph above. The  
15 individual Settlement Awards payable to eligible Class Members will be allocated as follows: 34%  
16 of the Class Members’ settlement payments will be characterized as wages, for which IRS Forms  
17 W-2 will be issued, 33% of the Class Members’ settlement payments will be characterized as  
18 interest, for which IRS Forms 1099 will be issued, and 33% of the Class Members’ settlement  
19 payments will be characterized as penalties, for which IRS Forms 1099 will be issued. The Parties  
20 stipulate and agree that Defendant NIR will pay the employer’s share of payroll taxes related to  
21 these Settlement Awards in addition to, and separately from, the amount specified as the Total  
22 Settlement Amount.

23       g.   Attorney’s Fees and Litigation Costs: Subject to Court approval and/or  
24 modification, Defendants agree to pay Plaintiff’s attorneys’ fees, up to a maximum of 30% of the  
25 Total Settlement Amount, and costs up to a maximum of nineteen thousand dollars (\$19,000) which  
26 will be paid out of the Total Settlement Amount. Defendant further agrees not to object to  
27 Plaintiff’s request for fees and costs in an amount not to exceed 30 percent of the Total Settlement  
28 Amount plus approximately \$19,000 in costs. Should the Court approve attorney’s fees and costs

1 payments in an amount less than that set forth above, the difference between the lesser amount  
2 approved by the Court and the requested amounts shall be included within the Net Settlement  
3 Amount.

4 h. Class Representative's Service Award: Subject to Court approval, Defendants  
5 further agree to pay the Named Plaintiff's service award ("Service Award") from the Total  
6 Settlement Amount for his service as a Class Representative, up to a maximum of ten thousand  
7 dollars (\$10,000) to Plaintiff Tovar. This service award shall be paid from the Total Settlement  
8 Amount. Defendants will not object to Class Counsel's application for Court approval of this  
9 service award to Plaintiff Tovar. It is understood that the Service Award payment is in addition to  
10 any claimed individual Settlement Award to which Plaintiff Tovar is entitled as Class Member.  
11 The Settlement Administrator will issue an IRS Form 1099 for the Service Award payment to  
12 Plaintiff Tovar for his service as Class Representative. Should the Court approve an enhancement  
13 award payment to Plaintiff Tovar in an amount less than that set forth above, the difference between  
14 the lesser amount approved by the Court and the enhancement award set forth above shall be  
15 included within the Net Settlement Amount.

16 i. Settlement Administrator: The Parties stipulate that they will seek appointment of  
17 CPT Group as the Settlement Administrator. The fees of the Settlement Administrator for work  
18 done shall be paid from the Total Settlement Amount, is estimated to be \$20,000 (twenty thousand  
19 dollars) and shall not exceed that amount.

20 j. Right of Class Members to Object or Request Exclusion: Class Members will have  
21 ninety (90) calendar days from the mailing of the Class Notice and Information Form within which  
22 to postmark an objection to the Settlement or to request exclusion ("opt out") from the Class. Only  
23 Class Members who have not opted out may object. To object, a Class Member must mail a letter  
24 to the Settlement Administrator stating that he objects to the Settlement. This letter must include  
25 his name, address, telephone number, signature, and the reasons for the objection to the Settlement.  
26 To opt out, a Class Member must mail a letter to the Settlement Administrator stating that he wants  
27 to "opt out" or be excluded from this lawsuit. The Class Member requesting to opt out must  
28 include his or her name, address, telephone number, and signature on this letter. The Parties agree

1 that upon receipt of a letter objecting to the Settlement or a letter requesting exclusion or opt out  
2 from the lawsuit or a letter stating a Class Member's intent to appear at the Final Fairness Hearing,  
3 the Settlement Administrator shall contact Plaintiff's and Defendants' Counsel and provide them  
4 with a copy of the letter. The Settlement Administrator shall contact Counsel within two (2)  
5 business days of receipt of such a letter. If a Class Member submits both an objection and a request  
6 to opt out, the Settlement Administrator and Class Counsel may contact the Class Member to clarify  
7 what the Class Member wishes to do with regard to the Settlement.

8 k. Option to Reject the Settlement. No later than ten (10) business days after the  
9 expiration of the 90-day period set forth in section 14.j., the Settlement Administrator shall provide  
10 to Class Counsel and Defendants' Counsel the number of Class Members who have timely  
11 requested exclusion from the Class, and their corresponding workweeks. If more than five percent  
12 (5%) of the Class Members or Class Members with more than five percent (5%) of the total  
13 workweeks opt out of the Settlement by submitting timely requests for exclusion, Defendants will  
14 have the option at their discretion of rejecting the Settlement in its entirety. Counsel for Defendants  
15 shall make such election to reject the Settlement in a writing served on Class Counsel no later than  
16 ten (10) business days following the issuance of the Settlement Administrator's notification of the  
17 persons who timely requested exclusion from the Class. If Defendants makes this election, they will  
18 assume full responsibility for the payment of the Settlement Administrator's fees and costs through  
19 the date of their election.

20 l. No Reversion to Defendant: The Parties agree that no amount from any uncashed  
21 Settlement Checks or any other portion of the Total Settlement Fund will revert to Defendant.

## 22 SETTLEMENT ADMINISTRATION

23 15. The Parties have mutually agreed to seek Court appointment of CPT Group as the  
24 Settlement Administrator to perform the customary duties of the Settlement Administrator. The  
25 fees of the Settlement Administrator for work done shall be paid from the Total Settlement Amount,  
26 is estimated to be \$20,000. The Settlement Administrator will send out to the Class Members the  
27 Notice and the Information Form within twenty (20) calendar days after the date the Court issues its  
28 order granting preliminary approval of the Settlement. The Settlement Administrator will

1 independently review Defendant NIR's records and will calculate the number of weeks worked by  
2 the Class Members and the amounts due to the Class Members in accordance with this Stipulation  
3 of Settlement. The Settlement Administrator shall maintain the confidentiality of the Class  
4 Members.

5       16.     Provided that all required payments have been made to the Total Settlement Fund,  
6 the Settlement Administrator will issue and send out Settlement award checks to Class Members as  
7 described on sections 25-27. The Settlement Administrator shall make all required tax  
8 withholdings and deposits, and shall duly report all necessary information to Defendants, to allow it  
9 to accurately and timely prepare and file all required payroll tax paperwork. Tax treatment of the  
10 Settlement awards will be as set forth herein and in accordance with state and federal tax laws. All  
11 disputes relating to the Settlement Administrator's performance of its duties shall be referred to the  
12 Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this  
13 Stipulation of Settlement until all payments and obligations contemplated by this Stipulation of  
14 Settlement have been fully carried out.

#### 15                                   **ATTORNEYS' FEES AND COSTS**

16       17.     In consideration for settling this matter and in exchange for the release of all claims  
17 by the Class, and subject to final approval and/or modification by the Court, as part of and from the  
18 Total Settlement Amount, Defendants agree to pay Plaintiff's Counsel's attorney's fees up to 30  
19 percent of the Total Settlement Amount, and litigation costs not to exceed the total sum of nineteen  
20 thousand dollars (\$19,000) from the Total Settlement Amount. Defendants will not object to  
21 Plaintiff's Counsel's application for attorney's fees and costs up to 30 percent of the Total  
22 Settlement Amount plus approximately \$19,000 in costs. Attorney's fees and costs approved by the  
23 Court will cover all work performed and all fees and costs incurred to date, and all other work to be  
24 performed and all fees and costs to be incurred in connection with the approval by the Court of this  
25 Stipulation of Settlement, Plaintiff's Counsel's administration of the Settlement.

26       18.     Provided that all required payments have been made to the Total Settlement Fund,  
27 the attorney's fees and costs approved by the Court shall be paid from the Total Settlement Fund by  
28 the Settlement Administrator to Class Counsel as described in section 26 below.

1 **NOTICE TO THE SETTLEMENT CLASS**

2 19. Within ten (10) calendar days of preliminary approval of this Settlement by the  
3 Court, Defendants shall provide to the Settlement Administrator and Class Counsel all of the  
4 following information about each Class Member in a format requested by the Settlement  
5 Administrator: (1) Class Member's name, (2) last-known address, (3) last-known telephone  
6 number, (4) Social Security Number, and (5) dates of employment with Defendants as non-exempt  
7 construction employees during the Class Period. This database shall be based on Defendant NIR's  
8 payroll and other business records. The Settlement Administrator will maintain this database and  
9 all data contained within the database, as private and confidential and shall not disclose such data to  
10 any persons or entities. If, as described above, a Class Member files both an objection and a  
11 request to opt out of the Settlement, the Settlement Administrator may provide Plaintiff's Counsel  
12 the Class Member's name and contact information. Prior to any mailing, the Settlement  
13 Administrator will run a check of the Class Members' addresses against those on file with the U.S.  
14 Postal Service's National Change of Address List. Within twenty (20) calendar days of preliminary  
15 approval of this Settlement, the Settlement Administrator will mail the Notice and the Information  
16 Form to the Class Members.

17 20. The Class Notice, as approved by the Court, shall be sent by the Settlement  
18 Administrator to the Class Members by first class mail. The Class Notice will be in English and  
19 Spanish. Accompanying the Notice will be an Information Form as approved by the Court. The  
20 front of each envelope mailed to Class Members shall prominently display the following language  
21 in English and Spanish: "Court-Ordered Northern California Roofing Class Action Notice and  
22 Class Member Information Form Inside. Please Open Immediately. You May be Entitled to  
23 Recover Money in this Class Action Settlement."

24 21. Additionally, the Parties agree that a Notice of Settlement shall be posted in English  
25 and Spanish at Defendant NIR's shop, as approved by the Court. The Notice shall alert Class  
26 Members to look for the envelope and the Notice shall make explicit that there will be no retaliation  
27 against Class Members regardless of whether Class members participate in the class settlement or  
28



decide to opt out. The same non-retaliation notice shall be included at the bottom of the first page of the mailed notice.

22. Any Notices and Information Forms returned to the Settlement Administrator as non-delivered during the ninety (90) calendar day period for returning corrected Information Forms shall be resent to the forwarding address, if any, on the returned envelope. The Settlement Administrator shall use all reasonably available means, such as NCOA searches and skip traces, to find Class Members. The Settlement Administrator will also collaborate with Plaintiff's Counsel to find former-employee Class Members. Upon completion of these steps by the Settlement Administrator, the Parties and the Settlement Administrator shall be deemed to have satisfied their obligations to provide reasonable Notice to the members of the Class. The affected members of the Class (that is, Class Members who do not validly request to be excluded from the Class) shall remain members of the Class and shall be bound by all the terms of the Stipulation of Settlement and the Court's Final Approval Order and Final Judgment.

23. Plaintiff's Counsel shall provide to the Court, at least twenty-one (21) calendar days prior to the Final Fairness Hearing, a declaration by the Settlement Administrator of due diligence and proof of mailing with regard to the mailing of the Class Notice and the Information Form.

## SETTLEMENT AWARD PROCESS

24. Defendants shall transfer the Settlement Sum for Distribution to the Settlement Administrator in separate installments—one of which shall be in the amount of \$40,000 and shall be made by October 1, 2020. Within thirty (30) days of the Preliminary Approval of the Class Settlement, Defendants will make thirty six (36) monthly payments of \$10,000 and two payments of \$40,000 as provided by sections 14.d and 14.d(1)(a) above—if the conditions stated in section 14.d(1)(a) are present, or thirty-six (36) monthly payments of \$10,000 and four monthly payments of \$20,000 as provided by sections 14.d and 14.d(1)(b) above. Defendants will make these monthly payments by the 15<sup>th</sup> of each month. In addition, at the time of each distribution, Defendant NIR will also pay the amount necessary to cover Defendant NIR's portion of payroll taxes as described above. All these monies will be paid into an interest-bearing escrow account, held and administered by the Settlement Administrator.

1           25.     Within 7 days after the Settlement Fund reaches \$160,000, amounting to  
2 approximately 33% of the Class Members' individual settlement payments, the Settlement  
3 Administrator will mail the first of three installment payments to Settlement Class Members.  
4 Within 7 days after the Settlement Fund reaches \$320,000, amounting to approximately 33% of the  
5 Class Members' individual settlement payments, the Settlement Administrator will mail the second  
6 of three installment payments to Settlement Class Members. Within 14 days after the final monthly  
7 payment and payroll tax payment is made to the Settlement Administrator, the Settlement  
8 Administrator will mail the third of three installment payments to the Settlement Class Members,  
9 amounting to approximately 33% of the Class Members' individual settlement payments.

10           26.     Within 7 days after the Settlement Fund reaches \$160,000, the Settlement  
11 Administrator will also transfer approximately 33% of any attorneys' fees and costs approved by  
12 the Court to Class Counsel and Settlement Administrator and mail approximately 100% of any  
13 Service Award approved by the Court to the Class Representative. Within 7 days after the  
14 Settlement Fund reaches \$320,000, the Settlement Administrator will also transfer approximately  
15 33% of any attorneys' fees and costs approved by the Court to Class Counsel and Settlement  
16 Administrator. Within 14 days after the final monthly payment and payroll tax payment is made to  
17 the Settlement Administrator, the Settlement Administrator will transfer the remaining fees and  
18 costs approved by the Court to Class Counsel and Settlement Administrator.

19           27.     Within 14 days after the final monthly payment and payroll tax payment is made to  
20 the Settlement Administrator, the Settlement Administrator will transfer the PAGA penalty amount  
21 to the LWDA.

22           28.     If a Settlement Check sent to a Class Member is returned with a forwarding address  
23 provided by the United States Postal Service, it shall be re-mailed to the forwarding address  
24 provided. If a Settlement Check sent to a Class Member is returned as undeliverable by the United  
25 States Postal Service or is otherwise designated by the United States Postal Service as having been  
26 sent to an invalid address and the Class Member did not provide the Settlement Administrator with  
27 additional address information after the mailing of the Settlement Check, the Settlement  
28 Administrator shall contact Class Counsel to attempt to locate the Class Member. Similar to the

process for finding former employee Class Members in order to provide Notice, the Settlement Administrator should use all reasonably available and accessible means, such as skip traces, to find updated and current addresses.

29. Settlement award checks issued to Class Members pursuant to this Settlement shall remain valid and negotiable for a period of 90 calendar days from the date of the mailing of the third installment payment. Class Members who fail to negotiate (*i.e.*, cash or deposit) their check(s) in timely fashion shall remain subject to the terms of this Settlement. Thirty days before the end of the 90-day period, the Settlement Administrator will send a reminder email and/or postcard to those Class Members whose checks (one, two, or three) remain uncashed, reminding them of the stale date of the checks. Settlement payments not negotiated within the 90-day period shall be distributed as follows:

- a. If the total amount of Class Members' settlement checks negotiated within 90 days of mailing of the third payment does not equal or exceed 95% of the Net Settlement Fund, then the difference between the total of the un-negotiated Settlement payments and the total of the negotiated Settlement payments shall revert to the Net Settlement Fund and shall be paid to the participating Settlement Class Members on a pro rata basis pursuant to the formula set forth in section 14.f.(1) above.
- b. If the total amount of Class Members' settlement checks negotiated within 90 days of mailing of the third payment equals or exceeds 95%, but is less than 100% of the Net Settlement Fund, the remainder sum will be put in a *cy pres* fund. If this occurs, subject to Court approval, the Parties agree to distribute the money to The Impact Fund, a non-profit organization.

## PAGA PENALTIES

30. Plaintiffs' complaint alleges potential claims for penalties pursuant to the Private Attorneys' General Act ("PAGA"), California Labor Code §§ 2698 *et seq.* The Parties agree that all such claims for PAGA penalties have been settled in this Joint Stipulation in the amount of \$24,000, subject to approval by the Court. The PAGA penalties shall be allocated as follows: 75%

1 (\$18,000) shall be paid to the LWDA, and the remaining 25% (\$6,000) shall be distributed to the  
2 Settlement Class Members.

3 **RELEASE BY THE CLASS**

4 31. Upon final approval by the Court of this Settlement, and except as to such rights or  
5 claims as may be created by this Stipulation of Settlement, Plaintiff Tovar, on his own behalf and as  
6 Class Representative, and all Class Members ("Releasing Parties") shall release and discharge  
7 Defendants and their present and former owners, parent companies, subsidiaries, related or  
8 affiliated companies, partners, officers, directors, employees, agents, attorneys, accountants,  
9 insurers, successors and assigns, and any other person acting on their behalf ("Released Parties"),  
10 from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties,  
11 liabilities, attorneys' fees, expenses, and losses and issues of any kind or nature whatsoever, that  
12 were alleged in the Second Amended Complaint or that reasonably arise from the facts alleged in  
13 the Second Amended Complaint from August 25, 2013 to November 1, 2019 ("Released Claims").

14 32. In addition, the Named Plaintiff Tovar understands and expressly agrees that in  
15 exchange for receiving a service award of up to ten thousand dollars (\$10,000), as approved by the  
16 Court, this Agreement extends to all claims of every nature and kind whatsoever, known or  
17 unknown, suspected or unsuspected, past or present, which the Named Plaintiff Tovar has or may  
18 have against the Released Parties, and all rights under section 1542 of the California Civil Code are  
19 hereby expressly waived. Such section reads as follows:

20 A general release does not extend to claims which the creditor does not know or suspect to  
21 exist in his or her favor at the time of executing the release, which if known by him or her  
22 must have materially affected his or her settlement with the debtor.

23 33. Additionally, the Releasing Parties acknowledge that, pursuant to the terms of the  
24 Settlement Agreement, they have released claims for unpaid wages, overtime, missed breaks,  
25 penalties, and interest in this Agreement. Releasing Parties further acknowledge that Defendants  
26 contested these claims on a factual basis and that the settlement reached herein is a compromised  
27 resolution of those disputed claims.  
28

1                                   **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

2           34.     The Parties shall promptly submit this Stipulation of Settlement to the Contra Costa  
3 County Superior Court of California in support of Plaintiff's Motion for Preliminary Approval and  
4 determination by the Court as to the Settlement's fairness, adequacy, and reasonableness. Promptly  
5 upon execution of this Stipulation of Settlement, the Parties shall apply to the Court for the entry of  
6 an Order Preliminarily Approving the Settlement, and the following:

- 7                   a.   Conditionally certifying the provisional settlement class of "all hourly construction  
8                   workers performing roofing work for NIR West Coast, Inc., in the state of California  
9                   who were employed by NIR West Coast, Inc. at any time from August 25, 2013 until  
10                  November 1, 2019";
- 11                  b.   Approving the Named Plaintiff Javier Tovar as Class Representative of the  
12                  Settlement Class;
- 13                  c.   Approving Cristina Molteni of Molteni Employment Law, as Class Counsel;
- 14                  d.   Approving CPT Group, as Settlement Administrator;
- 15                  e.   Approving as to form and content the Class Notice;
- 16                  f.   Approving as to form and content the Information Form;
- 17                  g.   Approving the manner and method for Class Members to request exclusion from the  
18                  Settlement;
- 19                  h.   Preliminarily approving the settlement subject only to the objections of Class  
20                  Members and final review by the Court;
- 21                  i.   Scheduling a Fairness Hearing on the question of whether the Settlement, including  
22                  payment of attorney's fees and costs and the Class Representative's service award  
23                  should be finally approved as fair, reasonable, and adequate as to the members of the  
24                  Class.

25                                   **DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

26           35.     Following final approval by the Court of the Settlement provided for in this  
27 Stipulation of Settlement, Counsel for the Class will submit a proposed Judgment on Final  
28 Approval of Settlement and Retention of Jurisdiction:

- 1 a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and  
2 adequate, and directing consummation of its terms and provisions;  
3 b. Approving Class Counsel's application for an award of attorney's fees and costs;  
4 c. Approving the service award payment to the Class Representative; and  
5 d. Retaining jurisdiction over the Parties to enforce the terms of the judgment, pursuant  
6 to California Rules of Court, Rule 3.769 and California Code of Civil Procedure §  
7 664.6.

### 8 SETTLEMENT TERMINATION

9 36. In the event that (a) the Court declines to enter final approval of the Settlement or to  
10 enter the Judgment or any part thereof as provided for herein, or the Parties hereto fail to consent to  
11 the entry of alternative forms of Judgment, in lieu thereof, or after such consent the Court declines  
12 to enter such alternate form of Judgment; or (b) any conditions to the Settlement are not satisfied; or  
13 (c) the Court disapproves this Settlement, or any term contained in this Settlement, including any  
14 amendments hereto, and such disapproval becomes final by reason of being affirmed on appeal or  
15 lapse of time or otherwise; or (d) the Court approves this Settlement, including any amendments  
16 hereto, but any such judgment and approval is finally reversed on appeal; or (e) Defendants elect to  
17 opt out of this Settlement pursuant to the provisions of section 14.k.; in any such event ((a) through  
18 (e)), this Settlement shall be void, and the Preliminary Approval Order and the Final Approval  
19 Order and Judgment, if any, shall be vacated upon application to the Court. In such event, (a) this  
20 Stipulation and the Settlement shall be terminated and become void, (b) any actions taken or to be  
21 taken in connection with this Stipulation and the Settlement shall become void and of no effect; and  
22 (c) all pretrial proceedings, including discovery, shall resume 30 (thirty) days thereafter as if this  
23 Settlement had not been proposed for approval of the Court.

### 24 PARTIES' AUTHORITY

25 37. The signatories hereto hereby represent that they are fully authorized to enter into  
26 this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.  
27  
28

1 **MUTUAL FULL COOPERATION**

2 38. The Parties agree to fully cooperate with each other to accomplish the terms of this  
3 Stipulation of Settlement, including but not limited to, execution of such documents and taking such  
4 other actions as reasonably may be necessary to implement the terms of this Stipulation of  
5 Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including all  
6 efforts contemplated by this Stipulation of Settlement and any other efforts that may become  
7 necessary by order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the  
8 terms set forth herein. As soon as practicable after execution of this Stipulation of Settlement,  
9 Plaintiff's Counsel shall, with the assistance and cooperation of Defendants and their counsel, take  
10 all necessary steps to secure the Court's final approval of this Stipulation of Settlement.

11 39. The Parties agree that they will not attempt to encourage or discourage Class  
12 Members from submitting Requests for Exclusion and will not discourage Class Members from  
13 participating in the Settlement.

14 **NO PRIOR ASSIGNMENTS**

15 40. The Parties represent, covenant, and warrant that they have not directly or indirectly  
16 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or  
17 entity any portion of any liability, claim, demand, action, cause of action or right herein released  
18 and discharged except as set forth herein.

19 **ENFORCEMENT ACTIONS**

20 41. In the event that one or more of the Parties to this Stipulation of Settlement institutes  
21 any legal action or other proceeding against any other Party or Parties to enforce the provisions of  
22 this Stipulation of Settlement or to declare rights and/or obligations under this Stipulation of  
23 Settlement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or  
24 Parties reasonable attorney's fees and costs, including expert witness fees incurred in connection  
25 with any enforcement actions.

26 **CONSTRUCTION**

27 42. The Parties hereto agree that the terms and conditions of this Stipulation of  
28 Settlement are the result of arm's-length negotiations between the Parties, and this Stipulation of



1 Settlement shall not be construed in favor of or against any Party by reason of the extent to which  
2 any Party or his or its counsel participated in the drafting of this Stipulation of Settlement.

### 3 CAPTIONS AND INTERPRETATIONS

4 43. Paragraph titles or captions contained herein are inserted as a matter of convenience  
5 and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation of  
6 Settlement or any provision hereof. Each term of this Stipulation of Settlement is contractual and  
7 not merely a recital.

### 8 MODIFICATION

9 44. This Stipulation of Settlement may not be changed, altered, or modified, except in  
10 writing and signed by the Parties hereto, and approved by the Court. This Stipulation of Settlement  
11 may not be discharged except by performance in accordance with its terms or by a writing signed  
12 by the Parties hereto.

### 13 INTEGRATION CLAUSE

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

### 19 BINDING ON ASSIGNS

20 46. This Stipulation of Settlement shall be binding upon and inure to the benefit of the  
21 Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

### 22 CLASS MEMBER SIGNATORIES

23 47. It is agreed that because the members of the Class are so numerous, it is impossible  
24 or impractical to have each member of the Class execute this Stipulation of Settlement. The Class  
25 Notice will advise all Class Members of the binding nature of the release.

### 26 COUNTERPARTS

27 48. This Stipulation of Settlement may be executed in counterparts and by facsimile or  
28 electronically-scanned signatures, and when each Party has signed and delivered at least one such

1 counterpart, each counterpart shall be deemed an original, and, when taken together with other  
2 signed counterparts, shall constitute one Stipulation of Settlement, which shall be binding upon and  
3 effective as to all Parties.

4 **STIPULATION FOR ENTRY OF JUDGMENT**

5 49. As part of this Settlement Agreement and to secure Defendants' obligations under  
6 this Agreement, the Parties shall execute a Stipulation for Entry of Judgment in the form attached as  
7 **Exhibit 2**, in the amount of four hundred eighty-five thousand dollars (\$485,000) less any amounts  
8 paid pursuant to this Agreement, plus reasonable attorney's fees and costs incurred in enforcing the  
9 Settlement Agreement and collecting the settlement sums. The Stipulation shall be held in trust by  
10 Plaintiff's Counsel and shall only be filed in the event of Defendants' default. In the event that  
11 Defendant fails to make timely payments of the monthly settlement amount of ten thousand dollars  
12 (\$10,000) or any other payment called for above, including the payments for forty thousand dollars  
13 (\$40,000) or twenty thousand dollars (\$20,000), for three (3) consecutive months, and Plaintiff's  
14 Counsel gives Defendants fifteen days' written notice of the default, and Defendants fail to correct  
15 the default, Plaintiff will have the option to file the Stipulation with the Court and may have  
16 judgment entered against Defendants and may enforce this judgment without further notice to  
17 Defendants and without further hearing before the Court, the rights to which are waived by  
18 Defendants.

19 **IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily executed this  
20 Joint Stipulation of Settlement and Release as of the dates set forth below:

21 **Plaintiff and Class Representative:**

22 Dated: 10/24/19

PLAINTIFF JAVIER VEGA TOVAR

23 By: 

Javier Vega Tovar

1 Defendant:

2 Dated: 10/23/19

NIR WEST COAST, INC. DBA  
NORTHERN CALIFORNIA ROOFING CO.

3 By: 

4 Its Authorized Officer or Agent

5 Defendant:

6 Dated: 10/23/19

GREGORY T. LYNN

7 By: 

Gregory T. Lynn

8 APPROVED AS TO FORM.

9 Plaintiff's Counsel and Class Counsel:

10 Dated: 10-24-19

MOLTENI EMPLOYMENT LAW

11 By: 

12 Cristina Molteni

13 Attorney for Plaintiff and the Proposed Class

14 Defendants' Counsel:

15 Dated: 10/23/19

WEINTRAUB TOBIN CHEDIAK COLEMAN GRODIN  
LAW CORPORATION

17 By: 

18 Lukas Clary

19 Attorney for Defendants