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11 Attorneys for Defendant, Pomona Quality Foam, LLC

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 13 **FOR THE COUNTY OF LOS ANGELES**

15 GABRIELA HERRERA, an individual, on
 16 behalf of herself and others similarly situated,

17 Plaintiff,

18 vs.

19 POMONA QUALITY FOAM, LLC, a limited
 liability company, and DOES 1 through 50,
 20 inclusive,

21 Defendants.

Case No.: 19STCV38235

CLASS ACTION

Assigned for All Purposes To:

Hon. Ann I. Jones
 Dept.: 11

**JOINT STIPULATION OF CLASS ACTION
 SETTLEMENT**

Complaint Filed: October 25, 2019
 Trial Date: None Set

1 This Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement
2 Agreement”) is made and entered into by and between Plaintiff Gabriella Herrera (“Plaintiff” or
3 “Class Representative”), an individual and on behalf of all others similarly situated, and Defendant
4 Pomona Quality Foam, LLC, a California limited liability company (“Defendant”) (collectively
5 with Plaintiff, the “Parties”).

6 **DEFINITIONS**

7 The following definitions are applicable to this Settlement Agreement.

8 Definitions contained elsewhere in this Settlement Agreement will also be effective:

9 1. “Action” means *Herrera v Pomona Quality Foam, LLC.*, Los Angeles County
10 Superior Court Case No. 19STCV38235.

11 2. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the
12 Court for Class Counsel’s litigation and resolution of this Action.

13 3. “Class Counsel” means David Yeremian & Associates, Inc.

14 4. “Class List” means a complete list of all Class Members that Defendant will
15 diligently and in good faith compile from its records and provide to the Settlement
16 Administrator within ten (10) calendar days after Preliminary Approval of this Settlement. The
17 Class List will be formatted in Microsoft Office Excel and will include the following
18 information from Defendant’s records: each Class Member’s full name; last-known mailing
19 address; Social Security number; and dates of employment as a non-exempt employee in
20 California during the Class Period.

21 5. “Class Member(s)” or “Settlement Class” means all current and former non-
22 exempt employees of Defendant who worked in California during the Class Period (or if any
23 such person is incompetent, deceased, or unavailable due to military service, the person’s legal
24 representative or successor in interest evidenced by reasonable verification). “Class Members”
25 shall not include any person who submits a timely and valid request for exclusion.

26 6. “Class Period” means the period from October 25, 2015 through December 3,
27 2020.

28

1 7. “Class Representative Enhancement Payment” means the amount approved by
2 the Court to be paid to Plaintiff in recognition of her contributions to the Action on behalf of
3 Class Members and Aggrieved Employees.

4 8. “Court” means the Superior Court of California, County of Los Angeles.

5 9. “Defendant” means Pomona Quality Foam, LLC, a California limited liability
6 company.

7 10. “Effective Date” means: (a) the date of entry of the Court’s order granting final
8 approval of the Settlement Agreement and Judgment, if no objections have been filed or if an
9 objection was filed and later withdrawn; or (b) if an objection to the Settlement Agreement is
10 filed, then the date when the time expires to file an appeal of the Court’s grant of Final
11 Approval of the Settlement Agreement; or (c) if an objection is filed, as well as a timely Notice
12 of Appeal of the Court’s grant of Final Approval of the Settlement Agreement, then the date the
13 appeal is finally resolved, with the final approval unaffected.

14 11. “Individual Settlement Payment” means each Class Member’s share of the Net
15 Settlement Amount.

16 12. “Maximum Settlement Amount” is the amount of One Hundred and Seventy-
17 Five Thousand Dollars and Zero Cents (\$175,000.00), which is the maximum amount to be
18 paid by Defendant pursuant to this Settlement Agreement. Defendant estimates that there are
19 approximately one hundred and ten (110) Class Members. If, the number of Class Members
20 increases by more than ten percent (10%) of the amount stated then the Net Settlement Fund
21 shall increase by an equal percentage. The Maximum Settlement Amount includes all
22 Individual Settlement Payments to Class Members, the Class Representative Enhancement
23 Payment to Plaintiff, Attorneys’ Fees and Costs to Class Counsel, the Settlement
24 Administration Costs to the Settlement Administrator and the PAGA Payment as specified in
25 this Agreement. Defendant shall pay the employer’s share of payroll taxes due on the portion of
26 Settlement Payments allocated to wages separately and in addition to the Maximum Settlement
27 Amount. The Parties agree that Defendant will have no obligation to pay any amount in
28 connection with this Settlement Agreement apart from the Maximum Settlement Amount and

1 the employer's share of payroll taxes due on the portion of Settlement Payments allocated to
2 wages, and that none of the Maximum Settlement Amount will revert to Defendant.

3 13. "Net Settlement Amount" means the Maximum Settlement Amount, less the
4 Class Representative Enhancement Payment, Attorneys' Fees and Costs, and Settlement
5 Administration Costs, and seventy-five percent (75%) of the PAGA Payment as specified in
6 this Agreement.

7 14. "Objection" means any written objection to this Settlement sent by a Class
8 Member to the Settlement Administrator as specified herein and in the Notice of Settlement.
9 An Objection to Settlement must be sent to the Settlement Administrator within the time
10 limitations set forth in this Stipulation.

11 15. "Notice of Class Action Settlement" means the notice of settlement, attached as
12 Exhibit A, to be mailed to all members of the Settlement Class upon Preliminary Approval.

13 16. "PAGA" means the California Labor Code Private Attorneys General Act of
14 2004.

15 17. "PAGA Payment" means the payment made hereunder to the California Labor
16 and Workforce Development Agency and the Settlement Class Members for settlement of
17 claims for civil penalties under PAGA.

18 18. "Parties" means Plaintiff and Defendant collectively.

19 19. "Plaintiff" means Gabriella Herrera.

20 20. "Preliminary Approval" means the Court order granting preliminary approval of
21 the Settlement Agreement.

22 21. "Released Claims" means all causes of action and factual or legal theories that
23 were alleged in the operative complaints or that could have been alleged against Defendant
24 based on the facts contained in the operative complaints, including all of the following claims
25 for relief: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b)
26 failure to provide proper meal and rest periods, and to properly provide premium pay in lieu
27 thereof; (c) failure to provide complete, accurate or properly formatted wage statements; (d)
28 waiting time penalties; (e) failure to reimburse business expenditures, (f) unfair business

1 practices that could have been premised on the claims, causes of action or legal theories of
2 relief described above or any of the claims, causes of action or legal theories of relief pleaded
3 in the operative complaint; (g) all claims under the California Labor Code Private Attorneys
4 General Act of 2004 that could have been premised on the claims, causes of action or legal
5 theories described above or any of the claims, causes of action or legal theories of relief
6 pleaded in the operative complaint; (h) any other claims or penalties under the California Labor
7 Code or other wage and hour laws pleaded in the Action; and (i) all damages, penalties, interest
8 and other amounts recoverable under said claims, causes of action or legal theories of relief.
9 The period of the Release shall extend to the limits of the Class Period. The *res judicata* effect
10 of the Judgment will be the same as that of the Release. Defendant shall be entitled to a release
11 of Released Claims which occurred during the Class Period only during such time that the
12 Settlement Class Member was classified as non-exempt, and expressly excluding all other
13 claims for vested benefits, wrongful termination, unemployment insurance, disability, social
14 security, workers' compensation, claims while classified as exempt, and claims outside of the
15 Class Period.

16 22. “Released Parties” means Defendant, and their past, present and/or future,
17 direct and/or indirect, owners, officers, directors, members, managers, employees, agents,
18 representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent
19 companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint
20 venturers, if any.

21 23. “Request for Exclusion” means a timely written request by a Class Member to
22 be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,
23 address, telephone number and last four digits of the Social Security Number of the Class
24 Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the
25 Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included
26 in the Settlement; and (v) be postmarked on or before the Response Deadline.

27 24. “Response Deadline” means the deadline by which Class Members must
28 postmark the Settlement Administrator Requests for Exclusion or Objection to the Settlement.

1 The Response Deadline will be forty-five (45) calendar days from the initial mailing of the
2 Notice of Class Action Settlement by the Settlement Administrator, unless the 45th day falls on
3 a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next
4 day on which the U.S. Postal Service is open.

5 25. "Settlement Administrator" means CPT Group, or any other third-party class
6 action settlement administrator approved by the Parties and the Court for the purposes of
7 administering this Settlement. The Parties each represent that they have no financial interest in
8 the Settlement Administrator or otherwise have a relationship with the Settlement
9 Administrator that could create a conflict of interest.

10 CPT Group has extensive experience in providing notice of class actions and
11 administering class action settlements. In the past 30 plus years they have provided notification
12 and/or claims administration services in hundreds of class action cases.

13 26. "Settlement Administration Costs" includes all costs payable to the Settlement
14 Administrator for administering this Settlement, including, but not limited to, printing,
15 distributing, and tracking notice and other documents for this Settlement, tax reporting,
16 distributing all payments to be made pursuant to this Settlement, and providing necessary
17 reports and declarations, as requested by the Parties. After conference and consultation with the
18 Settlement Administrator, \$9,500.00 will be allocated to Settlement Administration as a "not to
19 exceed" cost.

20 27. "Pay Periods" means the number of calendar pay periods that the Class
21 Member worked as a non-exempt employee in California during the Class Period.

22 28. "Workweek Value" means the value of each compensable Workweek, as
23 determined by the formula set forth in herein.

24 **TERMS OF AGREEMENT**

25 Plaintiff, on behalf of himself and the Settlement Class, and Defendant agrees as
26 follows:

27 29. Funding of the Maximum Settlement Amount. No later than within 30 business
28 days after the Effective Date, Defendant will deposit One Hundred and Seventy-Fifty Thousand

1 Dollars and Zero Cents (\$175,000.00) into a Qualified Settlement Fund administered by the
2 Settlement Administrator. The Maximum Settlement Amount will be used to pay: (i) Individual
3 Settlement Amounts; (ii) the Class Representative Enhancement Payment; (iii) Attorneys' Fees,
4 Costs, and any other expenses; (iv) the PAGA Payment and (v) Settlement Administration
5 Costs.

6 30. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys' Fees
7 and Costs of not more than Fifty-Eight Thousand, Three Hundred and Three Dollars and Thirty
8 Three Cents (\$58,333.33) in attorney's fees and not more than Fifteen Thousand Dollars and
9 Zero Cents (\$15,000.00) in costs, and Defendant agrees not to oppose such application. All
10 Attorneys' Fees and Costs will be paid from the Maximum Settlement Amount. Plaintiff and
11 Class Counsel will not have the right to revoke this Settlement in the event the Court fails to
12 approve the amount of Attorneys' Fees and Costs sought by Class Counsel. Any portion of the
13 Attorneys' Fees and Costs not awarded to Class Counsel will be added to the Net Settlement
14 Amount.

15 31. Class Representative Enhancement Payment. Plaintiff will apply to the Court for
16 a Class Representative Enhancement Payment of not more than Seven Thousand and Five
17 Hundred Dollars and Zero Cents (\$7,500.00) for her effort and work in prosecuting the Action on
18 behalf of Class Members and Aggrieved Employees and Defendant agrees not to oppose such
19 application. This amount will be considered non-wage damages and will be reported on an IRS
20 Form 1099. The Class Representative Enhancement Payment, which will be paid from the
21 Maximum Settlement Amount, will be in addition to Plaintiff's right to an Individual Settlement
22 Payment pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any
23 and all applicable taxes on the payments made pursuant to this paragraph and will hold
24 Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result
25 of the payments. Plaintiff will not have the right to revoke this Settlement in the event the Court
26 fails to approve the amount sought by Plaintiff as a Class Representative Enhancement Payment.
27 Any portion of the Class Representative Enhancement Payment not awarded to the Class
28 Representatives will be added to the Net Settlement Amount.

1 32. Settlement Administration Costs. The Settlement Administrator will be paid for
2 the reasonable costs of administration of the Settlement and distribution of payments. These
3 costs, which will be paid from the Maximum Settlement Amount, will include, *inter alia*, the
4 required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms,
5 preparing and distributing Notices of Class Action Settlement, calculating and distributing all
6 payments to be made pursuant to the Settlement, and providing necessary reports and
7 declarations. Class Counsel obtained a “not to exceed” quote from the Settlement Administrator
8 to complete the administration for \$9,500.00. The Settlement Administrator’s “not to exceed”
9 quote will represent the Settlement Administrator’s agreement that, based on the class size and
10 distributions under the terms of this Settlement, the costs for administration of the terms of this
11 Settlement will not exceed the specified amount. All of the Settlement Administration Costs
12 shall be paid from the Maximum Settlement Amount upon completion of all duties required to
13 be performed by the Settlement Administrator under the terms of this Settlement, or as
14 otherwise required by the Court, subject to the “not to exceed” quote from the Settlement
15 Administrator. The Settlement Administrator will establish the Qualified Settlement Fund
16 Account.

17 33. PAGA Payment. Five Thousand Dollars and Zero Cents (\$5,000.00) shall be
18 allocated from the Maximum Settlement Fund for settlement of claims for civil penalties under
19 PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of such \$5,000.00
20 PAGA Payment, or \$3,750.00, to the LWDA. Twenty-five (25%) of the \$5,000.00 PAGA
21 Payment, or \$1,250.00, will be included in the Net Settlement Amount and distributed to
22 Settlement Class Members as described in this Agreement. Each Settlement Class Member’s
23 pro rata share of that \$3750.00 will be part of his or her Individual Settlement Payment.

24 34. Individual Settlement Payment Calculations. Individual Settlement Payments
25 will be calculated and apportioned from the Net Settlement Amount based on the number of
26 Workweeks a Class Member worked during the Class Period as a non-exempt employee in
27 California. Specific calculations of Individual Settlement Payments will be made as follows:
28

1 34(a). The Settlement Administrator will calculate the total number of
2 Workweeks worked by each Class Member as a non-exempt employee in California during the
3 Class Period and the aggregate total number of Workweeks worked by all Class Members as
4 non-exempt employees in California during the Class Period.

5 34(b). To determine each Class Member’s estimated “Individual Settlement
6 Payment,” the Settlement Administrator will use the following formula: The Net Settlement
7 Amount will be divided by the aggregate total number of Workweeks, resulting in the
8 Workweek Value. Each Class Member’s “Individual Settlement Payment” will be calculated by
9 multiplying each individual Class Member’s total number of Workweeks by the Workweek
10 Value.

11 34(c). The entire Net Settlement Amount will be disbursed as Individual
12 Settlement Payments to Class Members. If there are any valid and timely Requests for
13 Exclusion from members of the Settlement Class, the Settlement Administrator shall
14 proportionately increase the Individual Settlement Payment for each Class Member according
15 to the number of Workweeks worked, so that the amount actually distributed to the Settlement
16 Class equals 100% of the Net Settlement Amount.

17 35. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
18 Class Members under this Settlement, as well as any other payments made pursuant to this
19 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to
20 which any Class Members may be eligible, including, but not limited to: (i) profit-sharing
21 plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick
22 leave plans, (vii) PTO plans, and (viii) any other benefit plan. Rather, it is the Parties’ intention
23 that this Settlement Agreement will not affect any rights, contributions, or amounts to which
24 any Class Members may be entitled under any benefit plans.

25 36. Settlement Administration Process. The Parties agree to cooperate in the
26 administration of the settlement and to make all reasonable efforts to control and minimize the
27 costs and expenses incurred in administration of the Settlement.
28

1 37. Delivery of the Class List. Within ten (10) business days of entry of the Court's
2 Order Granting Preliminary Approval, Defendant will provide the Class List to the Settlement
3 Administrator.

4 38. Notice by First-Class U.S. Mail. Within ten (10) business days after receiving
5 the Class List from Defendant, the Settlement Administrator will mail a Notice of Class Action
6 Settlement to all Class Members via regular First-Class U.S. Mail, using the most current,
7 known mailing addresses identified in the Class List.

8 39. Confirmation of Contact Information in the Class List and Undeliverable
9 Notices. Prior to mailing, the Settlement Administrator will perform a search based on the
10 National Change of Address Database for information to update and correct for any known or
11 identifiable address changes. Any Notices of Class Action Settlement returned to the Settlement
12 Administrator as non-deliverable on or before the Response Deadline will be sent promptly via
13 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
14 Administrator will indicate the date of such re-mailing on the Notice of Class Action
15 Settlement. If no forwarding address is provided, the Settlement Administrator will promptly
16 attempt to determine the correct address using an Accurant search/skip-trace, and will then
17 perform a single re-mailing.

18 40. Notices of Class Action Settlement. All Class Members will be mailed a Notice
19 of Class Action Settlement in both English and Spanish in the form attached as Exhibit A¹, or as
20 provided by Court order.

21 41. Disputed Information on Notices of Class Action Settlement. Class Members
22 will have an opportunity to dispute the information provided in their Notices of Class Action
23 Settlement. To the extent Class Members dispute their employment dates or the number of
24 Workweeks as set forth on the Notice, Class Members may produce evidence to the Settlement
25 Administrator showing that such information is inaccurate. The Settlement Administrator will
26

27 ¹ Only the English version of the Class Notice is being attached to the Stipulation of Class Action Settlement. Once
28 the above entitled case receives Preliminary Approval then the Claim Administrator, CPT Group, will translate the
Class Notice also into Spanish.

1 advise the Parties of such dispute, allow Defendant five (5) business days to respond with any
2 additional information or records, and then decide the dispute. Defendant's records will be
3 presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the
4 Class Member and Defendant and will make the final decision as to the merits of the dispute.

5 42. Requests for Exclusion. Any Class Member wishing to opt-out from the
6 Settlement Agreement must sign and postmark a written Request for Exclusion to the
7 Settlement Administrator within the Response Deadline. The postmark date will be the
8 exclusive means to determine whether a Request for Exclusion has been timely submitted. The
9 Parties and their counsel will not solicit or encourage any Class Member, directly or indirectly,
10 to opt out of the Settlement Agreement. More specifically, a Class Member may request to be
11 excluded from the effect of this Agreement, and any payment of amounts under this Agreement
12 by timely mailing a Request for Exclusion letter to the Settlement Administrator stating that the
13 Class Member wants to be excluded from this Action. This letter must include the Class
14 Member's name, address, telephone number, and signature. To be valid and timely, the request
15 to be excluded must be postmarked by the Response Deadline date that will be specified in the
16 Class Notice (no less than forty-five (45) days from the initial mailing of the Class Notice by
17 the Settlement Administrator). If a notice needs to be re-mailed then that individual Class
18 Member will not be provided additional time to object or request exclusion from the settlement.
19 A Class Member who properly submits a valid and timely request to be excluded from the
20 Action will not receive any payment of any kind in connection with this Agreement or this
21 Action, will not be bound by or receive any benefit of this Agreement, and will have no
22 standing to object to the Settlement. Class Members who do not timely request exclusion will
23 be bound by the releases herein and receive an individual settlement payment ("Participating
24 Class Members"). A request for exclusion must be mailed to the Settlement Administrator at its
25 address to be provided in the Class Notice, and the Settlement Administrator will promptly
26 transmit the requests for exclusion to counsel for the parties.

27 43. Defective Submissions. If a Class Member's Request for Exclusion is defective
28 as to the requirements listed herein, that Class Member will be given an opportunity to cure the

1 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three
2 (3) business days of receiving the defective submission to advise the Class Member that his or
3 her submission is defective and that the defect must be cured to render the Request for
4 Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii)
5 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
6 revised Request for Exclusion. If the revised Request for Exclusion is not postmarked and
7 mailed within that period, it will be deemed untimely.

8 44. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
9 Member who does not affirmatively opt out of the Settlement Agreement by submitting a
10 timely and valid Request for Exclusion will be bound by all of its terms, including those
11 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
12 it grants final approval of the Settlement.

13 45. Objection Procedures. The Notice shall state that Settlement Class Members
14 who wish to object to the Settlement may do so by a written statement of objection (“Notice of
15 Objection”) to be mailed by the Response Deadline to the Settlement Administrator or by
16 appearing at the hearing for Final Approval. The Objection must be signed by the Class
17 Member and contain all information required by this Settlement Agreement. The postmark date
18 of the filing and service will be deemed the exclusive means for determining that the Objection
19 is timely. The Notice of Objection must state: (1) the case name and number; (2) the name of
20 the Settlement Class Member; (3) the address of the Settlement Class Member; (4) the last four
21 digits of the Settlement Class Member’s Social Security number; (4) the basis for the objection;
22 and (5) if the Settlement Class Member intends to appear at the Final Approval/Settlement
23 Fairness Hearing. The Settlement Administrator will promptly provide any Notices of
24 Objection to the parties’ counsel upon receiving them. Class Counsel will include all objections
25 received and Plaintiff’s response(s) with Plaintiff’s motion for final approval of the Settlement.
26 Settlement Class Members may also have a right to have their objections heard at the Final
27 Approval/Settlement Fairness Hearing. Class Counsel will not represent any Class Members
28

1 with respect to any such Objections to this Settlement, and any Class Members who request
2 exclusion from the Settlement will have no standing to object to it.

3 46. Settlement Administrator Reports. The Settlement Administrator will provide
4 Defendant’s counsel and Class Counsel a weekly report of the number of Class Members who
5 have submitted valid Requests for Exclusion, Objections, and disputes regarding Pay Periods
6 calculations. Additionally, the Settlement Administrator will provide to counsel for both Parties
7 any updated reports regarding the administration of the Settlement Agreement as needed or
8 requested.

9 47. Distribution and Timing of Payments. Within 30 calendar days of the Effective
10 Date, and after Defendant has fully funded the Qualified Settlement Fund with the Maximum
11 Settlement Amount, the Settlement Administrator will issue payments to: (i) all Class Members
12 who have not submitted a valid and timely Request for Exclusion, including any Class Member
13 whose notice was returned as undeliverable; (ii) Plaintiff; (iii) Class Counsel; and (iv) the
14 LWDA. The Settlement Administrator will also issue a payment to itself for Court-approved
15 services performed in connection with the Settlement. The Settlement Administrator will pay
16 Individual Settlement Payments from the Net Settlement Amount to all Participating Class
17 Members. The Settlement Administrator will do so by sending a check in the appropriate
18 amount to the Class Member at the address indicated in the list of Class Member names and
19 addresses provided by Defendant, or as subsequently determined by the Settlement
20 Administrator to be correct.

21 48. Un-Cashed Settlement Checks. Class Members will receive checks for their
22 Individual Settlement Payments. Checks will remain negotiable for 120 days (“Check-Cashing
23 Deadline”). Any check not cashed within 120 calendar days will be void. The funds from the
24 uncashed checks shall be distributed by the Settlement Administrator to the State Controller’s
25 Unclaimed Property Fund. No later than ten (10) calendar days after the expiration of the 120
26 day period, the Settlement Administrator shall deposit the total amounts contained in the
27 settlement checks, and all interest that has accrued, to the State Controller’s Unclaimed
28 Property Fund. The Settlement Administrator shall provide a declaration of deposit with the

1 State Controller’s Unclaimed Property Fund, which will be served on Class Counsel and
2 Defendant’s Counsel within ten (10) calendar days of payment of the residual to such
3 beneficiary.

4 Any costs associated with administering the remaining funds under this section (e.g.,
5 bank stop-payment charges, settlement administration costs associated with any reserve
6 amount) or payments to the State Controller’s Unclaimed Property Fund will be deducted
7 before the deposit into the State Controller’s Unclaimed Property Fund

8 49. Certification of Completion. Upon completion of administration of the
9 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
10 such completion to the Court and counsel for all Parties.

11 50. Allocation of Individual Settlement Payments. All Individual Settlement
12 Payments will be allocated as follows: (a) 20% as wages and (b) 80% as penalties and interests.
13 The Settlement Administrator will be responsible for issuing to each claimant a form W-2 for
14 amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties.

15 51. Administration of Taxes by the Settlement Administrator. The Settlement
16 Administrator will be responsible for issuing to Plaintiff, Class Members, and Class Counsel
17 tax forms as may be required by law for all amounts paid pursuant to this Settlement. The
18 Settlement Administrator will also be responsible for forwarding all taxes and penalties to the
19 appropriate government authorities as may be required by law.

20 52. Tax Liability. Defendant makes no representation as to the tax treatment or
21 legal effect of the payments called for hereunder, and Plaintiff and Class Members are not
22 relying on any statement, representation, or calculation by Defendant or by the Settlement
23 Administrator in this regard. Plaintiff and Class Members understand and agree that they will
24 be solely responsible for the payment of any taxes and penalties assessed on the payments
25 described herein and will defend, indemnify, and hold Defendant free and harmless from and
26 against any claims resulting from treatment of such payments as non-taxable damages.

27 53. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
28 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY

1 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
2 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
3 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
4 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
5 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
6 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
7 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
8 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
9 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
10 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
11 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
12 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
13 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
14 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
15 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
16 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
17 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
18 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
19 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
20 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
21 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
22 AGREEMENT.

23 54. No Prior Assignments. The Parties and their counsel represent, covenant, and
24 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
25 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
26 demand, action, cause of action or right herein released and discharged.

27 55. Nullification of Settlement Agreement. In the event that: (i) the Court does not
28 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final

1 for any other reason, then this Settlement Agreement, and any documents generated to bring it
2 into effect, will be null and void. Any order or judgment entered by the Court in furtherance of
3 this Settlement Agreement will likewise be treated as void from the beginning.

4 56. Preliminary Approval Hearing. Plaintiff will obtain a date for hearing before the
5 Court to request the Preliminary Approval of the Settlement Agreement, and the entry of a
6 Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
7 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, (iii)
8 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval
9 Order will provide for the Notice of Class Action Settlement to be sent to all Class Members as
10 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit
11 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
12 proposed Notice of Class Action Settlement.

13 57. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
14 the deadlines to postmark Requests for Exclusion and/or Objections to the Settlement
15 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will
16 be conducted to determine the Final Approval of the Settlement Agreement along with the
17 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Representative
18 Enhancement Payment; (iii) Attorneys' Fees and Costs; and (iv) all Settlement Administration
19 Costs. The Final Approval/Settlement Fairness Hearing will be held no earlier than thirty
20 calendar (30) days after the Response Deadline. Class Counsel will be responsible for drafting
21 all documents necessary to obtain final approval. Class Counsel will also be responsible for
22 drafting the attorneys' fees and costs application to be heard at the final approval hearing.

23 58. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
24 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
25 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
26 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
27 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-

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1 Judgment matters as may be appropriate under court rules or as set forth in this Settlement
2 Agreement.

3 59. General Release by Plaintiff. In consideration for the consideration set forth in
4 this Agreement, Plaintiff, for herself, her heirs, successors and assigns, does waive, release,
5 acquit and forever discharge the Released Parties, from any and all claims, actions, charges,
6 complaints, grievances and causes of action, of whatever nature, whether known or unknown,
7 which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including but not
8 limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,
9 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
10 personal injury claims, emotional distress claims, invasion of privacy claims, defamation
11 claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal,
12 state or other governmental statute, law, regulation or ordinance, including any claims arising
13 under the California Fair Employment and Housing Act (FEHA), the California Labor Code,
14 the Wage Orders of California's Industrial Welfare Commission, other state wage and hour
15 laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
16 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
17 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the
18 Family Medical Leave Act, California's Whistleblower Protection Act, California Business &
19 Professions Code Section 17200 et seq., and any and all claims arising under any federal, state
20 or other governmental statute, law, regulation or ordinance. Plaintiff hereby expressly waives
21 and relinquishes any and all claims, rights or benefits that she may have under California Civil
22 Code § 1542, which provides as follows:

23
24 **A GENERAL RELEASE DOES NOT EXTEND TO**
25 **CLAIMS WHICH THE CREDITOR OR**
26 **RELEASING PARTY DOES NOT KNOW OR**
27 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
28 **THE TIME OF EXECUTING THE RELEASE**
 WHICH IF KNOWN BY HIM OR HER WOULD
 HAVE MATERIALLY AFFECTED HIS OR HER
 SETTLEMENT WITH THE DEBTOR OR
 RELEASED PARTY.

1 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
2 which she now knows or believes to exist, but she expressly agrees to fully, finally and forever
3 settle and release any and all claims against the Released Parties, known or unknown, suspected
4 or unsuspected, which exist or may exist against Released Parties at the time of execution of
5 this Agreement, including, but not limited to, any and all claims relating to or arising from
6 Plaintiff's employment with Defendant. The Parties further acknowledge, understand and
7 agree that this representation and commitment is essential to the Agreement and that this
8 Agreement would not have been entered into were it not for this representation and
9 commitment.

10 60. Release by All Settlement Class Members. Plaintiff and all Class Members who
11 do not submit a valid and timely Request for Exclusion, on behalf of himself or herself, his or
12 her heirs, descendants, dependents, executors, administrators, assigns, and successors, fully and
13 finally release and discharge the Released Parties from any and all of the Released Claims for
14 the entirety of the Class Period. This waiver and release will be final and binding on the
15 Effective Date, and will have every preclusive effect permitted by law. Plaintiff and the
16 Settlement Class Members may hereafter discover facts or legal arguments in addition to or
17 different from those they now know or currently believe to be true with respect to the Released
18 Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the
19 scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the
20 Settlement Class Members shall be deemed to have, and by operation of the final judgment
21 approved by the Court, shall have, fully, finally, and forever settled and released all of the
22 Released Claims. The parties understand and specifically agree that the scope of the release
23 described in this Paragraph: is a material part of the consideration for this Agreement; was
24 critical in justifying the agreed upon economic value of this settlement and without it
25 Defendant would not have agreed to the consideration provided; and is narrowly drafted and
26 necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of
27 claims that were or could have been alleged based on the facts, causes of action, and legal
28 theories contained in the operative complaint in the Action.

1 61. Exhibits Incorporated by Reference. The terms of this Settlement Agreement
2 include the terms set forth in any attached Exhibits, which are incorporated by reference as
3 though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of
4 the Settlement.

5 62. Publicity Agreement. Plaintiff and Class Counsel agree not to disclose or
6 publicize the Settlement, including the fact of the Settlement, its terms or contents, and the
7 negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any
8 person or entity, except potential class members and as shall be contractually required to
9 effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff
10 and Class Counsel agree not to issue press releases, communicate with, or respond to any
11 media or publication entities, publish information in manner or form, whether printed or
12 electronic, on any medium or otherwise communicate, whether by print, video, recording or
13 any other medium, with any person or entity concerning the Settlement, including the fact of
14 the Settlement, its terms or contents and the negotiations underlying the Settlement, except as
15 shall be contractually required to effectuate the terms of the Settlement. However, for the
16 limited purpose of allowing Plaintiff’s Counsel to prove adequacy as class counsel in other
17 actions for the limited purpose of showing to the court that the case has settled, Plaintiff’s
18 Counsel may disclose the name of the Parties in this action and the venue/case number of this
19 action (but not any other settlement details) for such purposes.

20 63. No Unalleged Claims. Plaintiff and Class Counsel represent that they are not
21 currently aware of any: (a) unalleged claims in addition to, or different from, those which are
22 finally and forever settled and released against the Released Parties by this Settlement; and (b)
23 unalleged facts or legal theories upon which any claims or causes of action could be brought
24 against Defendant, except such facts and theories specifically alleged in the operative
25 complaints in this Action. Plaintiff and Plaintiff’s Counsel will further represent that, other than
26 the instant Action, they have no current intention of asserting any other claims against
27 Defendant in any judicial or administrative forum and do not currently know of or represent
28 any persons who have expressed any interest in pursuing litigation or seeking any recovery

1 against Defendant. The Parties acknowledge, understand and agree that the representations
2 described in this paragraph are essential to the Settlement Agreement and that this Settlement
3 Agreement would not have been entered into were it not for this representation.

4 64. Defendant's Option to Revoke Settlement. If, after the Response Deadline, the
5 number of Settlement Class Members who submitted timely and valid written requests for
6 exclusion from the Settlement is at least ten percent (10%) of all 110 Settlement Class
7 Members, Defendant shall have, in its sole discretion, the option to terminate this Settlement.
8 If Defendant exercises the option to terminate this Settlement, Defendant shall: (a) provide
9 written notice to Class Counsel within seven (7) calendar days after the Response Deadline and
10 (b) pay all Settlement Administration Costs incurred up to the date or as a result of the
11 termination, and the Parties shall proceed in all respects as if this Settlement Agreement had not
12 been executed.

13 65. Entire Agreement. This Settlement Agreement and any attached Exhibits
14 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
15 written or oral agreements may be deemed binding on the Parties.

16 66. Amendment or Modification. This Settlement Agreement may be amended or
17 modified only by a written instrument signed by counsel for all Parties or their successors-in-
18 interest.

19 67. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
20 warrant and represent they are expressly authorized by the Parties whom they represent to
21 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
22 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
23 execute any other documents required to effectuate the terms of this Settlement Agreement. The
24 Parties and their counsel will cooperate with each other and use their best efforts to effect the
25 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
26 content of any document needed to implement the Settlement, or on any supplemental
27 provisions that may become necessary to effectuate the terms of this Settlement, the Parties
28 may seek the assistance of the Court to resolve such disagreement.

1 68. Binding on Successors and Assigns. This Settlement Agreement will be binding
2 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
3 defined.

4 69. California Law Governs. All terms of this Settlement Agreement and Exhibits
5 hereto will be governed by and interpreted according to the laws of the State of California.

6 70. Execution and Counterparts. This Settlement Agreement is subject only to the
7 execution of all Parties. However, the Settlement may be executed in one or more counterparts.
8 All executed counterparts and each of them, including facsimile and scanned copies of the
9 signature page, will be deemed to be one and the same instrument provided that counsel for the
10 Parties will exchange among themselves original signed counterparts.

11 71. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
12 believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action
13 and have arrived at this Settlement after arm's-length negotiations and in the context of
14 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
15 further acknowledge that they are each represented by competent counsel and that they have
16 had an opportunity to consult with their counsel regarding the fairness and reasonableness of
17 this Settlement. In addition, the Mediator may execute a declaration supporting the Settlement
18 and the reasonableness of the Settlement and the Court may, in its discretion, contact the
19 Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and
20 reasonable

21 72. Invalidity of Any Provision. Before declaring any provision of this Settlement
22 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
23 extent possible consistent with applicable precedents so as to define all provisions of this
24 Settlement Agreement valid and enforceable.

25 73. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate
26 to class certification for purposes of this Settlement only; except, however, that Plaintiff or
27 Class Counsel may appeal any reduction in Attorneys' Fees and Costs below the amount they
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1 request from the Court, and either party may appeal any court order that materially alters the
2 Settlement Agreement's terms.

3 74. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
4 dispute that has arisen between them and to avoid the burden, expense and risk of continued
5 litigation. In entering into this Settlement, Defendant does not admit, and specifically denies,
6 that it violated any federal, state, or local law; violated any regulations or guidelines
7 promulgated pursuant to any statute or any other applicable laws, regulations or legal
8 requirements; breached any contract; violated or breached any duty; engaged in any
9 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
10 employees. Neither this Settlement, nor any of its terms or provisions, nor any of the
11 negotiations connected with it, will be construed as an admission or concession by Defendant
12 of any such violations or failures to comply with any applicable law. Except as necessary in a
13 proceeding to enforce the terms of this Settlement, this Settlement and its terms and provisions
14 will not be offered or received as evidence in any action or proceeding to establish any liability
15 or admission on the part of Defendant or to establish the existence of any condition constituting
16 a violation of, or a non-compliance with, federal, state, local or other applicable law.

17 75. Waiver. No waiver of any condition or covenant contained in this Settlement or
18 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
19 constitute a further waiver by such party of the same or any other condition, covenant, right or
20 remedy.

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

27 77. Mutual Preparation. The Parties have had a full opportunity to negotiate the
28 terms and conditions of this Settlement. Accordingly, this Settlement Agreement will not be

1 construed more strictly against one party than another merely by virtue of the fact that it may
2 have been prepared by counsel for one of the Parties. It being recognized that, because of the
3 arms-length negotiations between the Parties, all Parties have contributed to the preparation of
4 this Settlement Agreement.

5 78. Representation By Counsel. The Parties acknowledge that they have been
6 represented by counsel throughout all negotiations that preceded the execution of this
7 Settlement Agreement, and that this Settlement Agreement has been executed with the consent
8 and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are
9 no liens on the Settlement Agreement.

10 79. All Terms Subject to Final Court Approval. All amounts and procedures
11 described in this Settlement Agreement herein will be subject to final Court approval.

12 80. Cooperation and Execution of Necessary Documents. All Parties will cooperate
13 in good faith and execute all documents to the extent reasonably necessary to effectuate the
14 terms of this Settlement Agreement.

15 81. Binding Agreement. The Parties warrant that they understand and have full
16 authority to enter into this Settlement, and further intend that this Settlement will be fully
17 enforceable and binding on all parties, and agree that it will be admissible and subject to
18 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
19 provisions that otherwise might apply under federal or state law.

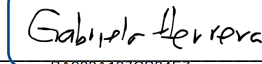
20 **SO AGREED AND STIPULATED**

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23 **[SIGNATURES ON NEXT PAGE]**
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PLAINTIFF

Dated: 12/4/2020

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Gabriella Herrera


DEFENDANT

Dated: _____

By:
Title:

DAVID YEREMIAN & ASSOCIATES, INC.

DATED: 12/4/2020

By 

David Yeremian
Jason Rothman
Attorneys for Plaintiff Gabriella Herrera and
all others similarly situated

LANDEGGER BARON LAW GROUP,
ALC

DATED: _____

By _____
Marie D. Davis
Attorneys for Defendant, Pomona Quality
Foam, LLC

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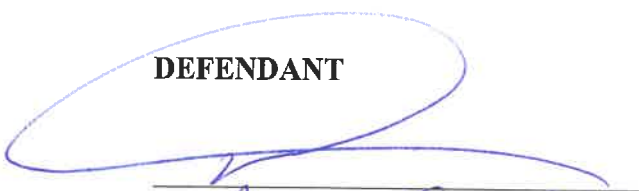
PLAINTIFF

Dated: _____

Gabriella Herrera

DEFENDANT

Dated: 12/3/2020



By: Wilton Cruz
Title: CRO


DAVID YEREMIAN & ASSOCIATES, INC.

DATED: _____

By _____
David Yeremian
Jason Rothman
Attorneys for Plaintiff Gabriella Herrera and
all others similarly situated

LANDEGGER BARON LAW GROUP,
ALC

DATED: 12.3.20


By _____
Marie D. Davis
Attorneys for Defendant, Pomona Quality
Foam, LLC