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13  
14 Attorneys for Defendant  
SIMS GROUP USA CORPORATION  
15 (Erroneously sued as "SIMS METAL MANAGEMENT - NORTHWEST")

16  
17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19  
20 RICKY MANIER, JR., individually and on  
behalf of all others similarly situated,

21 Plaintiff,

22 vs.

23 SIMS METAL MANAGEMENT -  
NORTHWEST, an unknown corporate entity;  
24 and DOES 1 through 50, inclusive,

25 Defendants.  
26

Case No. 3:19-cv-00718-JST

**ADDENDUM TO STIPULATION OF  
SETTLEMENT AND PLAINTIFF'S  
REQUEST TO CERTIFY THE CLASS FOR  
PURPOSES OF SETTLEMENT ONLY**

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Attorneys for Plaintiff and the Class

1 Pursuant to Section 16.3 of the Stipulation of Settlement and Plaintiff's Request to  
2 Certify the Class for Purposes of Settlement Only ("Settlement Agreement") (Dkt. No. 42-7),  
3 which states as follows: "this Agreement may be amended or modified by a written instrument  
4 **signed by counsel** for all Parties or their successors-in-interest, subject to approval by the  
5 Court," Plaintiff Ricky Manier, Jr. ("Plaintiff") and Defendant Sims Group USA Corporation  
6 (erroneously sued as "Sims Metal Management – Northwest") ("Defendant") (collectively, the  
7 "Parties"), by and through their counsel of record, hereby amend the Settlement Agreement as  
8 follows:

- 9 • Section 1.3 of the Settlement Agreement is amended as follows: "[a]ll of  
10 Defendant's past and present California exempt and non-exempt employees who  
11 worked for Defendant and were paid wages by Defendant from January 3, 2018,  
12 through the date the Court grants Preliminary Approval, ~~and who are not~~  
13 ~~members of the Shift Differential Overtime Class~~ ('WAGE STATEMENT  
14 CLASS')."
- 15 • Section 1.20 of the Settlement Agreement is amended as follows: "'Timely  
16 Written Objection' means a written objection to the Settlement which complies  
17 with Section 6.2, and that is filed with the Court no later than ~~45~~ 60 days after the  
18 Claims Administrator mails the Notice of Preliminary Approval."
- 19 • Section 1.21 of the Settlement Agreement is amended as follows: "'Timely  
20 Written Request To Opt-Out' means a written request to opt-out of the  
21 Settlement, that complies with Section 6.3, and that is received by the Claims  
22 Administrator and post-marked no later than ~~45~~ 60 days after the Claims  
23 Administrator mails the Notice of Preliminary Approval."
- 24 • Section 6.1 of the Settlement Agreement is amended to add the following  
25 language: "For all re-mailed Notices of Preliminary Approval of the Settlement,  
26 Class Members shall have 45 days from the date of re-mailing, or 60 days from  
27 the First Mailing Date to opt-out or object, whichever is later."

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- Section 6.2 of the Settlement Agreement is amended as follows: “[a]ll objections to the Settlement must be filed with the Court no later than ~~45~~ 60 calendar days after the Claims Administrator’s First Mailing Date of the Notice of Preliminary Approval.”
  - Section 6.3 of the Settlement Agreement is amended as follows: “[t]o opt-out of the Settlement, a Class Member must provide the Claims Administrator with a Timely Written Request To Opt Out (i.e., must be postmarked no later than ~~45~~ 60 calendar days after the First Mailing Date). Within 10 days following the last day to opt out, the Claims Administrator shall provide to counsel for the Parties the names and addresses of those Class Members who have submitted timely opt-out requests. In order to be valid, a request to opt-out must state the Class Member name ~~and address~~, reference the case name and number: Manier v. Sims Metal Mgmt. Northwest, Case No. 4:19-cv-00718-JST, ~~contain the last four digits of his/her social security number~~, be dated and signed by the Class Member and be timely submitted to the Claims Administrator, and contain a written statement that the Class Member has reviewed the notice and wishes to be excluded from the settlement.
  - Section 8.3 of the Settlement Agreement is amended as follows: “[a]ny funds remaining uncashed after 180 days shall be ~~distributed in accordance with Section 384 of the California Code of Civil Procedure to Legal Services for Children~~ sent to the California State Controller’s Office in the name of the Class Member to whom the uncashed settlement payment check was addressed.
  - Section 11.1 of the Settlement Agreement is amended to add the following language: “Plaintiff’s counsel shall file with the Court and upload onto the Claims Administrator’s website Plaintiff’s motion for an award of attorneys’ fees, costs, and enhancement award by no later than 30 days after the First Mailing Date.

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Class Members shall then have 30 days to object to Plaintiff’s motion for an award of attorneys’ fees, costs, and enhancement award.”

Other than as set forth herein, the Parties understand and agree that all other terms and provisions set forth in the Settlement Agreement remain unchanged and are enforceable.

The Parties further have amended the Notice of Preliminary Approval, a redline and clean copy of which are attached hereto as Exhibits “A” and “B,” respectively.

IT IS SO STIPULATED.

Dated: December 11, 2020

NIXON PEABODY LLP

By: Bonnie Glatzer  
BONNIE GLATZER  
Attorneys for Defendant  
Sims Group USA Corporation

Dated:

DIVERSITY LAW GROUP, P.C.

By: [Signature]  
LARRY W. LEE  
Attorneys for Plaintiff  
Ricky Manier, Jr.

Dated:

POLARIS LAW GROUP LLP

By: William L. Marder  
WILLIAM L. MARDER  
Attorneys for Plaintiff  
Ricky Manier, Jr.

Dated:

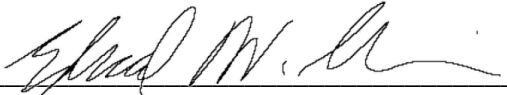
HYUN LEGAL, APC

By: [Signature]  
DENNIS S. HYUN  
Attorneys for Plaintiff  
Ricky Manier, Jr.

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Dated: December 9, 2020

LAW OFFICES OF CHOI & ASSOCIATES

By:   
EDWARD W. CHOI

Attorneys for Plaintiff  
Ricky Manier, Jr.

**EXHIBIT “A”**

## **NOTICE OF PENDENCY OF ACTION AND PROPOSED SETTLEMENT**

**If you worked for Sims Group USA Corporation (“Sims”) in California at any time between August 11, 2015 and [date of preliminary approval], you could receive money from a class action settlement.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been reached in a class action lawsuit that affects your rights.
- The settlement resolves a class action lawsuit against Sims alleging that Sims in some instances failed to: pay overtime based on a higher regular rate, and provide accurate paystubs, in violation of the California Labor Code. Sims denies any liability or wrongdoing of any kind in connection with the claims alleged, and contends that it has fully complied with the law, including paying the proper rate for all hours worked.
- The Court has not decided whether to finally approve the settlement. Payments will be made only after the Court approves the settlement and any appeals are resolved. Please be patient.
- The decision of whether to participate in, request to be excluded from, and/or object to the settlement is entirely yours. Sims will not retaliate against anyone for participating (or not participating) in the settlement.

<b>YOUR RIGHTS AND OPTIONS REGARDING THE SETTLEMENT</b>	
<b>DO NOTHING AND RECEIVE YOUR SHARE OF THE SETTLEMENT AWARD</b>	Do nothing. Automatically receive your settlement award. Release your claims against Sims. See section 11 below for more information about your settlement award. See section 14 below for more information about the release.
<b>REQUEST TO BE EXCLUDED FROM THE SETTLEMENT</b>	Ask to be excluded. Get no payment. Retain the right to file your own lawsuit for the same claims. See section 8 below.
<b>OBJECT TO THE TERMS OF THE SETTLEMENT</b>	File an objection that the settlement is unfair or inadequate. See section 9 below.

**Please read this notice carefully. It describes your rights, and the steps you have to take, if any, to receive money from the settlement or to exclude yourself from the settlement.**



## BASIC INFORMATION

### 1. What is this notice about?

A settlement has been reached in a class action lawsuit against Sims that affects your rights. This notice explains the lawsuit, the proposed settlement, your rights, what benefits are available and how to get them. Judge Jon S. Tigar of the United States District Court for the Northern District of California, who is overseeing this class action, ordered that you be sent this notice.

### 2. What is the case about?

This class action, known as *Ricky Manier, Jr. v. Sims Group USA Corp.*, Case No. 4:19-cv-00718-JST, alleges that Sims failed to: pay its workers overtime wages at a higher regular rate during weeks when workers also earned non-discretionary incentives, including “Shift Pay.” The lawsuit also alleges that Sims did not provide these workers accurate itemized pay stubs. The lawsuit alleges that these practices violated the California Labor Code and the California Unfair Business Practices Act.

Sims denies these allegations and contends that it has fully complied with the law, including legal requirements relating to paying all wages due at termination.

### 3. What is a class action?

In a class action, one or more people called “class representatives” (in this case the plaintiff, Ricky Manier, Jr.) sue on behalf of other people who they allege have similar claims. The people together are called a “class” and individually are “class members.” One court resolves the issues for everyone in the class—except for those people who choose to exclude themselves from the class.

### 4. Why is there a settlement?

After settlement negotiations and the exchange of information and documents, the class representative and Sims have agreed to settle this case rather than go to trial. The settlement represents a compromise of disputed claims and is not an admission by Sims or a finding by the Court that Sims violated the law. The parties and their attorneys believe the settlement is in the best interests of the class given the risks and expense of going to trial.

### 5. Am I part of this class?

In preliminarily approving the settlement, the Court defined the class as anyone who falls within either of the following groups: (a) All of Sims’ past and present non-exempt California employees who were paid shift pay and overtime in the same workweek at any time from August 11, 2015 through [the date the Court grants Preliminary Approval] (“Shift Differential Overtime Class”); and (b) All of Sims’ past and present California exempt and non-exempt employees who worked for Sims and were paid wages by Sims from January 3, 2018, through [the date the Court grants Preliminary Approval], ~~and who are not members of the Shift Differential Overtime Class~~ (“Wage Statement Class”). Employees who have not worked for Sims since they executed a general release of claims are not eligible to participate. Records indicate that you are a member of one of these classes. (If you have filed or want to file your own lawsuit and not be part of this settlement class, read Section 8 below).

## YOUR RIGHTS AND OPTIONS

### 6. What does the settlement provide?

Sims has agreed to pay a total of \$1,000,000 to settle the claims in this case, including the costs of administering the settlement (estimated to not exceed \$8,300), attorneys' fees up to \$300,000 as well as reasonable litigation expenses, and a "service award" to Plaintiff of up to \$10,000, all subject to the Court's approval. A "service award" is a payment authorized by the Court to the named plaintiff in a class action in recognition of the time, effort, and risks the class representative has taken to prosecute the class action. In the event that the Court awards less than the requested amounts, the difference will be made available for distribution as part of the settlement fund.

### 7. How do I participate in the settlement?

**You do not need to do anything to participate.** You will automatically receive a settlement payment and release claims against Sims unless you request to be excluded from the settlement.

### 8. How do I request to be excluded from the settlement?

If you wish to be excluded from the settlement, you must write the settlement administrator at the address specified below and request to be excluded. The settlement administrator is a third party appointed by the Court to send this notice, process and issue settlement checks, and otherwise administer the settlement. You may contact the settlement administrator to provide updated contact information, make corrections regarding your employment information, or ask questions regarding the processing of settlement awards. You may contact the settlement administrator at:

[address and phone number]

Your request to be excluded from the settlement must include: (1) your name, (2) ~~the last four digits of your social security number,~~ (3) ~~your address,~~ (4) your written statement that you have read this notice and request to be excluded from the Settlement, and (35) your dated signature. **To be effective, your request must be postmarked no later than <<date>>.**

If you do not complete and timely mail a valid request to be excluded from the settlement, you will be bound by all terms and conditions of the settlement, including its release of claims. If you do submit a timely and valid request to be excluded, you will not receive any money from the settlement, but you will retain the right to sue Sims separately about the same legal claims in this lawsuit.

### 9. May I object to the settlement?

You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement or change the terms of the settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. Please be advised that you may also object to the attorneys' fees and costs sought by Plaintiff's counsel. Plaintiff's counsel intends to file the motion for attorneys' fees, costs, and enhancement award by \*\*\*\*, 202\*. It will be available for review for free on \*\*\*\*, 202\*, at [http://www.\\*\\*\\*\\*\\*.com](http://www.*****.com).

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (Manier v. Sims Metal Mgmt. Northwest, Case No. 4:19-cv-00718-JST), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, [insert appropriate Court location here], or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before \_\_\_\_\_.”

~~If you believe the settlement is unfair or inadequate, you may object, personally or through an attorney, by either mailing a copy of your objection to Class Action Clerk, United States District Court for the Northern District of California, Oakland Division, 1301 Clay Street, Oakland, CA 94612, or by filing your objections in person at any location of the United States District Court for the Northern District of California.~~

Your objection must include: (1) the case name and number: *Manier v. Sims Metal Mgmt. Northwest*, Case No. 4:19-cv-00718-JST; (2) your name, (3) the grounds for the objection, (4) a statement of whether you intend to appear at the final approval hearing, (5) a list of any documents or witnesses that support the objection, and (6) a dated signature. Your objection must also state whether it applies only to you personally, to one of the Settlement Classes, or to the entire class. To be effective, your objection must be mailed or filed with the Court no later than <<date>>. Do not telephone the Court or Sims counsel. You cannot object to the settlement and exclude yourself from the settlement. If the Court rejects your objection, you will still be bound by the terms of the settlement and you will not be able to exclude yourself from the settlement.

#### **10. When will I receive my payment?**

Payments will be sent approximately 25 business days after the Court gives the settlement its final approval if no objections are filed. If any objections are filed or if any appeal is filed, payments will be delayed until the time to appeal has expired or any appeals are finally resolved in favor of the settlement. Please be patient.

#### **11. How will the Settlement Fund be distributed to Class Members?**

The amount remaining in the settlement fund after settlement administration costs and other Court-approved payments described above are deducted (the “Net Settlement Amount”) will be distributed to all participating class members as follows: 80% of the Net Settlement amount shall be allocated to the Shift Differential Overtime Class and 20% of the Net Settlement Amount shall be allocated to the Wage Statement Class.

As to the Shift Differential Overtime Class, the Claims Administrator will calculate the amount of each individual’s award based on the number of weeks worked during August 11, 2015 through [the date the Court grants Preliminary Approval] (“the Class Period”), as reflected by Defendant’s payroll data. Specifically, each Shift Differential Overtime Class Member’s Settlement Award will be calculated by multiplying the fraction x/y by the total of the Net Settlement Amount allocated to the Shift Differential Overtime Class, where “x” equals the total number of workweeks during the Class Period in which the Shift Differential Overtime Class Member was employed and receiving wages and “y” equals the total number of workweeks during the Class Period in which

all Shift Differential Overtime Class Members were employed and receiving wages during the Class Period. As to the Wage Statement Class, the Claims Administrator will calculate the amount of each individual's award based on the number of weeks worked between January 3, 2018, through [the date the Court grants Preliminary Approval], as reflected by Defendant's payroll data. Specifically, each Wage Statement Class Member's Settlement Award will be calculated by multiplying the fraction  $x/y$  by the total of the Net Settlement Amount allocated to the Wage Statement Class, where "x" equals the total number of workweeks between January 3, 2018, through [the date the Court grants Preliminary Approval] in which the Wage Statement Class Member was employed and receiving wages and "y" equals the total number of workweeks between January 3, 2018, through [the date the Court grants Preliminary Approval] in which all Wage Statement Class Members were employed and receiving wages between January 3, 2018, through [the date the Court grants Preliminary Approval]. Checks will be valid for 180 days. Upon expiration of the 180-day period, your money will be sent to the California State Controller's Office's Unclaimed Property Fund and held in your name.

According to Sims' records, you are a member of [Shift Differential Overtime Class or Wage Statement Class] and worked a total of \_\_\_ workweeks during the applicable period. **If this information is incorrect and you wish to correct it, you must submit a signed, written statement explaining why you dispute this information.** Attach copies (not originals) of any relevant documents supporting your dispute. You must mail the signed and completed statement to the settlement administrator at the address provided above in section 8 no later than <<date>>. **If your signed and completed statement is not postmarked by this date, you will not be able to dispute the calculation of your Settlement Share.** After consultation with you, Class Counsel, and Sims, the settlement administrator will make a final determination that will be binding on you and Sims that you will not be able to appeal. All determinations by the settlement administrator in calculating any individual award shall be final.

**Based on the records supplied to the settlement administrator, your estimated settlement share is \$\_\_\_\_\_.** Please note that this amount may change depending on various factors, including the number of class members who request to be excluded from the settlement.

**12. What happens if there is money left in the settlement fund?**

Any money remaining after all payments are made under the settlement agreement (for example, if any settlement checks are not cashed within the appropriate timeframe) will be paid to Legal Services for Children.

**13. Will I have to pay taxes on my award?**

The Shift Differential Overtime Class' Settlement Awards shall be deemed to consist of 1/3 back wages, subject to normal payroll withholding, 1/3 interest, and 1/3 penalties. The Wage Statement Class' Settlement Awards shall be deemed 1/2 penalties and 1/2 interest. You should consult a tax professional for more information about your own specific situation.

## RELEASE OF CLAIMS

### 14. What claims are being released as part of the settlement?

Upon final approval of the settlement by the Court, and except as to such rights or claims as may be created by the settlement agreement, each class member will release Sims as follows:

For the Shift Differential Overtime Class: Any and all claims that accrued during the Class Period for the payment of unpaid overtime wages, including but not limited to, penalties (including, without limitation, penalties for alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 510, 558, 1194 and 2698, *et seq.*), interest, costs, attorneys' fees, restitution, unjust enrichment, compensatory damages, liquidated damages, injunctive relief, and any other remedies available at law or equity for wages allegedly owed to Plaintiff and with respect to the Class Members only to the extent that such claims were asserted or could have been asserted in the Litigation based upon the facts alleged in the First Amended Complaint ("FAC") in this Litigation. The claims being waived include any and all claims, rights, demands or causes of action, that were brought or could have been brought in the Litigation on behalf of the Plaintiff and all members of the Settlement Class upon the facts alleged in the FAC under any state or local statutory or common law, including, but not limited to, California Labor Code §§ 201-203, 226, 226.3, 510, 558, and 1194, 1194.2, as well as the Private Attorneys General Act or "PAGA" (Labor Code § 2698, *et seq.*) based on the claims alleged in the FAC, all related provisions of the California Industrial Welfare Commission Wage Orders based on the claims alleged in the FAC, California Business and Professions Code § 17200 *et seq.* based on the claims alleged in the FAC, California Code of Civil Procedure § 1021.5, and the laws of contract, torts and equity.

For the Wage Statement Class: Any and all claims that accrued between January 3, 2018, through the date the Court grants Preliminary Approval, for inaccurate wage statements, including without limitation, any and all claims under Labor Code § 226 and derivative penalties under the PAGA, including Labor Code § 226.3, that were brought or could have been brought in the Litigation on behalf of the Plaintiff and all members of the Settlement Class upon the facts alleged in the FAC.

Additionally, in exchange for his Service award for serving as the Class Representative, Plaintiff is releasing any claim he had or could possibly have had against Sims.

## FINAL SETTLEMENT APPROVAL HEARING

### 15. When will the Court consider whether to finally approve the settlement?

A final fairness hearing will be held by the Court at \_\_\_\_\_ on \_\_\_\_\_, 2020 in Courtroom 6, 2nd Floor of the United States District Court for the Northern District of California, located at 1301 Clay Street, 2nd Floor, Oakland, California, 94612, to decide whether or not the proposed settlement is fair, reasonable and adequate. At that time, the Court will make a final decision regarding the settlement, as well as certification of the class for purposes of settlement, and will also decide whether to approve Class Counsel's request for attorneys' fees and reimbursement of costs, and the class representative payment.

**It is not necessary for you to appear at this hearing.** If you have timely submitted an objection to the settlement and a notice of intent to appear, you may appear at the hearing to argue your objection to the Court. Any attorney who will represent you must file a notice of appearance with

the Court and serve the notice of appearance on Class Counsel and counsel for Sims, on or before \_\_\_\_\_, 2020 (one week before the hearing). You will be solely responsible for the fees and costs of your own attorney.

The hearing may be postponed without further notice to the Class. If the settlement is not approved, the lawsuit will continue to be prepared for trial or other judicial resolution.

### THE LAWYERS REPRESENTING YOU

#### 16. Do I have a lawyer in this case?

The Court has determined that the law firms of Diversity Law Group, P.C., Polaris Law Group LLP, Hyun Legal, APC, and Law Offices of Choi & Associates are qualified to represent you and the other class members. Lawyers for these firms are called “Class Counsel.” They are experienced in handling similar cases. Their contact information is as follows:

**To Plaintiff:**

DIVERSITY LAW GROUP, P.C.	POLARIS LAW GROUP LLP
Larry W. Lee	William L. Marder
515 S, Figueroa St., Suite 1250	501 San Benito St., Suite 200
Los Angeles, CA 90071	Hollister, CA 95023
Tel: (213) 488-6555	Telephone: (831) 531-4214
Fax: (213) 488-6554	Facsimile: (831) 634-0333

HYUN LEGAL, APC	LAW OFFICES OF CHOI & ASSOCIATES
Dennis S. Hyun	Edward W. Choi
515 S, Figueroa St., Suite 1250	515 S, Figueroa St., Suite 1250
Los Angeles, CA 90071	Los Angeles, CA 90071
Tel: (213) 488-6555	Telephone: (213) 381-1515
Fax: (213) 488-6554	Facsimile: (213) 465-4885

#### 17. May I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. Nonetheless, you may hire your own lawyer if you wish. If you hire your own lawyer, however, you are responsible for paying for that lawyer.

### FURTHER INFORMATION

#### 18. How do I get more information?

[This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www.\\_\\_\\_\\_\\_.com, by contacting class counsel at their contact information listed above, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records \(PACER\) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Oakland,](#)

California, 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

~~This description is a summary of the settlement. For the settlement's complete terms and conditions, please consult the Settlement Agreement. You can view the entire case file, including the motion for approval and for attorneys' fees and any other important documents in this case by (1) visiting the clerk of the court located at 1301 Clay Street, Oakland, California, 94612, (2) contacting Class Counsel at the addresses provided above or (3) visiting the settlement administrator's website at: [INSERT HYPERLINK TO SETTLEMENT ADMINISTRATOR'S WEBSITE ADDRESS]~~

**PLEASE DO NOT TELEPHONE OR WRITE THE COURT, THE OFFICE OF THE CLERK, SIMS, OR COUNSEL FOR SIMS FOR INFORMATION REGARDING THIS SETTLEMENT.**

# **EXHIBIT B**



## **NOTICE OF PENDENCY OF ACTION AND PROPOSED SETTLEMENT**

**If you worked for Sims Group USA Corporation (“Sims”) in California at any time between August 11, 2015 and [date of preliminary approval], you could receive money from a class action settlement.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been reached in a class action lawsuit that affects your rights.
- The settlement resolves a class action lawsuit against Sims alleging that Sims in some instances failed to: pay overtime based on a higher regular rate, and provide accurate paystubs, in violation of the California Labor Code. Sims denies any liability or wrongdoing of any kind in connection with the claims alleged, and contends that it has fully complied with the law, including paying the proper rate for all hours worked.
- The Court has not decided whether to finally approve the settlement. Payments will be made only after the Court approves the settlement and any appeals are resolved. Please be patient.
- The decision of whether to participate in, request to be excluded from, and/or object to the settlement is entirely yours. Sims will not retaliate against anyone for participating (or not participating) in the settlement.

<b>YOUR RIGHTS AND OPTIONS REGARDING THE SETTLEMENT</b>	
<b>DO NOTHING AND RECEIVE YOUR SHARE OF THE SETTLEMENT AWARD</b>	Do nothing. Automatically receive your settlement award. Release your claims against Sims. See section 11 below for more information about your settlement award. See section 14 below for more information about the release.
<b>REQUEST TO BE EXCLUDED FROM THE SETTLEMENT</b>	Ask to be excluded. Get no payment. Retain the right to file your own lawsuit for the same claims. See section 8 below.
<b>OBJECT TO THE TERMS OF THE SETTLEMENT</b>	File an objection that the settlement is unfair or inadequate. See section 9 below.

**Please read this notice carefully. It describes your rights, and the steps you have to take, if any, to receive money from the settlement or to exclude yourself from the settlement.**

## BASIC INFORMATION

### 1. What is this notice about?

A settlement has been reached in a class action lawsuit against Sims that affects your rights. This notice explains the lawsuit, the proposed settlement, your rights, what benefits are available and how to get them. Judge Jon S. Tigar of the United States District Court for the Northern District of California, who is overseeing this class action, ordered that you be sent this notice.

### 2. What is the case about?

This class action, known as *Ricky Manier, Jr. v. Sims Group USA Corp.*, Case No. 4:19-cv-00718-JST, alleges that Sims failed to: pay its workers overtime wages at a higher regular rate during weeks when workers also earned non-discretionary incentives, including “Shift Pay.” The lawsuit also alleges that Sims did not provide these workers accurate itemized pay stubs. The lawsuit alleges that these practices violated the California Labor Code and the California Unfair Business Practices Act.

Sims denies these allegations and contends that it has fully complied with the law, including legal requirements relating to paying all wages due at termination.

### 3. What is a class action?

In a class action, one or more people called “class representatives” (in this case the plaintiff, Ricky Manier, Jr.) sue on behalf of other people who they allege have similar claims. The people together are called a “class” and individually are “class members.” One court resolves the issues for everyone in the class—except for those people who choose to exclude themselves from the class.

### 4. Why is there a settlement?

After settlement negotiations and the exchange of information and documents, the class representative and Sims have agreed to settle this case rather than go to trial. The settlement represents a compromise of disputed claims and is not an admission by Sims or a finding by the Court that Sims violated the law. The parties and their attorneys believe the settlement is in the best interests of the class given the risks and expense of going to trial.

### 5. Am I part of this class?

In preliminarily approving the settlement, the Court defined the class as anyone who falls within either of the following groups: (a) All of Sims’ past and present non-exempt California employees who were paid shift pay and overtime in the same workweek at any time from August 11, 2015 through [the date the Court grants Preliminary Approval] (“Shift Differential Overtime Class”); and (b) All of Sims’ past and present California exempt and non-exempt employees who worked for Sims and were paid wages by Sims from January 3, 2018, through [the date the Court grants Preliminary Approval] (“Wage Statement Class”). Employees who have not worked for Sims since they executed a general release of claims are not eligible to participate. Records indicate that you are a member of one of these classes. (If you have filed or want to file your own lawsuit and not be part of this settlement class, read Section 8 below).

## YOUR RIGHTS AND OPTIONS

### 6. What does the settlement provide?

Sims has agreed to pay a total of \$1,000,000 to settle the claims in this case, including the costs of administering the settlement (estimated to not exceed \$8,300), attorneys' fees up to \$300,000 as well as reasonable litigation expenses, and a "service award" to Plaintiff of up to \$10,000, all subject to the Court's approval. A "service award" is a payment authorized by the Court to the named plaintiff in a class action in recognition of the time, effort, and risks the class representative has taken to prosecute the class action. In the event that the Court awards less than the requested amounts, the difference will be made available for distribution as part of the settlement fund.

### 7. How do I participate in the settlement?

**You do not need to do anything to participate.** You will automatically receive a settlement payment and release claims against Sims unless you request to be excluded from the settlement.

### 8. How do I request to be excluded from the settlement?

If you wish to be excluded from the settlement, you must write the settlement administrator at the address specified below and request to be excluded. The settlement administrator is a third party appointed by the Court to send this notice, process and issue settlement checks, and otherwise administer the settlement. You may contact the settlement administrator to provide updated contact information, make corrections regarding your employment information, or ask questions regarding the processing of settlement awards. You may contact the settlement administrator at:

[address and phone number]

Your request to be excluded from the settlement must include: (1) your name, (2) your written statement that you have read this notice and request to be excluded from the Settlement, and (3) your dated signature. **To be effective, your request must be postmarked no later than <<date>>.**

If you do not complete and timely mail a valid request to be excluded from the settlement, you will be bound by all terms and conditions of the settlement, including its release of claims. If you do submit a timely and valid request to be excluded, you will not receive any money from the settlement, but you will retain the right to sue Sims separately about the same legal claims in this lawsuit.

### 9. May I object to the settlement?

You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement or change the terms of the settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. Please be advised that you may also object to the attorneys' fees and costs sought by Plaintiff's counsel. Plaintiff's counsel intends to file the motion for attorneys' fees, costs, and enhancement award by \*\*\*\*, 202\*. It will be available for review for free on \*\*\*\*, 202\*, at [http://www.\\*\\*\\*\\*\\*.com](http://www.*****.com).

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Manier v. Sims Metal Mgmt. Northwest*, Case No. 4:19-cv-00718-JST), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, [insert appropriate Court location here], or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before \_\_\_\_\_.”

Your objection must include: (1) the case name and number: *Manier v. Sims Metal Mgmt. Northwest*, Case No. 4:19-cv-00718-JST; (2) your name, (3) the grounds for the objection, (4) a statement of whether you intend to appear at the final approval hearing, (5) a list of any documents or witnesses that support the objection, and (6) a dated signature. Your objection must also state whether it applies only to you personally, to one of the Settlement Classes, or to the entire class. To be effective, your objection must be mailed or filed with the Court no later than <<date>>. Do not telephone the Court or Sims counsel. You cannot object to the settlement and exclude yourself from the settlement. If the Court rejects your objection, you will still be bound by the terms of the settlement and you will not be able to exclude yourself from the settlement.

#### **10. When will I receive my payment?**

Payments will be sent approximately 25 business days after the Court gives the settlement its final approval if no objections are filed. If any objections are filed or if any appeal is filed, payments will be delayed until the time to appeal has expired or any appeals are finally resolved in favor of the settlement. Please be patient.

#### **11. How will the Settlement Fund be distributed to Class Members?**

The amount remaining in the settlement fund after settlement administration costs and other Court-approved payments described above are deducted (the “Net Settlement Amount”) will be distributed to all participating class members as follows: 80% of the Net Settlement amount shall be allocated to the Shift Differential Overtime Class and 20% of the Net Settlement Amount shall be allocated to the Wage Statement Class.

As to the Shift Differential Overtime Class, the Claims Administrator will calculate the amount of each individual’s award based on the number of weeks worked during August 11, 2015 through [the date the Court grants Preliminary Approval] (“the Class Period”), as reflected by Defendant’s payroll data. Specifically, each Shift Differential Overtime Class Member’s Settlement Award will be calculated by multiplying the fraction  $x/y$  by the total of the Net Settlement Amount allocated to the Shift Differential Overtime Class, where “x” equals the total number of workweeks during the Class Period in which the Shift Differential Overtime Class Member was employed and receiving wages and “y” equals the total number of workweeks during the Class Period in which all Shift Differential Overtime Class Members were employed and receiving wages during the Class Period. As to the Wage Statement Class, the Claims Administrator will calculate the amount of each individual’s award based on the number of weeks worked between January 3, 2018, through [the date the Court grants Preliminary Approval], as reflected by Defendant’s payroll data.

Specifically, each Wage Statement Class Member's Settlement Award will be calculated by multiplying the fraction  $x/y$  by the total of the Net Settlement Amount allocated to the Wage Statement Class, where "x" equals the total number of workweeks between January 3, 2018, through [the date the Court grants Preliminary Approval] in which the Wage Statement Class Member was employed and receiving wages and "y" equals the total number of workweeks between January 3, 2018, through [the date the Court grants Preliminary Approval] in which all Wage Statement Class Members were employed and receiving wages between January 3, 2018, through [the date the Court grants Preliminary Approval]. Checks will be valid for 180 days. Upon expiration of the 180-day period, your money will be sent to the California State Controller's Office's Unclaimed Property Fund and held in your name.

According to Sims' records, you are a member of [Shift Differential Overtime Class or Wage Statement Class] and worked a total of \_\_\_ workweeks during the applicable period. **If this information is incorrect and you wish to correct it, you must submit a signed, written statement explaining why you dispute this information.** Attach copies (not originals) of any relevant documents supporting your dispute. You must mail the signed and completed statement to the settlement administrator at the address provided above in section 8 no later than <<date>>. **If your signed and completed statement is not postmarked by this date, you will not be able to dispute the calculation of your Settlement Share.** After consultation with you, Class Counsel, and Sims, the settlement administrator will make a final determination that will be binding on you and Sims that you will not be able to appeal. All determinations by the settlement administrator in calculating any individual award shall be final.

**Based on the records supplied to the settlement administrator, your estimated settlement share is \$\_\_\_\_\_.** Please note that this amount may change depending on various factors, including the number of class members who request to be excluded from the settlement.

**12. What happens if there is money left in the settlement fund?**

Any money remaining after all payments are made under the settlement agreement (for example, if any settlement checks are not cashed within the appropriate timeframe) will be paid to Legal Services for Children.

**13. Will I have to pay taxes on my award?**

The Shift Differential Overtime Class' Settlement Awards shall be deemed to consist of 1/3 back wages, subject to normal payroll withholding, 1/3 interest, and 1/3 penalties. The Wage Statement Class' Settlement Awards shall be deemed 1/2 penalties and 1/2 interest. You should consult a tax professional for more information about your own specific situation.

**RELEASE OF CLAIMS**

**14. What claims are being released as part of the settlement?**

Upon final approval of the settlement by the Court, and except as to such rights or claims as may be created by the settlement agreement, each class member will release Sims as follows:

For the Shift Differential Overtime Class: Any and all claims that accrued during the Class Period for the payment of unpaid overtime wages, including but not limited to, penalties (including,

without limitation, penalties for alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 510, 558, 1194 and 2698, *et seq.*), interest, costs, attorneys' fees, restitution, unjust enrichment, compensatory damages, liquidated damages, injunctive relief, and any other remedies available at law or equity for wages allegedly owed to Plaintiff and with respect to the Class Members only to the extent that such claims were asserted or could have been asserted in the Litigation based upon the facts alleged in the First Amended Complaint ("FAC") in this Litigation. The claims being waived include any and all claims, rights, demands or causes of action, that were brought or could have been brought in the Litigation on behalf of the Plaintiff and all members of the Settlement Class upon the facts alleged in the FAC under any state or local statutory or common law, including, but not limited to, California Labor Code §§ 201-203, 226, 226.3, 510, 558, and 1194, 1194.2, as well as the Private Attorneys General Act or "PAGA" (Labor Code § 2698, *et seq.*) based on the claims alleged in the FAC, all related provisions of the California Industrial Welfare Commission Wage Orders based on the claims alleged in the FAC, California Business and Professions Code § 17200 *et seq.* based on the claims alleged in the FAC, California Code of Civil Procedure § 1021.5, and the laws of contract, torts and equity.

For the Wage Statement Class: Any and all claims that accrued between January 3, 2018, through the date the Court grants Preliminary Approval, for inaccurate wage statements, including without limitation, any and all claims under Labor Code § 226 and derivative penalties under the PAGA, including Labor Code § 226.3, that were brought or could have been brought in the Litigation on behalf of the Plaintiff and all members of the Settlement Class upon the facts alleged in the FAC.

Additionally, in exchange for his Service award for serving as the Class Representative, Plaintiff is releasing any claim he had or could possibly have had against Sims.

## FINAL SETTLEMENT APPROVAL HEARING

### 15. When will the Court consider whether to finally approve the settlement?

A final fairness hearing will be held by the Court at \_\_\_\_\_ on \_\_\_\_\_, 2020 in Courtroom 6, 2nd Floor of the United States District Court for the Northern District of California, located at 1301 Clay Street, 2nd Floor, Oakland, California, 94612, to decide whether or not the proposed settlement is fair, reasonable and adequate. At that time, the Court will make a final decision regarding the settlement, as well as certification of the class for purposes of settlement, and will also decide whether to approve Class Counsel's request for attorneys' fees and reimbursement of costs, and the class representative payment.

**It is not necessary for you to appear at this hearing.** If you have timely submitted an objection to the settlement and a notice of intent to appear, you may appear at the hearing to argue your objection to the Court. Any attorney who will represent you must file a notice of appearance with the Court and serve the notice of appearance on Class Counsel and counsel for Sims, on or before \_\_\_\_\_, 2020 (one week before the hearing). You will be solely responsible for the fees and costs of your own attorney.

The hearing may be postponed without further notice to the Class. If the settlement is not approved, the lawsuit will continue to be prepared for trial or other judicial resolution.

## THE LAWYERS REPRESENTING YOU

### 16. Do I have a lawyer in this case?

The Court has determined that the law firms of Diversity Law Group, P.C., Polaris Law Group LLP, Hyun Legal, APC, and Law Offices of Choi & Associates are qualified to represent you and the other class members. Lawyers for these firms are called “Class Counsel.” They are experienced in handling similar cases. Their contact information is as follows:

**To Plaintiff:**

DIVERSITY LAW GROUP, P.C. Larry W. Lee 515 S, Figueroa St., Suite 1250 Los Angeles, CA 90071 Tel: (213) 488-6555 Fax: (213) 488-6554	POLARIS LAW GROUP LLP William L. Marder 501 San Benito St., Suite 200 Hollister, CA 95023 Telephone: (831) 531-4214 Facsimile: (831) 634-0333
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HYUN LEGAL, APC Dennis S. Hyun 515 S, Figueroa St., Suite 1250 Los Angeles, CA 90071 Tel: (213) 488-6555 Fax: (213) 488-6554	LAW OFFICES OF CHOI & ASSOCIATES Edward W. Choi 515 S, Figueroa St., Suite 1250 Los Angeles, CA 90071 Telephone: (213) 381-1515 Facsimile: (213) 465-4885
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### 17. May I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. Nonetheless, you may hire your own lawyer if you wish. If you hire your own lawyer, however, you are responsible for paying for that lawyer.

## FURTHER INFORMATION

### 18. How do I get more information?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), by contacting class counsel at their contact information listed above, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, California, 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE OR WRITE THE COURT, THE OFFICE OF THE CLERK, SIMS, OR COUNSEL FOR SIMS FOR INFORMATION REGARDING THIS SETTLEMENT.**