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 13 situated

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 23 **PREMIERE RELOCATIONS SERVICES, INC.**, a California corporation dba **CUMMINGS**
 24 **MOVING CO.**

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 26 **FOR THE COUNTY OF SAN MATEO**

27 JUAN LARA, as an individual and on
 28 behalf of all employees similarly situated,

Plaintiff,

v.

PREMIERE RELOCATIONS SERVICES,
 INC. dba CUMMINGS MOVING CO., and
 DOES 1 through 50, inclusive,

Defendant.

Case No. 19CIV02396

CLASS ACTION

**JOINT STIPULATION OF CLASS
 ACTION SETTLEMENT AND RELEASE**

Assigned for all purposes to:
 Hon. Marie S. Weiner, Dept.: 2

Complaint Filed: April 30, 2019
 Trial Date: None Yet Set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 IT IS HEREBY STIPULATED, by and among Plaintiff JUAN LARA, on behalf of himself and
3 the Settlement Class Members on the one hand, and Defendant PREMIERE RELOCATIONS
4 SERVICES, INC., a California corporation dba CUMMINGS MOVING COMPANY, and
5 subject to the approval of the Court, that the above-captioned action is hereby being compromised
6 and settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class Action
7 Settlement and Release (the “**Settlement**” or the “**Agreement**”).

8 **1. DEFINITIONS**

9 Capitalized terms used in this Settlement shall have the meanings set forth below:

10 1.1. “**Action**” means the lawsuit entitled *Juan Lara v. Premiere Relocations Services,*
11 *Inc. dba Cummings Moving Co.*, and DOES 1 through 50, pending in the Superior Court of the
12 State of California, County of San Mateo, and designated as Case No. 19CIV02396.

13 1.2. “**Claims Administrator**” means Phoenix Settlement Administrators.

14 1.3. “**Claims Administration Costs**” means the amount to be paid to the third-party
15 Claims Administrator from the Gross Settlement Amount for the administration of the Settlement.
16 The Claims Administration Costs amount is not to exceed Fifteen Thousand Dollars (\$15,000.00).
17 Any portion of the requested Claims Administration Costs that is not awarded to the Claims
18 Administrator shall be part of the Net Settlement Amount.

19 1.4. “**Class Counsel**” means Kevin Mahoney, Anna Salusky Mahoney, and Berkeh
20 Alemzadeh of the Mahoney Law Group, APC.

21 1.5. “**Class Counsel Award**” means reasonable attorneys’ fees for Class Counsel’s
22 litigation and resolution of this Action in a maximum amount of one hundred thousand dollars
23 (\$100,000.00) (1/3rd of the Gross Settlement Amount). The Court shall determine the amount of
24 the Class Counsel Award, and it shall be paid from the Gross Settlement Amount. Any portion
25 of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the
26 Net Settlement Amount.

27 1.6. “**Class Counsel Costs**” means expenses incurred by Class Counsel for Class
28 Counsel’s litigation and resolution of this Action, not to exceed Fifteen Thousand Dollars

1 (\$15,000.00). The Court shall determine the amount of the Class Counsel Costs, and it shall be
2 paid from the Gross Settlement Amount. Any portion of the requested Class Counsel Costs that
3 is not awarded to Class Counsel shall be part of the Net Settlement Amount.

4 1.7. **“Class Information”** means information regarding Settlement Class Members
5 that Defendant Premiere Relocations Services, Inc. dba Cummings Moving Co., will in good faith
6 compile from its records and provide to the Claims Administrator. Class Information shall be
7 provided as a Microsoft Excel spreadsheet or similar document form, and shall include: each
8 Settlement Class Member’s full name; last known address; last known home telephone number;
9 social security number; start and end dates of employment during the Class Period, and the total
10 number of days each Settlement Class Member worked for Defendant Premiere Relocations
11 Services, Inc. dba Cummings Moving Co., during the Class Period. Because social security
12 numbers are included in the Class Information, the Claims Administrator shall maintain the Class
13 Information in confidence; access shall be limited to those with a need to use the Class
14 Information as part of the administration of the Settlement; and transmission shall be through use
15 of a secure, password-protected file.

16 1.8. **“Class Period”** means the period from April 30, 2015 through and including the
17 Preliminary Approval Date.

18 1.9. **“Class Representative Enhancement Award”** means the amount that the Court
19 authorizes to be paid to Plaintiff, not to exceed Five-Thousand Dollars (\$5000.00) for Plaintiff
20 Juan Lara, in addition to his Individual Settlement Payment, in recognition of Plaintiff’s efforts
21 and risks in assisting with the prosecution of the Action. The Class Representative Enhancement
22 Award shall be paid from the Gross Settlement Amount. Any portion of the requested Class
23 Representative Enhancement Award that is not awarded to Plaintiff Juan Lara shall be part of the
24 Net Settlement Amount.

25 1.10. **“Court”** means the Superior Court of the State of California for the County of
26 San Mateo.

27 1.11. **“Defendant”** means Premiere Relocations Services, Inc. dba Cummings Moving
28 Co., and all of its current and former parents, owners, subsidiaries, predecessors and successors,

1 and each of their respective officers, directors, partners, shareholders and agents, and any other
2 successors, assigns, or legal representatives.

3 1.12. “**Defense Counsel**” means Denis Kenny and John B. Lough, Jr. of Scherer Smith
4 & Kenny LLP.

5 1.13. “**Effective Date**” means the date that the Gross Settlement Amount is fully funded.

6 1.14. “**Employee Taxes**” means the employee’s share of any and all applicable federal,
7 state, and local payroll taxes on the portion of Participating Class Members’ Individual
8 Settlement Payment that constitutes wages. The Employee Taxes will be paid out of the Net
9 Settlement Amount.

10 1.15. “**Employer Taxes**” means the employer’s share of any and all applicable federal,
11 state, and local payroll taxes on the portion of Participating Class Members’ Individual
12 Settlement Payment that constitutes wages. The Employer Taxes will be paid by Defendant
13 Premiere Relocations Services, Inc. dba Cummings Moving Co., and not out of the Gross
14 Settlement Amount or Net Settlement Amount.

15 1.16. “**Final Approval Hearing**” means the hearing held on the motion for final
16 approval of the Settlement.

17 1.17. “**Final Approval Date**” means the date which the Court grants final approval of
18 the Settlement.

19 1.18. “**Final Judgment**” means the Court’s entry of an order of judgment in this Action
20 following the Court’s final approval of the Settlement.

21 1.19. “**Gross Settlement Amount**” means the maximum amount Defendant shall have
22 to pay in connection with this Settlement, by way of a common fund, which shall be inclusive
23 of all Individual Settlement Payments to Participating Class Members, Class Counsel Award,
24 Class Counsel Costs, Claims Administrator Costs, Class Representative Enhancement Award,
25 and PAGA Allocation. Subject to Court approval and the terms of this Settlement, the Gross
26 Settlement Amount Defendant shall be required to pay is Three Hundred Thousand Dollars
27 (\$300,000.00). No portion of the Gross Settlement Amount will revert to Defendant, and the
28 Settlement does not require Participating Class Members to submit claims as a prerequisite to

1 receiving their Individual Settlement Payment. This settlement sum is based on Defendant
2 Premiere Relocations Services, Inc. dba Cummings Moving Co.'s representation that the class
3 size is one hundred thirty-six (136) individuals from April 30, 2015 to November 18, 2019.
4 Defendant shall not be required to pay more than the Gross Settlement Amount as long as the
5 class size does not increase by more than two and one-tenth (2.10) percent. Should the class size
6 increase by more than two and one-tenth (2.10) percent, the Gross Settlement Amount shall
7 increase proportionately — e.g., if the class size increases by two and four-tenths (2.40) percent,
8 the Gross Settlement Amount shall also increase by two and four-tenths (2.40) percent; if the
9 class size increases by ten (10) percent, the Gross Settlement Amount shall also increase by ten
10 (10) percent, and so forth. Under no other circumstances shall Defendant be required to pay more
11 than the Gross Settlement Amount except as provided for in this Settlement.

12 1.20. “**Individual Settlement Payment**” means the amount payable to each
13 Participating Class Member, as calculated pursuant to Paragraph 3.22 of the Settlement, from the
14 Net Settlement Amount. Checks for Individual Settlement Payments will specifically indicate that
15 they are void if not negotiated within one hundred eight (180) days of their issuance.

16 1.21. “**PAGA Allocation**” means Five Thousand Dollars (\$5,000.00), allocated from
17 the Gross Settlement Amount for the compromise of claims for civil penalties brought under the
18 Labor Code Private Attorneys General Act of 2004 (“**PAGA**”). Per California Labor Code section
19 2699(i), Three Thousand Seven Hundred Fifty Dollars (\$3,750.00), representing 75% of the
20 PAGA Allocation, will be paid to California’s Labor Workforce Development Agency. The
21 remaining One Thousand Two Hundred Fifty Dollars (\$1,250.00), representing 25% of the PAGA
22 Allocation, shall be part of the Net Settlement Amount to be distributed to Participating Class
23 Members.

24 1.22. “**LWDA PAGA Allocation**” means Three Thousand Seven Hundred Fifty Dollars
25 (\$3,750.00), representing 75% of the PAGA Allocation, and is the amount payable from the Gross
26 Settlement Amount to California’s Labor Workforce Development Agency.

27 1.23. “**Net Settlement Amount**” means the Gross Settlement Amount, less the Class
28 Counsel Award, the Class Counsel Costs, the Class Representative Enhancement, the Claims

1 Administration Costs, and the LWDA PAGA Allocation. The Net Settlement Amount shall be
2 distributed in its entirety to Participating Class Members.

3 1.24. **“Notice of Objection”** means a written statement of objection to the Settlement
4 made and signed by a Settlement Class Member and includes the following: (1) the full name of
5 the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3)
6 the last four (4) digits of the Settlement Class Member’s Social Security number and/or the
7 Employee ID number; (4) the basis for the objection; and, (5) whether the Settlement Class
8 Member intends to appear at the Final Approval Hearing.

9 1.25. **“Notice of Settlement”** means the Notice of Proposed Class Action Settlement
10 (substantially in the form attached hereto as **Exhibit “A”**).

11 1.26. **“Notice Packet”** means the Notice of Proposed Class Action Settlement and the
12 Request for Exclusion.

13 1.27. **“Participating Class Members”** means all Settlement Class Members who do not
14 submit a valid and timely Request for Exclusion.

15 1.28. **“Parties”** means Plaintiff and Defendant collectively, and **“Party”** shall mean any
16 Plaintiff or any Defendant, individually.

17 1.29. **“Plaintiff”** means Juan Lara.

18 1.30. **“Plaintiff’s General Released Claims”** means, in addition to the releases made
19 by Participating Class Members, Plaintiff, on behalf of himself, his heirs, successors, assigns, and
20 estates, in exchange for the terms and conditions of this Agreement, including the Class
21 Representative Enhancement Award requested or as otherwise authorized by the Court, shall also,
22 as of the Effective Date, fully and forever release the Released Parties, to the full extent permitted
23 by law, of and from any and all claims, demands, damages, losses, actions, disputes, controversies,
24 rights, promises, debts, obligations, liabilities, causes of action, suits, costs, expenses, judgments,
25 liens, orders, agreements, loss of services, expenses (including, but not limited to, attorneys’ fees
26 and costs), and compensation of whatever kind or nature, in law or in equity, whether known or
27 unknown, past or present, suspected or unsuspected, matured or unmatured, fixed or contingent,
28 apparent or concealed, based on any act, omission, event, occurrence, or nonoccurrence from the

1 beginning of time to the Effective Date. The type of claims that Plaintiff is releasing under this
2 Settlement, include without limitation claims that Defendant: (A) Discriminated against, retaliated
3 against, or harassed Plaintiff on the basis of age, race, color, sex, national origin, ancestry,
4 disability, religion, marital status, parental status, sexual orientation, gender, gender expression,
5 veteran status, entitlement to benefits, or any other characteristic protected by any applicable local,
6 state, federal, or international law, ordinance or regulation, including but not limited to the
7 California Fair Employment and Housing Act, the California Unruh Act, Title VII of the Civil
8 Rights Act of 1964, as amended, the Civil Rights Act of 1966, the Civil Rights Act of 1971, the
9 Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in
10 Employment Act, the Older Workers Benefit Protection Act, the California Constitution, the
11 California Labor Code, the California Government Code, and the California Civil Code; (B)
12 Violated public policy or common law, including but not limited to claims for retaliatory discharge,
13 negligent hiring or supervision, severance pay, breach of contract, wrongful termination, personal
14 injury, invasion of privacy, defamation, intentional infliction of emotional distress, negligent
15 infliction of emotional distress, adverse employment/personnel action, intentional interference
16 with contract, negligence, detrimental reliance, concealment, fraud, misrepresentation, and/or
17 promissory estoppel or any other common law tort, battery or contract causes of action; and (C)
18 Violated any other applicable international, federal, state or local law, ordinance or regulation,
19 including but not limited to any claim for wages and/or penalties under the California Labor Code,
20 the Fair Labor Standards Act, claim to entitlement to any pay, claim to attorneys' fees and/or costs
21 incurred, wrongful denial of disability benefits or retirement benefits, the Employee Retirement
22 Income Security Act, the National Labor Relations Act, the Industrial Welfare Commission, the
23 Family Medical Leave Act, the California Family Rights Act, California Business & Professions
24 Code section 17200, and the Worker Adjustment and Retraining Notification Act. This release
25 does not become effective until the "effective date" had occurred as defined in 1.13.

26 1.31. **"Preliminary Approval Date"** means the date the Court enters the Preliminary
27 Approval Order for the Settlement.

28 1.32. **"Preliminary Approval Order"** means the Proposed Order (filed concurrently

1 with this Settlement) for preliminary approval of the Settlement.

2 1.33. “**Released Claims**” means any and all claims arising from the facts alleged in the
3 Action, including all wage and hour claims for unpaid wages including minimum wage
4 payments, failure to pay wages during employment, failure to pay overtime, meal and rest break
5 violations, wage statement violations, reimbursement, restitution, disgorgement, conversion,
6 unjust enrichment, civil and statutory penalties, interests, liquidated damages, attorneys’ fees and
7 costs, claims under California Labor Code sections 201-203, 204, 223, 226, 226.7, 510, 512,
8 558.1, 1194, 1194.2, 1197, 2698-2699.5 (“**Private Attorney General Act**” or “**PAGA**”), 2802,
9 Industrial Welfare Commission Wage Order No. 9, and claims under California Business &
10 Professions Code sections 17200-17204.

11 It is understood and agreed that, with the exception of Plaintiff’s Release General Claims,
12 Released Claims **do not** include claims for workers compensation, unemployment, or disability
13 benefits of any nature, nor any claims, actions, or causes of action which may be possessed by
14 Settlement Class Members under state or federal discrimination statutes, including, without
15 limitation, the Cal. Fair Employment and Housing Act, the Cal. Government Code § 12940, et
16 seq.; the Unruh Civil Rights Act, the Cal. Civil Code § 51, et seq.; the California Constitution;
17 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.; the Americans with
18 Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee Retirement Income
19 Security Act of 1974, as amended, 29 U.S.C. § 1001, et seq.; and all of their implementing
20 regulations and interpretive guidelines.

21 1.34. “**Released Parties**” means Defendant Premiere Relocations Services, Inc. dba
22 Cummings Moving Co., and all of its current, former, and future parents, owners, subsidiaries,
23 predecessors and successors, each of their respective officers, directors, partners, shareholders
24 and agents, and any other successors, assigns, or legal representatives, and any other individual
25 or entity which could be jointly liable with any of the following.

26 1.35. “**Request for Exclusion**” means the Request for Exclusion form (substantially in
27 the form attached hereto as **Exhibit B**).

28 1.36. “**Response Deadline**” means the date forty-five (45) days after the Claims

1 Administrator mails Notice Packets to Settlement Class Members, and shall be the last date on
2 which Settlement Class Members may: (a) postmark Requests for Exclusion from the Settlement,
3 or (b) postmark Objections to the Settlement.

4 1.37. “**Settlement**” means this Joint Stipulation of Class Action Settlement and Release.

5 1.38. “**Settlement Class Member(s)**” or “**Settlement Class**” means all non-exempt
6 employees, currently and formerly employed by Defendant Premiere Relocations Services, Inc.
7 dba Cummings Moving Co. (“**CUMMINGS**”) in the State of California during the Class Period,
8 who were or are California residents.

9 **2. RECITALS**

10 2.1. Class Certification. The Parties stipulate and agree to the certification of this
11 Action for purposes of this Settlement only. Should the Settlement not become final and effective,
12 class certification shall immediately be set aside (subject to further proceedings on motion of any
13 party to certify or deny certification thereafter). The Parties’ willingness to stipulate to class
14 certification as part of the Settlement shall have no bearing on and shall not be admissible in or
15 considered in connection with, the issue of whether a class should be certified in a non-settlement
16 context in this Action, and shall have no bearing on and shall not be admissible or considered in
17 connection with the issue of whether a class should be certified in any other lawsuit.

18 2.2. Procedural History. On April 30, 2019, Plaintiff Juan Lara, a former employee of
19 Defendant Premiere Relocations Services, Inc. dba Cummings Moving Co., filed the Action in
20 the Superior Court of California for the County of San Mateo as a proposed class action on behalf
21 of all current and former non-exempt California employees of Defendant Premiere Relocations
22 Services, Inc. dba Cummings Moving Co., during the period of April 30, 2015 through the date
23 of final judgment. Plaintiff Lara alleged that Defendant Premiere Relocations Services, Inc. dba
24 Cummings Moving Co., (1) failed to pay all wages, including overtime wages, (2) failed to
25 provide meal periods; (3) failed to provide rest periods; (4) failed to provide accurate itemized
26 wage statements; (5) failed to pay wages upon termination of employment; (6) failed to reimburse
27 for necessary business expenditures; and (7) engaged in unfair business practices. Plaintiff Lara
28 sought recovery under the California Labor Code, the applicable Industrial Welfare Commission

1 Wage Order, and the California Business & Professions Code. On or about July 24, 2019, Plaintiff
2 Lara filed his First Amended Complaint, adding a cause of action for the violation of the Private
3 Attorney's General Act ("**PAGA**").

4 2.3. Settlement Negotiations. On November 18, 2019, the Parties participated in a
5 private mediation session with mediator Alan Berkowitz Esq., a well-respected, experienced
6 mediator in the field of wage and hour class actions. Prior to the mediation, Class Counsel
7 conducted extensive informal discovery and investigation during the prosecution of the Class
8 Action. The informal discovery and investigation included, among other things: (1) inspection
9 and analysis of employee documents and data, including Plaintiff's personnel file, time and
10 payroll records for all current and former nonexempt employees, employment policies and
11 procedures, and other relevant documents; (2) evaluation of legal positions taken by Defendant;
12 (3) evaluation of potential class-wide damages and PAGA penalties; and (4) review and research
13 of applicable law with respect to the claims and potential defenses brought by Defendant. Class
14 Counsel has vigorously prosecuted this Class Action, and Defendant has vigorously defended it.
15 The Parties have engaged in sufficient discovery and investigation to assess the relative merits of
16 the claims and contentions of the Parties. The mediation session involved robust discussions of
17 risk and rewards of continued litigation and several offers and counter-offers. Based on this
18 information and the settlement discussions during the mediation conducted at arm's length and
19 settlement discussions, the Parties came to an agreement on November 18, 2019. The settlement
20 is the result of an informed and detailed evaluation of the potential liability of total exposure in
21 relation to the costs and risks associated with continued litigation of the Class Action.

22 2.4. Benefits of Settlement to Settlement Class Members. Plaintiff and Class Counsel
23 recognize the length of continued proceedings necessary to litigate their disputes through
24 certification, trial, and any possible appeal. Plaintiff and Class Counsel have also taken into
25 account the uncertainty and risk of the outcome of further litigation, the difficulties and delays
26 inherent in such litigation, including, but not limited to, the risks related to a contested motion for
27 class certification, and the risks related to liability raised by the issues in this case. Plaintiff and
28 Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims

1 asserted in the Action and the difficulties in establishing damages for the Settlement Class
2 Members. Plaintiff and Class Counsel have also taken into account Defendant's agreement to
3 enter into a settlement that confers substantial relief upon Settlement Class Members. Based on
4 the foregoing, Plaintiff and Class Counsel have determined that this Settlement is a fair, adequate,
5 and reasonable, and is in the best interests of the Settlement Class Members.

6 2.5. Defendant's Denial of Wrongdoing and Liability and Reasons for Settlement.

7 Defendant contends that the Settlement Class Members were properly and timely paid all wages
8 owed, including, but not limited to, all straight time and overtime, were properly reimbursed, and
9 were provided meal and rest periods as required under California law. However, Defendant has
10 concluded that any further defense of this litigation would be protracted and expensive for all
11 Parties. Substantial amounts of time, energy and resources of Defendant have been and, unless
12 this Settlement is made, will continue to be devoted to the defense of the claims asserted by
13 Plaintiff and Settlement Class Members. Defendant has also taken into account the risks of further
14 litigation in reaching their decision to enter into this Settlement. Nonetheless, without admitting
15 or conceding that class certification, collective action certification, or representative treatment is
16 appropriate for any purpose other than settlement, Defendant has concluded that further
17 proceedings in the Action would be protracted and expensive and that it is desirable that the
18 Action be fully and finally settled in the manner and upon the terms and conditions set forth in
19 this Settlement in order to dispose of burdensome and protracted litigation, to permit the operation
20 of Defendant's business without further expensive litigation and the distraction and diversion of
21 its personnel with respect to matters at issue in the Action. Defendant has also taken into account
22 the uncertainty and risks inherent in any litigation, especially in complex cases such as this
23 Action. Defendant has therefore determined that it is desirable and beneficial to them that the
24 Action be settled in the manner and upon the terms and conditions set forth in this Settlement.

25 2.6. No Admissions. The Parties understand and agree that this Settlement is the result
26 of a good faith compromise of disputed claims and allegations, and Defendant is entering into
27 this Settlement Agreement solely to resolve doubtful and disputed matters. No part of this
28 Settlement Agreement or any conduct or written or oral statements made in connection with this

1 Settlement, whether or not the Settlement Agreement is finally approved and/or consummated,
2 may be offered as or construed to be an admission or concession of any kind by either of any of
3 the Parties. In particular, but without limiting the generality of the foregoing, nothing about this
4 Settlement or Settlement Agreement shall be offered or construed as an admission that
5 Defendant has violated any of their obligations under the California Labor Code, or of liability
6 in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever on the part of
7 Defendant and/or Released Parties. In addition, this Settlement Agreement shall not be offered
8 or be admissible in evidence against any of the Parties or any of the Released Parties, except in
9 any action or proceeding brought by or against Plaintiff, the Class, Class Members, or Defendant
10 to enforce its terms, or by Defendant in defense of any claims brought by Plaintiff, the Class, or
11 Class Members. The provision of this paragraph shall become effective when this Settlement is
12 signed and shall be binding on the Parties and their counsel regardless of whether the Settlement
13 Agreement is preliminarily and/or finally approved or terminated for any reason, or rendered
14 null and void.

15 2.7. Settlement Class Members' Claims. Plaintiff claims that the Released Claims
16 have merit and give rise to liability on the part of Defendants. This Settlement is a compromise
17 of disputed claims. Nothing contained in this Settlement and no documents referred to herein,
18 nor any action taken to carry out this Settlement may be construed or used as an admission by
19 or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the
20 claims asserted.

21 2.8. Defendants' Defenses. Defendant has denied and continues to deny each and all
22 of the allegations, claims, and contentions alleged by Plaintiff in the Action. Defendant has
23 expressly denied and continues to deny all charges of wrongdoing or liability against them
24 arising out of any of the conduct, statements, acts, or omissions alleged in the Action. Defendant
25 contends that it complied in good faith with California and federal wage-and-hour laws and has
26 dealt legally and fairly with Plaintiff and Settlement Class Members. Defendant further denies
27 that, for any purpose other than settling this Action, these claims are appropriate for class or
28 representative treatment.

1 2.9. Gross Amount Payable by Defendant. Under the terms of this Settlement, the
2 gross amount payable by Defendant shall not exceed the Gross Settlement Amount of Three
3 Hundred Thousand Dollars (\$300,000.00), except as provided in this Settlement at ¶ 1.19 herein
4 above.

5 **3. TERMS OF SETTLEMENT**

6 The Parties agree as follows:

7 3.1. Binding Settlement. This Settlement shall bind the Parties and all Participating
8 Class Members, subject to the terms and conditions hereof and the Court’s approval.

9 3.2. Release As To Plaintiff and All Settlement Class Members.

10 3.2.1. Release As To All Settlement Class Members. As of the Effective Date, all
11 Settlement Class Members, including Plaintiff, who do not opt out of the Settlement, will be
12 deemed to have fully, finally and forever released, settled, compromised, relinquished, and
13 discharged the Released Parties from the Released Claims for the period of April 30, 2015 to the
14 Preliminary Approval Date.

15 3.2.2. Release As To Plaintiff. As of the Effective Date, Plaintiff will be deemed
16 to have fully, finally and forever released, settled, compromised, relinquished, and discharged
17 any and all of Plaintiff’s General Released Claims against the Released Parties. With respect to
18 the Plaintiff’s General Released Claims only, Plaintiff shall be deemed to have, and by operation
19 of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent
20 permitted by law, the provisions, rights, and benefits of section 1542 of the California *Civil Code*,
21 or any other similar provision under federal or state law, which section provides (bold and all
22 caps):
23

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

DEBTOR OR RELEASED PARTY.

1
2 Plaintiff may hereafter discover facts in addition to or different from those he now knows
3 or believes to be true with respect to the subject matter of the Plaintiff's General Released Claims,
4 but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment
5 shall have, fully, finally, and forever settled and released any and all of the Plaintiff's General
6 Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-
7 contingent, which now exist, or heretofore have existed, upon any theory of law or equity now
8 existing or coming into existence in the future, including, but not limited to, conduct that is
9 negligent, intentional, with or without malice or a breach of any duty, law or rule, without regard
10 to the subsequent discovery or existence of such different or additional facts. Plaintiff agrees not
11 to sue or otherwise make a claim against any of the Released Parties for Plaintiff's General
12 Released Claims.

13
14 3.3. Tax Liability. The Parties understand and agree that the Parties are not providing
15 tax or legal advice. Defendant CUMMINGS is responsible for any Employer Taxes. These
16 payments shall not be made from the Gross Settlement Amount or the Net Settlement Amount.
17 Participating Class Members will remain responsible for any Employee Taxes. Participating
18 Class Members will assume any employee tax obligations or consequences that may arise from
19 this Settlement and should consult with a tax expert if they have questions. However, Individual
20 Settlement Payments will be allocated as follows: thirty percent (30%) as wages (a W-2 will be
21 issued) and seventy percent (70%) as interest and penalties (a 1099 will be issued). Any required
22 payroll deductions will be based on this apportionment. The Parties agree that, in the event that
23 any taxing body determines that additional employee taxes are due from any Participating Class
24 Member, such Participating Class Member assumes all responsibility for the payment of such
25 taxes.

26 3.4. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision
27 of this Settlement, and no written communication or disclosure between or among the Parties,
28 Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall any

1 such communication or disclosure constitute or be construed or be relied upon as, tax advice
2 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
3 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
4 independent legal and tax counsel for advice (including tax advice) in connection with this
5 Settlement, (b) has not entered into this Settlement based upon the recommendation of any other
6 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
7 communication or disclosure by any attorney or advisor to any other party to avoid any tax
8 penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any
9 other party has imposed any limitation that protects the confidentiality of any such attorney's or
10 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure
11 by the acknowledging party of the tax treatment or tax structure of any transaction, including
12 any transaction contemplated by this Settlement.

13
14 3.5. Settlement Approval and Implementation Procedures. As part of this Settlement,
15 the Parties agree to the following procedures for obtaining the Court's preliminary approval of
16 the Settlement, certifying the Settlement Class, notifying Settlement Class Members of the
17 Settlement, obtaining the Court's final approval of the Settlement, and processing the Individual
18 Settlement Payments.

19 3.6. Preliminary Approval and Certification. As soon as practicable after execution of
20 this Settlement, but no later than thirty (30) days, the Parties will jointly submit this Settlement
21 to the Court for its preliminary approval. Such submission will include this Settlement, the
22 proposed Notice Packet, the proposed Preliminary Approval Order, and any memoranda and
23 evidence as may be necessary for the Court to determine that this Settlement is fair, adequate,
24 and reasonable. The Parties agree to request the Court to enter an order conditionally certifying
25 the Settlement Class after the preliminary approval hearing, in accordance with California Rules
26 of Court, Rule 3.769(c).

27 3.7. Class Information. No more than fifteen (15) calendar days after the entry of the
28 Preliminary Approval Order, Defendant CUMMINGS, shall provide the Claims Administrator

1 with the Class Information for purposes of mailing Notice Packets to Settlement Class Members.

2 3.8. Notice by First Class U.S. Mail. Upon receipt of the Class Information, the Claims
3 Administrator will perform a search on the National Change of Address database to update the
4 Settlement Class Members' addresses. No more than ten (10) calendar days after receiving the
5 Class Information from Defendant CUMMINGS, as provided herein, the Claims Administrator
6 shall mail copies of the Notice Packet to all Settlement Class Members by regular First-Class
7 U.S. Mail. The Claims Administrator shall exercise its best judgment to determine the current
8 mailing address for each Settlement Class Member. The address identified by the Claims
9 Administrator as the current mailing address shall be presumed to be the best mailing address
10 for each Settlement Class Member. It will be conclusively presumed that if an envelope so
11 mailed has not been returned within twenty (20) days of the mailing that the Settlement Class
12 Member received the Notice Packet.

13
14 3.8.1. Proof of Mailing. At least fifteen (15) calendar days before the
15 Final Approval Hearing, the Claims Administrator shall provide a declaration of due diligence
16 and proof of mailing with regard to mailing of the Class Settlement Notice to Class Counsel and
17 Defense Counsel, which they shall in turn provide to the Court.

18 3.9. Undeliverable Notices. Any Notice Packets returned to the Claims Administrator
19 as undeliverable on or before the Response Deadline shall be re-mailed to the forwarding
20 address affixed thereto.

21 3.10. For each Settlement Class Member whose Notice Packet is returned, there will be
22 one (1) skip trace by the Claims Administrator. If an updated mailing address is identified, the
23 Claims Administrator shall resend the Notice Packet to the Settlement Class Member. One (1)
24 supplemental Notice Packet shall be mailed to each Settlement Class Member whose original
25 Notice Packet is returned as undeliverable to the Claims Administrator. Such re-mailing shall
26 be made within five (5) business days of the Claims Administrator receiving notice that the
27 respective Notice Packet was undeliverable. Any requests by the Claims Administrator for
28 documents or information from Defendant CUMMINGS must be responded to within a

1 reasonable amount of time by counsel for Defendant CUMMINGS. It is the intent of the Parties
2 that reasonable means be used to locate the Settlement Class Members and apprise them of their
3 rights.

4 3.11. Settlement Class Members to whom Notice Packets are resent after having been
5 returned undeliverable to the Claims Administrator shall have fourteen (14) calendar days
6 thereafter, or until the Response Deadline has expired, whichever is later, to mail the Request
7 for Exclusion or a Notice of Objection. Notice Packets that are resent shall inform the recipient
8 of this adjusted deadline. The date of the postmark on the return envelope shall be the exclusive
9 means used to determine whether a Settlement Class Member has returned his or her Request
10 for Exclusion on or before the adjusted deadline. It will be conclusively presumed that if an
11 envelope so mailed has not been returned within twenty (20) days of the mailing, that the
12 Settlement Class Member received the Notice Packet. If a Settlement Class Member's Notice
13 Packet is returned to the Claims Administrator more than once as undeliverable, then an
14 additional Notice Packet shall not be re-mailed.

15 3.12. Compliance with the procedures specified in paragraphs 3.8 through 3.11 of this
16 Settlement shall constitute due and sufficient notice to Settlement Class Members of this
17 Settlement and shall satisfy the requirement of due process. Nothing else shall be required of,
18 or done by, the Parties, Class Counsel, and Defense Counsel to provide notice of the proposed
19 Settlement.

20 3.13. Disputes. Settlement Class Members will have the opportunity during the forty-
21 five (45) day response period, should they disagree with Defendant CUMMINGS' records
22 regarding their days worked during the Class Period, to provide documentation and/or an
23 explanation to show contrary days worked. If there is a dispute, the Claims Administrator will
24 consult with the Parties to determine whether an adjustment is warranted. The Claims
25 Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement
26 Payments under the terms of this Settlement. The Claims Administrator's determination of the
27 eligibility for and amount of any Individual Settlement Payment shall be binding upon the
28

1 Settlement Class Member and the Parties.

2 3.14. Exclusions (Opt-Outs). The Notice Packet shall state that Settlement Class
3 Members who wish to exclude themselves from the Settlement must submit a Request for
4 Exclusion by the Response Deadline. The Request for Exclusion: (1) must contain the name,
5 address, and the last four (4) digits of the Social Security number of the Settlement Class
6 Member requesting exclusion, (2) must state the reason for the exclusion, (3) must be signed by
7 the Settlement Class Member; and (4) must be postmarked by the Response Deadline and
8 returned to the Claims Administrator at the specified address. If the Request for Exclusion does
9 not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from this
10 Settlement. The date of the postmark on the return-mailing envelope shall be the exclusive
11 means used to determine whether a Request for Exclusion has been timely submitted. Any
12 Settlement Class Member who requests to be excluded from the Settlement will not be entitled
13 to any recovery under the Settlement and will not be bound by the terms of the Settlement.
14 Settlement Class Members who receive a Notice Packet, but fail to submit a valid and timely
15 Request for Exclusion on or before the Response Deadline shall be bound by all terms of the
16 Settlement and any Final Judgment entered in this Action if the Settlement is approved by the
17 Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
18 members of the Settlement Class to submit Requests for Exclusion from the Settlement. Class
19 Counsel shall not represent any Settlement Class Member with respect to any such Requests for
20 Exclusion. Settlement Class Members who submit a valid Request for Exclusion may not also
21 submit a Notice of Objection.

22
23 Within seven (7) calendar days after the Response Deadline, the Claims Administrator
24 shall notify Class and Defense Counsel of the number of timely Opt-Outs.

25 3.15. Objections. The Notice Packet shall state that Settlement Class Members who
26 wish to object to the Settlement must not submit a Request for Exclusion and must submit a
27 written statement of objection (“**Notice of Objection**”) by the Response Deadline to the Claims
28 Administrator. The Notice of Objection must be signed by the Settlement Class Member and

1 state: (1) the full name of the Settlement Class Member; (2) the dates of employment of the
2 Settlement Class Member; (3) the last four (4) digits of the Settlement Class Member's Social
3 Security number and/or the Employee ID number; (4) the basis for the objection; and, (5)
4 whether the Settlement Class Member intends to appear at the Final Approval Hearing. The
5 Notice of Objection must be postmarked by the Response Deadline and returned to the Claims
6 Administrator at the specified address.

7 Within five (5) days of receiving a Notice of Objection from a Settlement Class Member,
8 the Claims Administrator shall forward the Notice of Objection to Class Counsel and Defense
9 Counsel. The Parties will thereafter lodge the Settlement Class Member's Notice of Objection
10 with the Court. Settlement Class Members, regardless of whether or not they submit a timely
11 Notice of Objection, will have a right to appear at the Final Approval Hearing, with or without
12 an attorney, in order to have their objections heard by the Court. At no time shall any of the
13 Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to file
14 or serve written objections to the Settlement or appeal from the Final Judgment. Class Counsel
15 shall not represent any Settlement Class Members with respect to any such objections.
16

17 Within seven (7) calendar days after the Response Deadline, the Claims Administrator
18 shall notify Class and Defense Counsel of the number of timely Notice of Objections.

19 3.16. Plaintiff's Participation. By executing this Settlement, Plaintiff hereby stipulates
20 he will not object to or exclude himself from the Settlement in anyway.

21 3.17. No Solicitation of Settlement Objections or Exclusions. The Parties and their
22 counsel agree to use their best efforts to carry out the terms of this Settlement. At no time shall
23 any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class
24 Members to submit either written objections to the Settlement or Requests for Exclusion from
25 the Settlement, or to appeal from the Court's Final Judgment.

26 3.18. Funding of the Gross Settlement Amount. This is a non-reversionary Settlement
27 in which Defendant is required to pay the entire Gross Settlement Amount. No portion of the
28 Gross Settlement Amount will revert to Defendants. Defendant CUMMINGS is separately and

1 solely responsible for any employer payroll taxes owed as a result of the Settlement. The
2 funding schedule is as follows:

- 3 • By no later than twenty (20) calendar days after the Final Approval Date, CUMMINGS,
4 shall provide to the Claims Administrator the first of three (3) installment payments in
5 the amount of one hundred thousand dollars (\$100,000.00)
- 6 • By no later than one year after the Final Approval Date, Defendant CUMMINGS shall
7 provide to the Claims Administrator the second of three installment payments in the
8 amount of one hundred thousand dollars (\$100,000.00).

9 3.19. By no later than eighteen (18) months after the Final Approval Date, Defendant
10 CUMMINGS, shall provide to the Claims Administrator the third and final installment payment
11 in the amount of one hundred thousand dollars (\$100,000.00). No payments from the Gross
12 Settlement Amount shall be made before the Gross Settlement Amount is fully funded. The
13 release(s) in this Settlement shall be effective as of the Effective Date, but if the Gross
14 Settlement Amount does not become fully funded, an opportunity to cure has lapsed, and the
15 dispute resolution procedure provided in this Agreement has been exhausted, the release(s) shall
16 be deemed rescinded. All Defendants are jointly and severally liable for the full funding of the
17 Gross Settlement Amount. If Defendant defaults, Plaintiff and all Participating Class Members
18 will be able to pursue all claims, and the Settlement becomes null and void.

19 3.20. No more than five (5) business days after the Gross Settlement Amount is fully
20 funded, the Claims Administrator will provide the Parties with an accounting of all anticipated
21 payments from the Gross Settlement Amount. The Net Settlement Amount shall be calculated
22 by deducting from the Gross Settlement Amount payments for (1) Class Representative
23 Enhancement Awards, as specified in this Settlement and approved by the Court; (2) Class
24 Counsel Award, as specified in this Settlement and approved by the Court; (3) Class Counsel
25 Costs, as specified in this Settlement and approved by the Court; (4) Claims Administration
26 Costs, as specified in this Settlement and approved by the Court; and (5) the LWDA PAGA
27 Allocation, as specified in this Settlement and approved by the Court. The Net Settlement
28

1 Amount shall be distributed in Individual Settlement Payments in accordance with Paragraphs
2 3.21 to 3.22.

3 3.21. Individual Settlement Payments. Each Participating Class Member shall be
4 eligible to receive an Individual Settlement Payment, which is a share of the Net Settlement
5 Amount, based on the number of days worked by the Participating Class Member during the
6 Class Period, as a proportion of all days worked by all Participating Class Members during the
7 Class Period. Individual Settlement Payments shall be paid pursuant to the formula set forth in
8 Paragraph 3.22 below. Individual Settlement Payments shall be mailed by regular First-Class
9 U.S. Mail to Participating Class Members' last known mailing address no later than fifteen (15)
10 calendar days after the Gross Settlement Amount is fully funded. Individual Settlement
11 Payments will specifically indicate that they are void if not negotiated within one hundred eight
12 (180) days of their issuance. Individual Settlement Payments reflect settlement of a dispute
13 regarding wages, interest, and penalties. Individual Settlement Payments will be allocated as
14 follows: thirty percent (30%) as wages; and seventy percent (70%) as interest and penalties. The
15 "wage" portion of each Individual Settlement Payment will be reduced by any Employee Taxes.
16 The Claims Administrator shall issue the appropriate tax documents associated with the
17 Individual Settlement Payments, including an IRS Form W-2 for the amounts allocated as
18 "wages" and an IRS Form 1099 for the amounts allocated as "interest" or "penalties."

19
20 3.22. Individual Settlement Payment Formula. After deducting the Class Counsel
21 Award and Class Counsel Costs, the LWDA PAGA Allocation, Class Representative
22 Enhancement Awards, and Claims Administration Costs, the remaining funds (the "**Net**
23 **Settlement Amount**"), will be distributed as follows: The Claims Administrator shall divide
24 the Net Settlement Amount by the total number of workdays Participating Class Members
25 worked during the Class Period in order to determine the amount each Participating Class
26 Member is entitled to for each workday he or she was employed by Defendant CUMMINGS
27 (the "**Daily Amount**"). The Claims Administrator will multiply the Daily Amount by the
28 estimated total number of workdays that each Participating Class Member worked during the

1 Class Period. The product of each calculation represents the gross Individual Settlement
2 Payment for the respective Participating Class Member. The Claims Administrator will then
3 deduct Employee Taxes attributable to wages to arrive at the net Individual Settlement Payment
4 for each respective Class Member. Within fifteen (15) calendar days after Preliminary
5 Approval, Defendant CUMMINGS, shall provide the Claims Administrator with any
6 information reasonably necessary to perform the calculation of number of workdays for each
7 Settlement Class Member, and any other reasonably required information the Claims
8 Administrator requests to perform the calculations required under this Settlement. Defendant
9 shall have no responsibility for deciding the validity of any Individual Settlement Payment or
10 any other payments made pursuant to this Settlement, shall have no involvement in or
11 responsibility for the determination or payment of Employee Taxes, and shall have no liability
12 for any errors made with respect to such Employee Taxes.

13
14 3.23. Settlement Class Members are not eligible to receive any compensation other than
15 the Individual Settlement Payment, and they may only receive an Individual Settlement Payment
16 if they do not submit a valid and timely Request for Exclusion to opt out of the Settlement.
17 Plaintiff, however, is also eligible to receive the Class Representative Enhancement Award.

18 3.24. No benefit, including but not limited to pension benefits, shall increase or accrue
19 as a result of any payment made pursuant to this Settlement.

20 3.25. Remaining Undeliverable or Uncashed Checks. If a check for an Individual
21 Settlement Payment is returned to the Claims Administrator as undeliverable, the Claims
22 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip
23 trace search. If another address is identified, the Claims Administrator shall mail the check to
24 the newly identified address. If an Individual Settlement Payment check is returned to the Claims
25 Administrator a second time as undeliverable, the Claims Administrator shall not attempt any
26 further re-mailing of that check. Any settlement checks that remain uncashed one hundred eighty
27 (180) or more calendar days after issuance shall be voided. The Claims Administrator shall
28 forward all voided settlement checks to the California State Controller's Office's Unclaimed

1 Property Division. The Claims Administrator shall also compile a list of the Participating Class
2 Members for whom their funds were deposited with the California State Controller's Office's
3 Unclaimed Property Division. In such event, the Participating Class Member shall nevertheless
4 remain bound by the Settlement. The Parties agree that good cause exists for the Court to
5 approve this distribution because the unclaimed funds are unclaimed wages of employees that
6 will be held by the State of California for the benefit of these employees, who may request
7 receipt of payment from the California State Controller's Office's Unclaimed Property Division.

8 3.26. Class Representative Enhancement Award. Defendant agrees not to oppose or
9 object to any application or motion by Plaintiff for a Class Representative Enhancement Award,
10 not to exceed Five Thousand Dollars (\$5,000.00) for Plaintiff Juan Lara, as consideration for
11 Plaintiff's time and effort in bringing and prosecuting this matter. The Class Representative
12 Enhancement Award shall be paid to Plaintiff from the Gross Settlement Amount no later than
13 fifteen (15) calendar days after the Gross Settlement Amount is fully funded. The Claims
14 Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Class Representative
15 Enhancement Award. Plaintiff shall be solely and legally responsible for payment of all
16 applicable taxes on the Class Representative Enhancement Award and shall hold Defendant
17 harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Class
18 Representative Enhancement Award. The Class Representative Enhancement Award shall be
19 in addition to Plaintiff's Individual Settlement Payment as a Participating Class Member. In the
20 event that the Court awards lesser amounts than the Class Representative Enhancement Award
21 requested, then any portion of the requested amounts not awarded to Plaintiff shall be added to
22 the Net Settlement Amount. Plaintiff shall not have the right to revoke his agreement to the
23 Settlement on the grounds the Court did not approve any or all of his request for a Class
24 Representative Enhancement Award.
25

26 3.27. Class Counsel Award and Costs. Defendant agrees not to oppose or object to any
27 application or motion by Class Counsel for a Class Counsel Award not to exceed one hundred
28 thousand dollars (\$100,000.00) and Class Counsel Costs not to exceed fifteen Thousand Dollars

1 (\$15,000.00) from the Gross Settlement Amount. The Class Counsel Award and Class Counsel
2 Costs shall be paid no later than fifteen (15) calendar days after the Gross Settlement Amount
3 is fully funded. Class Counsel shall be solely and legally responsible to pay all applicable taxes
4 on the payments made pursuant to this paragraph. The Claims Administrator shall issue an IRS
5 Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. This
6 Settlement is not contingent upon the Court awarding Class Counsel any particular amount in
7 attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Award
8 and Class Counsel Costs and not granted by the Court shall be part of the Net Settlement
9 Amount.

10 3.28. PAGA Allocation. Subject to Court approval, the Parties shall allocate a total of
11 Five Thousand Dollars (\$5,000.00) from the Gross Settlement Amount for the compromise of
12 claims for civil penalties brought under the PAGA (the "**PAGA Allocation**"). Per California
13 Labor Code section 2699(i), Three Thousand Seven Hundred Fifty Dollars (\$3,750.00),
14 representing 75% of the PAGA Allocation, will be paid to California's Labor Workforce
15 Development Agency. The remaining One Thousand Two Hundred Fifty Dollars (\$1,250.00),
16 representing 25% of the PAGA Allocation, shall be part of the Net Settlement Amount to be
17 distributed to Participating Class Members.

18 3.29. LWDA PAGA Allocation. The LWDA PAGA Allocation shall be Three
19 Thousand Seven Hundred Fifty Dollars (\$3,750.00), representing 75% of the PAGA Allocation,
20 and shall be paid to California's Labor Workforce Development Agency from the Gross
21 Settlement Amount by the Claims Administrator no later than fifteen (15) calendar days after
22 the Gross Settlement Amount is fully funded. The remaining One Thousand Two Hundred Fifty
23 Dollars (\$1,250.00), representing 25% of the PAGA Allocation, shall be part of the Net
24 Settlement Amount for distribution to Participating Class Members.

25 3.30. Notice of Settlement of PAGA Claims. Pursuant to Labor Code § 2699(l), Class
26 Counsel shall notify the Labor and Workforce Development Agency of this proposed
27 Agreement and any judgment including a copy of the court's judgment's in this Action and any
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1 other order that denies or approves any PAGA settlement.

2 3.31. Defendant's Option to Terminate Settlement. If, after the Response Deadline and
3 before the Final Approval Hearing, five percent (5%) or more of the number of Settlement Class
4 Members submit timely and valid Requests for Exclusion from the Settlement, Defendant
5 CUMMINGS shall have, in its sole discretion, the option to terminate this Settlement. Defendant
6 CUMMINGS shall exercise its option to terminate, if it wishes, prior to the Final Approval
7 Hearing. If Defendant CUMMINGS decides to void the Settlement, then the Settlement and
8 conditional class certification shall be considered void, and neither the Settlement, conditional
9 class certification, nor any of the related negotiations or proceedings, shall be of any force or
10 effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement
11 had been neither entered into nor filed with the Court. Should Defendant CUMMINGS void the
12 Settlement under this paragraph, it shall be responsible for all Claims Administration Costs.

13 3.32. Claims Administration Costs. The Claims Administrator shall be paid for the costs
14 of administration of the Settlement from the Gross Settlement Amount. Such costs of
15 administration are not to exceed Fifteen Thousand Dollars (\$15,000.00), unless the court
16 approves a higher amount. No fewer than twenty (20) days prior to the Final Approval Hearing,
17 the Claims Administrator shall provide the Parties with a statement detailing the costs of
18 administration. The Claims Administrator, on Defendants' behalf, shall have the authority and
19 obligation to make payments, credits and disbursements, including payments and credits in the
20 manner set forth in this Settlement, to Participating Class Members, calculated in accordance
21 with the methodology set out in this Settlement and orders of the Court. The Parties agree to
22 cooperate in the administration of the Settlement and to make all reasonable efforts to control
23 and minimize the costs and expenses incurred in administration of the Settlement. The Parties
24 each represent they do not have any financial interest in the Claims Administrator or otherwise
25 have a relationship with the Claims Administrator that could create a conflict of interest. The
26 Claims Administrator shall be responsible for: processing and mailing all court-approved
27 payments to the Plaintiff, Class Counsel, Participating Class Members, and the LWDA; printing
28

1 and mailing the Notice Packets to the Settlement Class Members as called for in this Settlement
2 and ordered by the Court; receiving and reporting Notice of Objections and Requests for
3 Exclusion submitted by Settlement Class Members; providing declaration(s) as necessary in
4 support of preliminary and/or final approval of this Settlement; and other tasks as the Parties
5 mutually agree or the Court orders the Claims Administrator to perform. The Claims
6 Administrator shall keep the Parties timely apprised of the performance of all Claims
7 Administrator responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other
8 tax documents required by administration of this Settlement shall be prepared by the Claims
9 Administrator. Any expenses incurred in connection with such preparation shall be Claims
10 Administration Costs. The Claims Administrator shall be paid the Claims Administration Costs
11 no later than fifteen (15) calendar days after the Gross Settlement Amount is fully funded.

12 3.33. Final Approval. On the date set forth for the Final Approval Hearing in the Order
13 granting preliminary approval of the Settlement, a Final Approval Hearing shall be held before
14 the Court in order to consider and determine whether (i) the Court should give this Settlement
15 final approval; (ii) Class Counsel’s application for attorneys’ fees and costs and Class
16 Representative Enhancement Award should be granted; and (iii) any timely objections made
17 and all responses by Class Counsel and Defense Counsel to such objections have any merit. At
18 the Final Approval Hearing, Plaintiff, Class Counsel, and Defense Counsel shall ask the Court
19 to give final approval of this Settlement. Upon final approval, the Court shall enter a Judgment
20 in accordance with this Settlement, pursuant to California Rules of Court 3.769(h) as to Plaintiff
21 and all Settlement Class Members who did not opt-out of this Settlement pursuant to its terms.
22 If the Court grants final approval to the Settlement, notice of Final Approval shall be posted on
23 the Claims Administrator’s website, at www.phoenixclassaction.com.

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1 3.34. Summary of Estimated Distribution.

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Proposed Distribution	Distribution of Gross Settlement Fund of \$300,000.00
Net Settlement Amount (30% as wages (IRS form W-2 will be issued); 70% as interest and penalties (IRS form 1099 will be issued)).	Minimum excluding the 25% of Civil Penalty Fund: \$160,000.00 .
PAGA Allocation	\$5,000.00 where (i) 75% of the Civil Penalty Fund (\$3,750.00) goes to the Labor and Workforce Development Agency and (ii) 25% of the Civil Penalty Fund (\$1,250.00).
Class Representative Enhancement Award	Amount not to exceed \$5,000.00 .
Class Administrator Costs	Amount not to exceed \$15,000.00
Class Counsel Award (that is, Attorneys' Fees to Class Counsel)	Amount not to exceed \$100,000.00 (or one-third of the Gross Settlement Fund).
Class Counsel Costs	Amount not to exceed \$15,000.00 .

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20 3.35. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Participating

21 Class Members pursuant to this Settlement will not count as earnings or compensation for

22 purposes of any benefits (e.g., pensions or retirement plans) sponsored by Defendants. It is

23 expressly understood and agreed that the receipt of Individual Settlement Amount shall not

24 entitle any Participating Class Member to additional compensation or benefits under any

25 collective bargaining agreement or under any bonus, contest or other compensation or benefit

26 plan or agreement in place during the period covered by the Settlement, nor shall it entitle any

27 Participating Class Member to any increased pension and/or retirement, or other deferred

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1 compensation benefits. It is the intent of the Parties that Individual Settlement Amounts
2 provided for in this Stipulation are the sole payments to be made by Defendant to Participating
3 Class Members in connection with this Settlement, with the exception of Plaintiff's receipt of a
4 Class Representative Enhancement Award, and that the Participating Class Members are not
5 entitled to any new or additional compensation or benefits as a result of having received the
6 Individual Settlement Awards. Furthermore, the receipt of Individual Settlement Amounts by
7 Participating Class Members shall not, and does not, by itself establish any general, special, or
8 joint employment relationship between and among the Participating Class Member(s) and
9 Defendants.

10 3.36. Nullification of Settlement. In the event: (i) the Court does not enter the
11 Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of
12 the Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided
13 herein; or (iv) the Settlement does not become final for any other reason, this Settlement shall
14 be null and void and any order or judgment entered by the Court in furtherance of this Settlement
15 shall be treated as void from the beginning. In such a case, the Parties and any funds to be
16 awarded under this Settlement shall be returned to their respective statuses as of the date and
17 time immediately prior to the execution of this Settlement, and the Parties shall proceed in all
18 respects as if this Settlement had not been executed, except that any costs and fees already
19 incurred by the Claims Administrator shall be paid by Defendant CUMMINGS. In the event an
20 appeal is filed from the Court's Final Judgment, or any other appellate review is sought,
21 administration of the Settlement shall be stayed pending final resolution of the appeal or other
22 appellate review, but any fees incurred by the Claims Administrator prior to it being notified of
23 the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be
24 paid to the Claims Administrator by Defendant CUMMINGS within thirty (30) days of said
25 notification.
26

27 3.37. No Admission by the Parties. Defendant denies any and all claims alleged in this
28 Action and deny all wrongdoing whatsoever. This Settlement is not a concession or admission,

1 and shall not be used against Defendant as an admission or indication, with respect to any claim,
2 of any fault, concession, or omission by Defendant. Neither this Settlement, nor any of its terms
3 and conditions, nor any of the negotiations connected with it, is a concession or admission, and
4 none shall be used against Defendant as an admission or indication with respect to any claim of
5 any fault, concession, or omission by Defendant or that class certification is proper under the
6 standard applied to contested certification motions. The Parties stipulate and agree to the
7 certification of the proposed class for settlement purposes only. The Parties further agree that
8 this Settlement will not be admissible in this or any other proceeding as evidence that either: (i)
9 a class action should be certified or (ii) Defendant is liable to Plaintiff or any Class Member,
10 other than according to the terms of this Settlement.

11 3.38. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
12 the interpretation, calculation or payment of settlement claims, or other disputes regarding
13 compliance with this Settlement shall be resolved as follows:
14

15 3.39. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
16 Members, or Defendant, at any time believe that the other Party or Parties have breached or
17 acted contrary to the Settlement, that Party shall notify the other Party or Parties in writing of
18 the alleged violation. Upon receiving notice of the alleged violation or dispute, the responding
19 Party shall have ten (10) days to correct the alleged violation and/or respond to the initiating
20 Party with the reasons why the Party disputes all or part of the allegation.

21 3.39.1. If the response does not address the alleged violation to the initiating
22 Party's satisfaction, the Parties shall negotiate in good faith for up to ten
23 (10) days to resolve their differences.

24 3.39.2. If thereafter, the Parties still cannot resolve the dispute, the Parties shall
25 utilize the services of Alan Berkowitz, Esq. (Mediator) in a good-faith
26 attempt to mediate and resolve the dispute.

27 3.39.3. If the Parties are unable to resolve their differences after twenty (20)
28 days, either Party may file an appropriate motion for enforcement with

1 the Court.

2 3.40. Exhibits and Headings. The terms of this Settlement include the terms set forth in
3 Exhibits A and B, which are attached to this Settlement and incorporated by this reference as
4 though fully set forth in this paragraph. Any Exhibits to this Settlement are an integral part of
5 the Settlement. The descriptive headings of any paragraphs or sections of this Settlement are
6 inserted for convenience of reference only and do not constitute a part of this Settlement.

7 3.41. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
8 Action and thereafter implement and complete the Settlement.

9 3.42. Amendment or Modification. This Settlement may be amended or modified only
10 by a written instrument signed by all the Parties and counsel for all Parties or their successors-
11 in-interest.

12 3.43. Entire Settlement. This Settlement and any attached Exhibits constitute the entire
13 agreement among these Parties, and no oral or written representations, warranties or
14 inducements have been made to any Party concerning this Settlement or its exhibits, other than
15 the representations, warranties and covenants contained and memorialized in the Settlement and
16 its exhibits. No other prior or contemporaneous written or oral agreements may be deemed
17 binding on the Parties.

18 3.44. Authorization to Enter into Settlement. Counsel for all Parties warrant and
19 represent they are expressly authorized by the Parties whom they represent to negotiate this
20 Settlement and to take all appropriate actions required or permitted to be taken by such Parties
21 pursuant to this Settlement to effectuate its terms, and to execute any other documents required
22 to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each
23 other and use their best efforts to affect the implementation of the Settlement. In the event the
24 Parties are unable to reach agreement on the form or content of any document needed to
25 implement the Settlement, or on any supplemental provisions that may become necessary to
26 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
27 such disagreement. The person signing this Settlement on behalf of Defendant CUMMINGS
28

1 represents and warrants that he or she is authorized to sign this Settlement on behalf of
 2 Defendant CUMMINGS. Plaintiff Juan Lara represents and warrants that he is authorized to
 3 sign this Settlement and that he has not assigned any claim, or part of a claim, covered by this
 4 Settlement to a third-party.

5 3.45. Binding on Successors and Assigns. This Settlement shall be binding upon, and
 6 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

7 3.46. No Prior Assignments. The Parties and their counsel represent, covenant, and
 8 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
 9 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
 10 demand, action, cause of action or right herein released and discharged.

11 3.47. California Law Governs. All terms of this Settlement and the exhibits hereto shall
 12 be governed by and interpreted according to the laws of the State of California.

13 3.48. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
 14 Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
 15 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
 16 present and potential.

17 3.49. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h),
 18 the Parties agree that the Court shall retain jurisdiction with respect to the interpretation,
 19 implementation, and enforcement of the terms of this Settlement and all orders and judgments
 20 entered in connection therewith, and the Parties and their counsel hereto submit to the
 21 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this
 22 Settlement and all orders and judgments entered in connection therewith.

23 Subject to the Court's approval, the Parties will adhere to the following schedule:
 24

Event	Timing
Defendant deposits the full amount of the Claims Administrator's anticipated total costs	Within 10 calendar days after the Court enters Preliminary Approval Date.

<p>(up to \$15,000.00) with the Claims Administrator (to be returned to Defendant less any applicable administrator costs if no Final Approval Judgment is issued).</p>	
<p>Defendant provides class data (that is, each Class Member’s full name, last known mailing address, last known home telephone number, social security number, and information necessary for Claims Administrator to calculate the potential amount due to each Settlement Class Members: (a) start and end dates of employment during the Class Period and (b) total number of days each Settlement Class Member worked for Defendant.</p> <p><i>See also</i> ¶¶ 1.7, 1.8 (defining “Class Period” as “April 30, 2015 through and including the Preliminary Approval Date”).</p>	<p>Within 15 calendar days after Preliminary Approval Order (<i>see</i> ¶ 3.7) (“Receipt of Class Information”).</p>
<p>Claims Administrator mails Class Settlement Notice to Class Members.</p>	<p>Within 10 calendar days after Receipt of Class Information (<i>see</i> ¶ 3.8).</p>
<p>Response Deadline.</p>	<p>Within 45 calendar days after mailing of Class Settlement Notice by Claims Administrator (“Consideration Period”) (<i>see</i> ¶ 1.36).</p>
<p>Request for Exclusion or Objection Deadline.</p>	<p>Consideration Period.</p>
<p>Claims Administrator notifies Class and Defense Counsel of the number of timely Opt-Outs and Notice of Objections.</p>	<p>Within 7 calendar days after the Response Deadline (“Opt-Out Notification”) (<i>see</i> ¶¶ 3.14, 3.15).</p>

1 2 3 4 5 6	Defendant's deadline to elect to withdraw.	Election may occur anytime between Opt-Out Notification and before Final Approval Hearing (<i>see</i> ¶ 3.31).
7 8 9 10 11	Claims Administrator provides declaration of due diligence and proof of mailing of Class Settlement Notice.	Within 15 calendar days before Final Approval Hearing (<i>see</i> ¶ 3.8.1).
12 13 14 15 16	Final Approval Hearing	TBD
17 18 19 20 21 22 23 24	Defendant deposits the first of three (3) installment payments in the amount of \$100,000.00 to the Claims Administrator.	Within 20 calendar days of the Final Approval Date (<i>see</i> ¶ 3.18).
25 26 27 28	Defendant deposits the second of three (3) installment payments in the amount of \$100,000.00 to the Claims Administrator.	By no later than one (1) year after the Final Approval Date (<i>see</i> ¶ 3.18).
	Defendant deposits the final of three (3) installment payments in the amount of \$100,000.00 to the Claims Administrator.	By no later than eighteen (18) months after the Final Approval Date (“ Final Funding ”) (<i>see</i> ¶ 3.18).
	Claims Administrator provide Class and Defense Counsel with an accounting of all anticipated payments from the Gross Settlement Amount.	No more than five (5) business days after Final Funding (<i>see</i> ¶ 3.20).
	Class Counsel transmits instructions to the Claims Administrator about (1) how attorneys' fees and costs award shall be paid and (2) requiring the Claims Administrator to provide notice of the completion of the settlement distribution to the Court.	Within 10 calendar days of the Final Funding.
	Claims Administrator pays Class Counsel approved Class Counsel Award and Costs.	Within 15 calendar days of the Final Funding (<i>see</i> ¶ 3.27).

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Claims Administrator makes payments to Plaintiff and Settlement Class Members.	Within 15 calendar days of the Final Funding (see ¶¶ 3.21, 3.25, 3.26).
	Checks paid to Settlement Class Members as part of the initial distribution are valid for 180 days.	

3.50. Invalidity of Any Provision. Before declaring any provision of this Settlement invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent possible, consistent with applicable precedents.

3.51. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only.

3.52. Cooperation. The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may be reasonably necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Settlement and its terms.

3.53. Publicity. Plaintiff and Class Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the Action and/or the fact, amount, or terms of the Settlement. However, Class Counsel may refer to the settlement amount and the nature of the case without identifying any of the Parties. Before the date of the filing of the motion for preliminary approval of the Settlement, Plaintiff and Class Counsel will not initiate any contact with Settlement Class Members about the Settlement, except that: (a) Class Counsel, if contacted by a Settlement Class Member, may respond that a settlement has been reached and that the details will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by a Settlement Class Member, may respond only that the Settlement Class Member should contact Class Counsel. Neither Plaintiff nor Class Counsel shall hold a press conference

1 or otherwise seek to affirmatively contact the media about the Settlement. If contacted by the
2 media regarding the Settlement, Class Counsel shall state, "It is a fair settlement, and we are
3 happy with the results." Additionally, no Party or their counsel shall disparage the Settlement.

4 3.54. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
5 and conditions of this Settlement. Accordingly, this Settlement will not be construed more
6 strictly against one party than another merely by virtue of the fact that it may have been prepared
7 by counsel for one of the Parties, it being recognized that, because of the arm's-length
8 negotiations between the Parties, all Parties have contributed to the preparation of this
9 Settlement.

10 3.55. Representation by Counsel. The Parties acknowledge that they have been
11 represented by counsel throughout all negotiations that preceded the execution of this
12 Settlement, and that this Settlement has been executed with the consent and advice of counsel,
13 and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are
14 no liens on the Settlement Agreement.

15 3.56. All Terms Subject to Final Court Approval. All amounts and procedures described
16 in this Stipulation are subject to final Court approval.

17 3.57. Notices. Unless otherwise specifically provided, all notices, demands or other
18 communications in connection with this Settlement shall be: (1) in writing; (2) deemed given
19 on the third business day after mailing; and (3) sent via United States registered or certified mail,
20 return receipt requested, addressed as follows:
21

22 **To Plaintiff:**

23 Kevin Mahoney, Esq.
24 Anna Salusky Mahoney, Esq.
25 Berkeh Alemzadeh, Esq.
26 MAHONEY LAW GROUP
27 249 East Ocean Boulevard, Suite 814
28 Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

To Defendant:

Denis S. Kenny, Esq.
John B. Lough, Jr. Esq.
SCHERER SMITH & KENNY, LLP
140 Geary Street, Seventh Floor,
San Francisco, CA 91436
Telephone: (415) 433-1099
Facsimile: (415) 433-9434

1 3.58. Execution by Settlement Class Members. It is agreed that it is impossible or
2 impractical to have each Settlement Class Member execute this Settlement. The Notice of
3 Settlement will advise all Settlement Class Members of the binding nature of the release and
4 such shall have the same force and effect as if each Settlement Class Member executed this
5 Settlement.

6 3.59. Execution by Plaintiff and Defendant. Plaintiff and Defendant, by signing this
7 Settlement, are bound by the terms herein.

8 3.60. Fair, Adequate and Reasonable Settlement. The Parties hereto agree that the terms
9 and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations
10 between the Parties and that this Settlement shall not be construed in favor of or against any of
11 the Parties by reason of their participation in the drafting of this Settlement.

12 3.61. Binding Agreement. The Parties warrant that they understand and have full
13 authority to enter into this Settlement, and further intend that this Settlement will be fully
14 enforceable and binding on all Parties, and agree that it will be admissible and subject to
15 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
16 provisions that otherwise might apply under federal or state law.

17 3.62. Counterparts. This Settlement shall become effective upon its execution by all of
18 the undersigned. Plaintiff, Class Counsel, Defendant, and Defense Counsel may execute this
19 Settlement in counterparts, and execution of counterparts shall have the same force and effect
20 as if each had signed the same instrument. Counterparts may be delivered via facsimile,
21 electronic mail (including pdf or any electronic signature complying with the U.S. federal
22 ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method. Copies of the
23 executed Settlement shall be effective for all purposes as though the signatures contained therein
24 were original signatures.
25

26 ///

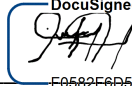
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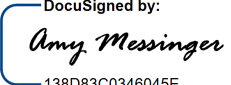
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SO AGREED AND STIPULATED:

Dated: 05/06/2020

DocuSigned by:

F0582F6D510E45B...
By: _____
Juan Lara, on behalf of himself, as Plaintiff
and the Class

Dated: 5/29/2020

DocuSigned by:

138D83C0346045E...
By: _____
Premiere Relocations Services, Inc., a
California corporation, dba Cummings
Moving Co.,
Defendant

Print Name: Amy Messinger
Title: CFO