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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**

14 CIOMARA AYALA DOLORES, individually,
15 and on behalf of other members of the general
16 public similarly situated and on behalf of other
17 aggrieved employees pursuant to the California
18 Private Attorneys General Act;

17 *Plaintiff,*

19 vs.

20 INLAND MARINE INDUSTRIES, INC.,
21 a California corporation; INLAND METAL
22 TECHNOLOGIES, an unknown business
23 entity; INLAND METAL INDUSTRIES, an
24 unknown business entity; INLAND METAL,
25 INC., an unknown business entity and DOES 1
26 through 100, inclusive

24 *Defendants.*

Case No.: RG19039075

**JOINT STIPULATION OF CLASS
ACTION AND PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT,
SETTLEMENT AGREEMENT AND
GENERAL RELEASE**

Dept.: 16
Judge: Hon. Michael M. Markman
Trial Date: None Set
Action filed: October 15, 2019
FAC filed: January 26, 2022

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1 Plaintiff Ciomara Ayala Dolores ("Plaintiff") and Defendant Inland Marine Industries,
2 Inc., a California corporation ("Defendant") (collectively, the "Parties"), subject to the terms and
3 conditions hereof and final approval by the Court, hereby enter into this Joint Stipulation of
4 Class Action and Private Attorneys General Act Settlement and Release ("Settlement
5 Agreement"). This Settlement Agreement is intended to fully, finally, and forever compromise,
6 release, resolve, discharge, and settle the released claims subject to the terms and conditions set
7 forth below.

8 **I. RECITALS**

9 **A. Background and Procedural History**

10 1. On or about October 15, 2019, Plaintiff filed a lawsuit against Defendant in the
11 Superior Court of the State of California for the County of Alameda, titled *Ciomara Ayala*
12 *Dolores v. Inland Marine Industries, Inc. et al.*, Case No. RG19039075, (the "Complaint" or, as
13 amended, the "Action"). Plaintiff's Complaint alleges claims on behalf of herself and other,
14 similarly situated current and former employees of Defendant. Plaintiff filed a First Amended
15 Complaint on or about January 26, 2022, asserting claims on behalf of herself, the State of
16 California, and other aggrieved employees pursuant to the Private Attorneys General Act, a true
17 and correct copy of which is attached hereto as Exhibit A.

18 2. Plaintiff alleges that Defendant violated California's wage and hour laws by not
19 providing her and putative class members with overtime and minimum wages, rest and meal
20 breaks, by failing to pay them premium wages for missed rest and meal breaks, by failing to
21 provide accurate wage statements, by failing to keep required payroll records, by not paying
22 unreimbursed business expenses, and by not paying final wages due upon termination. In
23 addition to alleging violations of the California Labor Code, Plaintiff also has asserted claims
24 under California Business & Professions Code section 17200. Plaintiff seeks to represent a class
25 of "all current and former hourly-paid or non-exempt employees who worked for any of the
26 Defendants within the State of California at any time during the period from four years
27 preceding the filing of this Complaint to final judgment and who reside in California" at the

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1 time of their employment. Amended Complaint, Para. 16.

2 3. The Parties have participated in multiple full day mediations with
3 mediator Jeffrey Ross, Esq., a well-respected wage and hour class action mediator, on July 1,
4 2020, July 13, 2021 and August 3, 2021.

5 **B. Parties' Statements and Recognition of the Benefits of the Settlement**

6 4. Counsel for Plaintiff ("Class Counsel") has conducted an extensive investigation
7 into the facts of the Action, including obtaining informal disclosures from Defendant. Class
8 Counsel is aware of Defendant's practices and procedures from such disclosures. Furthermore,
9 the Parties have engaged in extensive negotiations and the exchange of data, documents, and
10 information, including thousands of pages of records produced by Defendant.

11 5. Based on a thorough investigation and evaluation of this case, Class Counsel and
12 Plaintiff have concluded that settlement with Defendant for the consideration and on the terms
13 set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest
14 of the class in light of all known facts and circumstances, including the risk of significant delay,
15 defenses asserted by Defendant, numerous potential appellate issues, the additional costs of
16 litigating the Action, and Defendant's financial inability to pay much, if anything, beyond the
17 Settlement Fund described below.

18 6. Defendant denies each and every claim alleged by Plaintiff in the Action.
19 Defendant expressly denies any and all allegations of wrongdoing or liability arising out of any
20 of the acts, omissions, facts, matters, transactions, or occurrences that are alleged or could have
21 been alleged in the Action. Nevertheless, Defendant has taken into account the uncertainty and
22 risks inherent in any litigation and has also concluded that further conduct of the instant action
23 would be protracted and expensive. Defendant, therefore, has determined that it is desirable and
24 beneficial that the Action be settled in the manner and upon the terms and conditions set forth in
25 this Settlement Agreement. Neither this Settlement Agreement, nor any document referred to or
26 contemplated herein, nor any action taken to carry out this Settlement Agreement, is, may be
27 construed as, or may be used as an admission, concession, or indication by or against Defendant

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1 of any fault, wrongdoing or liability whatsoever.

2 **II. DEFINITIONS**

3 7. As used in this Settlement Agreement, in addition to the capitalized terms
4 defined above, the following terms have the meanings specified below.

5 8. "Administrative Costs" shall mean the estimated cost for administering the
6 settlement and claims process, including providing the Notice of Settlement, various efforts to
7 locate Settlement Class Members, and coordinating the payment of claims on behalf of the
8 Settlement Class.

9 9. "Attorneys' Fees and Costs." Attorneys' Fees shall mean the amount not to
10 exceed thirty-five (35%) of the Settlement Fund, subject to approval by the Court, for Class
11 Counsel's attorneys' fees incurred in investigation, litigation and resolution of the Action, to be
12 paid to Class Counsel under the terms of this Settlement Agreement. Attorneys' Costs shall
13 mean the amount to be paid from the Settlement Fund, not to exceed thirty thousand dollars
14 (\$30,000.00), for Class Counsel's actual litigation costs and expenses incurred in investigation,
15 litigation and resolution of the Action, to be paid to Class Counsel under the terms of this
16 Settlement Agreement. (Collectively, "Attorneys' Fees and Costs").

17 10. "Action" or "Lawsuit" shall mean the civil action brought by Ciomara Ayala
18 Dolores., individually and on behalf of all similarly situated current and former employees,
19 *Ciomara Ayala Dolores v. Inland Marine Industries, Inc. et al*, Case No. RG19039075, in
20 Superior Court of the State of California for the County of Alameda.

21 11. "Class Counsel" shall mean the attorneys representing Plaintiff in the Action:
22 LAWYERS for JUSTICE, PC, and the undersigned lawyers for such firm.

23 12. "Class Period" shall mean October 15, 2015, to November 11, 2021, inclusive.

24 13. "Claims Released" means any and all claims, rights, demands, obligations,
25 controversies, debts, disputes, damages, losses, actions, causes of action, sums of money due,
26 judgments, suits, amounts, matters, issues, liabilities, and charges of any kind or nature
27 whatsoever (including, but not limited to, any claims for interest, attorneys' fees, expert or

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1 consulting fees, and any other costs, expenses, amounts, or liabilities whatsoever), and claims
2 for relief of every nature and description whatsoever, whether in law or equity, including both
3 known claims and, Unknown Claims (as defined below), suspected or unsuspected, accrued or
4 unaccrued, fixed or contingent, liquidated or unliquidated, matured or unmatured, foreseen or
5 unforeseen, whether in contract, violation of any local, state or federal statute, rule or regulation,
6 arising out of, concerning, in connection with any, or in any manner related to any act,
7 omission, allegations, transactions, facts, matters, occurrences, representations, statements, or
8 omissions alleged, involved, set forth, or referred to in the Action or which could have been
9 asserted in the Action or any other forum of any kind based on any act, omission, allegations,
10 transactions, facts, matters, occurrences, representations, statements, or omissions alleged,
11 involved, set forth, or referred to in the Action (including as alleged in the Complaint or First
12 Amended Complaint) and during the Class Period, including, without limitation, all claims
13 relating to the failure to pay overtime and minimum wages, provide meal and rest periods,
14 inaccurate wage statements, penalties relating to the failure to provide rest periods and/or
15 inaccurate wage statements, including PAGA penalties, or any other alleged wage and hour
16 violations and related record-keeping requirements, including, without limitation, under Labor
17 Code Section 203, Business & Professions Code section 17200, the applicable California
18 Industrial Welfare Commission Order, or any other local government, California or federal laws
19 relating to the failure to pay wages and penalties or provide rest and meal periods based on or
20 relating to the facts alleged in the Complaint and/or Amended Complaint.

21 14. "Defense Counsel" shall mean the attorneys representing Defendant in the
22 Action: Daniel Croley and Katherine O'Neal of Futterman Dupree Dodd Croley Maier LLP.

23 15. "Final Approval Hearing" means the hearing to be conducted by the Court, or
24 any other court taking jurisdiction of this matter, to determine whether to finally approve the
25 Settlement.

26 16. The "Effective Date" of this Settlement Agreement shall mean seven (7) calendar
27 days after all of the following conditions have been satisfied:

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i. Execution of this Settlement Agreement by all Parties, Class Counsel and Defense Counsel;

ii. Submission of this Settlement Agreement to the Court, along with appropriate motions and requests for approval of this Settlement Agreement by the Court;

iii. Preliminary approval of the settlement by the Court;

iv. Mailing of the Notice of Settlement to the Settlement Class Members in accordance with the Court's Order of Preliminary Approval;

v. Expiration of the opt-out date as defined in the Notice of Settlement;

vi. Five percent (5%) or fewer of the Settlement Class Members submit timely and valid requests to opt out of the Settlement Class (or if more than five percent (5%) opt out, Defendant does not exercise their right to rescind and void the Settlement Agreement);

vii. A formal fairness hearing, final approval of the settlement by the Court, and entry of a written, final order by the Court approving this Settlement Agreement and entering final judgment with respect to the Action. Except that, in the event there are written objections made prior to the formal fairness hearing, or an appeal of the Court's approval of the settlement taken, then the Effective Date shall be the later of the following events: when the period for filing any appeal, writ or other appellate proceeding opposing the settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding opposing the settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ or other appellate proceeding has upheld the Court's final order with no right to pursue further remedies or relief; and

viii. Named Plaintiff's execution of the General Releases referenced below.

The occurrence of the Effective Date is a prerequisite to any funding and/or distributions from the Settlement Fund. In the event that the Court does not execute an

1 Order of Final Approval, or any such Order of Final Approval does not become final for
2 any reason, or is modified in any material respect, the Effective Date does not occur, or
3 if any of the conditions set forth above does not occur, this Settlement Agreement shall
4 be deemed null and void and shall be of no force or effect whatsoever, and shall not be
5 referred to or utilized for any purpose whatsoever.

6 17. "Order of Final Approval" and "Final Approval" means an order that finally and
7 unconditionally grants final approval of this Settlement Agreement, enters final judgment with
8 respect to the Action, and authorizes payments to the Settlement Administrator, the Settlement
9 Class Members, the Plaintiff, the LWDA and Class Counsel as provided in this Settlement
10 Agreement and means the time when a Judgment that has not been reversed, vacated, or
11 modified in any way is no longer subject to appellate review, either because of disposition on
12 appeal and conclusion of the appellate process (including potential writ proceedings) or because
13 of passage, without action, of time for seeking appellate or writ review. More specifically, it is
14 that situation when (i) no appeal or petition for review by writ has been filed and the time has
15 passed for any notice of appeal or writ petition to be timely filed from the Judgment; or (ii) if an
16 appeal has been filed, the court of appeal has either affirmed the Judgment or dismissed that
17 appeal and the time for any reconsideration or further appellate review has passed; or (iii) a
18 higher court has granted further appellate review and that court has either affirmed the
19 underlying Judgment or affirmed the court of appeal's decision affirming the Judgment or
20 dismissing the appeal or writ proceeding, and the time for any reconsideration or further
21 appellate review has passed. Any reference to the finality or any similar phrase shall
22 incorporate the definition of Final Approval in this paragraph.

23 18. "Order Granting Preliminary Approval" and "Preliminary Approval" refers to the
24 Court order or statement of decision granting preliminary approval to this Settlement
25 Agreement.

26 19. "Named Plaintiff" or "Plaintiff" shall mean Ciomara Ayala Dolores.

27 20. "Notice of Settlement" refers to the official notice of settlement of class action,
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1 attached hereto as Exhibit B.

2 21. "Defendant" means Inland Marine Industries, Inc. (DBA Inland Metal
3 Technologies Inc).

4 22. "Released Parties" shall mean the Defendant, including each and all of its past
5 and present successors, subsidiaries, parents, holding companies, and affiliated companies,
6 divisions and other related entities, as well as the successors, predecessors, shareholders, lenders
7 and investors and each and all of their respective officers, directors, partners, assigns, agents,
8 employees, principals, heirs, administrators, attorneys, vendors, accountants, auditors,
9 consultants, fiduciaries, insurers, reinsurers, employee benefit and retirement plans of any kind,
10 and representatives of each of them, both individually and in their official capacities, past or
11 present, as well as all persons acting by, through, under or in concert with any of these persons
12 or entities. Without limiting the generality of the forgoing sentence and for the avoidance of
13 doubt, the Complaint names as defendants, in addition to Inland Marine Industries, Inc., Inland
14 Metal Technologies, Inland Metal Industries and Inland Metal, Inc. and those entities do not
15 exist but to the extent they do or ever did or are claimed to have liability for any reason related
16 to the Action, they are included as Released Parties and are released to same extent as
17 Defendant.

18 23. "Service Award" shall mean a Court-approved sum, not to exceed seven
19 thousand five hundred dollars (\$7,500.00), to be paid to the Plaintiff for her time and effort
20 spent during the Action, and for the risks associated with suing Defendant, in accordance with
21 Section III. B.

22 24. "Settlement Administrator" shall mean Phoenix Settlement Administrators,
23 which is the entity that has been selected to provide notice of this proposed class action
24 settlement to the Settlement Class and to perform other related functions to administer the
25 settlement contemplated by this Settlement Agreement as described herein.

26 25. "Settlement Class" or "Settlement Class Members" shall mean: all current and
27 former hourly-paid or non-exempt employees who worked for Defendant within the State of

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1 California at any time during the period from October 15, 2015 to and including November 11,
2 2021.

3 26. "Settlement Fund" means "all-in" one million dollars (\$1,000,000.00), non-
4 reversionary settlement upon the terms and conditions set forth in the executed Settlement
5 Agreement, which is the total and maximum amount Defendant will be required to pay under
6 this settlement, except that Defendant will pay its share of any payroll taxes (i.e., employer-side
7 of FICA, FUTA and etc.) in addition to the Settlement Fund. The Settlement Fund will be
8 allocated to pay and therefore include the following elements: (i) payments to Settlement Class
9 Members, as described herein; (ii) payment to the State of California Labor and Workforce
10 Development Agency ("LWDA") under PAGA, as described herein; (iii) Service Award to the
11 Named Plaintiff, as described herein; (iv) Class Counsel's Attorneys' Fees and Costs, as
12 described herein; and (v) Administrative Costs, as described herein.

13 27. "Participating Settlement Class Members" means those Settlement Class
14 Members who do not submit a valid and timely Request for Exclusion from the Settlement.

15 28. "Unknown Claims" means any and all Claims Released that any Plaintiff or
16 current or former employee who is part of the putative class does not know or suspect to exist in
17 his or her favor at the time of the release of such claims, including claims which, if known by
18 him or her, might have affected his or her decision to settle or the terms of his or her settlement
19 with and releases provided to Defendant, or might have affected his or her decision not to object
20 to this Settlement. With respect to any and all Claims Released, the Parties stipulate and agree
21 that, upon the Effective Date, they shall expressly waive, and, with respect to claims asserted or
22 that could have been asserted in the Action, all other Class Members by operation of the
23 Judgment shall be deemed to have expressly waived the provisions, rights, and benefits of
24 California Civil Code § 1542, or any other law of the United States or any state or territory of
25 the United States, or principle of common law that is similar, comparable, or equivalent to
26 Section 1542, which provides:

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1 **A. The Settlement Fund Allocation**

2 30. In consideration for settlement of the Action and the release of claims of the
3 Settlement Class, Defendant agrees to pay the “all-in” sum of one million dollars
4 (\$1,000,000.00) (the "Settlement Fund"). Any Administrative Costs, Attorneys’ Fees and Costs,
5 payment to the LWDA under PAGA, and Service Award for the Named Plaintiff shall be
6 deducted from the Settlement Fund. The Settlement Fund is the maximum total amount
7 Defendant is required to pay for any and all purposes under this Settlement Agreement, except
8 that Defendant will pay its share of any payroll taxes (FICA, FUTA and etc.) in addition to the
9 Settlement Fund and nothing more.

10 31. This is a non-reversionary settlement in which Defendant is required to pay the
11 entire gross settlement amount, which includes the Net Settlement Proceeds, the Service Award
12 for the Named Plaintiff, LWDA payment, Administrative Costs, and Attorneys’ Fees and Costs.
13 No portion of the Settlement Fund will revert to Defendant.

14 32. Within ninety (90) calendar days of the Order Granting Preliminary Approval,
15 Defendant will wire the Settlement Fund, which shall immediately be deposited by the
16 Settlement Administrator into an interest-bearing account under Internal Revenue Code
17 §1.468B-1.

18 33. The Parties have agreed to the appointment of Phoenix Settlement
19 Administrators to serve as the Settlement Administrator for the purpose of administering the
20 settlement and claims process. The Parties represent that they do not have any financial interest
21 in the Settlement Administrator or otherwise have a relationship with the Settlement
22 Administrator that could create a conflict of interest.

23 **B. Plaintiff’s Service Award**

24 34. In addition to the amounts determined to be due to the Named Plaintiff as a
25 member of the settlement class, Class Counsel and Plaintiff intend to apply to the Court for a
26 Service Award for Named Plaintiff, in the total amount of no more than seven thousand and five
27 hundred dollars (\$7,500.00) for her role in prosecuting the Action, taking the risks of serving as

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1 the named representative, providing factual information and documentation necessary to the
2 prosecution of the Action, providing a General Release of all claims, maintaining contact with
3 Class Counsel, and other participation necessary to the successful prosecution of the Action.
4 Any such motion shall be filed concurrently with Class Counsel's application for Attorneys'
5 Fees and Costs. Any Service Award approved by the Court in conjunction with the Settlement
6 shall be paid from the Settlement Fund and shall reduce the amount of the Net Settlement Fund
7 payable to the Participating Settlement Class Members. Defendant will not oppose a request for
8 up to seven thousand five hundred dollars (\$7,500.00) for the Named Plaintiff Service Award.

9 35. In exchange for this Service Award, the Named Plaintiff agrees not to publicize the
10 settlement beyond what is required or expressly approved by the Court, agrees to respond to any
11 inquiry regarding the settlement only by referring the inquiry to Class Counsel and saying
12 nothing further, and agrees to execute a General Release as to any and all claims she might have
13 against Defendant and the Released Parties, whether such claim is known or unknown, as set
14 forth in Paragraph 61 below. Named Plaintiff may, however, discuss the settlement with Class
15 Members prior to the Effective Date in order to obtain approval of the settlement. Named
16 Plaintiff agrees that she is not requesting to opt out and will not opt out and has not and will not
17 encourage any person to opt out.

18 36. If the Court denies, modifies, or reduces any request for a Service Award,
19 Plaintiff, Class Counsel, and the Participating Settlement Class Members may not seek to
20 modify, revoke, cancel, terminate, or void this Settlement Agreement and will not seek, request,
21 or demand an increase in the Settlement Amount.

22 37. If Plaintiff appeals the Court's ruling on Plaintiff's request for a Service Award
23 for Named Plaintiff, any ruling of any appellate court in such an appeal (regardless of its
24 substance) shall not constitute a material alteration of this Settlement Agreement, and shall not
25 give Plaintiff, Class Counsel, or the Participating Settlement Class Members the right to modify,
26 revoke, cancel, terminate, or void this Settlement Agreement.

27 38. Notwithstanding the above, the Named Plaintiff shall receive payment of Service
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1 Award only after (a) executing and delivering to Defendant this Settlement Agreement and a
2 separate General Release of all known and unknown claims against Defendant and (b) the
3 Effective Date has passed.

4 **C. Attorneys' Fees and Costs**

5 39. Class Counsel shall request a reasonable award of attorneys' fees and costs from
6 the Court to compensate Class Counsel for fees and costs incurred for work already performed
7 in this Action, and for the work remaining to be performed in documenting the Settlement
8 Agreement, securing Court approval of the Settlement Agreement, administering the Settlement
9 Agreement, obtaining dismissal of the Action with prejudice, and defending against any
10 appeals, as well as all associated expenses. The amount to be paid to Class Counsel shall be
11 subject to Court approval. Defendant will not oppose a reasonable request, up to thirty-five
12 percent (35%) of the Settlement Fund, for attorneys' fees and costs. Class Counsel's attorneys'
13 fees and costs shall be paid from the Settlement Fund, and Defendant shall not be obligated to
14 pay any amount above the Settlement Fund to compensate Class Counsel for any attorneys' fees
15 or costs.

16 40. Class Counsel will submit an application for Attorneys' Fees and Costs to the
17 Court for approval prior to the date of the Final Fairness Hearing. The Parties agree that, over
18 and above the total amount of court-approved Attorneys' Fees and Costs award in this Action,
19 each of the Parties, including all persons eligible to be members of the Settlement Class, shall
20 bear their own fees and costs relative to the investigation, filing, prosecution or settlement of the
21 Action, the negotiation, execution, or implementation of this Settlement Agreement, and/or the
22 process of obtaining, administering or challenging a Class Certification Order and/or Final
23 Approval.

24 41. The Parties agree that Class Counsel shall be solely responsible for the division
25 and distribution of any and all Court-approved Attorneys' Fees and Costs awarded in the Action
26 to Class Counsel, and that Class Counsel agree to release Defendant and the Released Parties
27 from any responsibility for or liability arising out of or related to the division and distribution of
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1 any Court-approved Attorneys' Fees and Costs.

2 42. In the event that the Court denies, modifies, or reduces Class Counsel's request
3 for Attorneys' Fees and Costs, then Plaintiff, Class Counsel, and the Participating Settlement
4 Class Members may not seek to modify, revoke, cancel, terminate, or void this Settlement
5 Agreement and will not seek, request, or demand an increase in the Settlement Fund.

6 43. If Class Counsel appeals the Court's ruling on their request for Attorneys' Fees
7 and Costs, any ruling of any appellate court in such an appeal (regardless of its substance) shall
8 not constitute a material alteration of this Settlement Agreement, and shall not give Plaintiff,
9 Class Counsel, or the Participating Settlement Class Members the right to modify, revoke,
10 cancel, terminate, or void this Settlement Agreement.

11 44. All claims for attorneys' fees or costs or expenses that Class Counsel, Plaintiffs,
12 and the Participating Settlement Class Members may possess against Defendant or Released
13 Parties have been compromised and resolved in this Settlement Agreement and shall not be
14 affected by any appeal that Class Counsel may file.

15 **D. Administrative Costs**

16 45. The Administrative Costs associated with administering the settlement and
17 claims process shall be deducted from the Settlement Fund. The Administrative Costs are
18 estimated not to exceed ten thousand dollars (\$10,000.00). No fewer than ten court days before
19 the Final Approval Hearing, the Settlement Administrator shall provide the Court and all
20 counsel for the Parties with a statement detailing the Administrative Costs. The Parties agree to
21 cooperate in the settlement administration process and to make all efforts to control and
22 minimize the costs and expenses incurred in the administration of this Settlement.

23 **E. Payment for PAGA Penalties**

24 46. The total amount of the Settlement Fund allocated to PAGA penalties shall be
25 fifty thousand dollars (\$50,000.00), with seventy-five percent (75%) of the PAGA penalties,
26 thirty-seven thousand and five hundred dollars (\$37,500.00), will be payable to the California
27 Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of the

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1 PAGA penalties, twelve thousand and five hundred dollars (\$12,500.00), will be part of the Net
2 Settlement Amount and paid to Participating Settlement Class Members on a *pro rata* basis.

3 47. The amount of the Settlement Fund being paid to aggrieved employees for
4 PAGA penalties will be allocated in the manner of, and as part of, the Net Settlement Proceeds,
5 as set forth in Section I.G, below.

6 48. Pursuant to California Labor Code § 2699(1)(2), settlement of a PAGA action is
7 subject to the Court approval and a copy of the proposed settlement will be provided to the
8 LWDA at roughly the same time of its submission to the Court.

9 **F. No Effect on Benefits for Settlement Class Members**

10 49. Plaintiff agrees, on behalf of all Settlement Class Members, that this Settlement
11 Agreement and any payments under this Settlement Agreement shall not have any effect on the
12 eligibility or calculation of employee benefits of any kind with respect to the Settlement Class
13 Members. This Settlement Agreement does not represent any modification of any previously
14 credited hours of service, income, or other eligibility criteria under any employee pension
15 benefit plan, employee welfare benefit plan, or other program or policy (past or present)
16 sponsored by or provided by Defendant and/or any of the Released Parties.

17 50. Likewise, Plaintiff agrees, on behalf of all Participating Settlement Class
18 Members, that no payment provided under this Settlement Agreement shall be considered
19 "compensation" or "annual earnings for benefits" in any year for purposes of determining
20 eligibility for, or benefit accrual within, any employee pension benefit plan, employee welfare
21 benefit plan, or other program or policy sponsored or provided by the Defendant and/or any of
22 the Released Parties.

23 **G. Allocation**

24 51. The "Net Settlement Proceeds" shall equal the Settlement Fund minus the total of
25 (i) court-approved Attorneys' Fees and Costs; (ii) court-approved Service Award to the Named
26 Plaintiff; (iii) all fees, costs, and expenses of the Settlement Administrator in connection with
27 the settlement and claims administration services including, without limitation, those connected
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1 with providing notice to the members of the Settlement Class and making settlement
2 distributions to members of the Settlement Class; and (iv) payment to the LWDA for PAGA
3 penalties.

4 52. The Net Settlement Proceeds shall be allocated as follows for each member of
5 the Settlement Class: The Settlement Administrator will determine the number of Workweeks
6 worked by each member of the Settlement Class. All Settlement Class Members will be credited
7 with at least one (1) Workweek.

8 53. The Settlement Administrator will calculate the value of each Workweek
9 ("Workweek Value") by dividing the Net Settlement Proceeds by the total number of
10 Workweeks for all Class Members.

11 54. The Settlement Administrator will calculate each Settlement Class Member's
12 "Individual Settlement Award" by multiplying an individual's total number of Workweeks by
13 the Workweek Value. The Settlement Administrator will pay out all Settlement Class Members
14 on a confidential basis and issue IRS tax forms.

15 55. Each Class Member's Individual Settlement Award will be allocated as follows:
16 twenty five percent (25%) to unpaid wages which will be reported to the IRS on Form W-2;
17 thirty seven and one half percent (37.5%) to penalties and thirty seven and one half percent
18 (37.5%) to interest, which will be reported to the IRS on Form 1099.

19 56. Each Party, Plaintiff, and Participating Settlement Class Member will be
20 responsible for his or her own tax obligations. The payment by Defendant pursuant to this
21 Agreement is for alleged failure to pay compensation due, interest on the compensation sum,
22 penalties regarding the compensation sum, and all other claims as set forth in the Complaint
23 and/or First Amended Complaint and explained in greater detail in definition of Claims
24 Released. In accordance with both State and Federal tax laws, the Administrator shall withhold
25 such sums from each Participating Settlement Class Member's Individual Settlement Award as
26 is required in order to comply with the same. Portions of any Individual Settlement Award not
27 subject to withholding will be issued with a 1099 Form. After appropriate tax withholding from

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1 Individual Settlement Awards, the Settlement Administrator shall immediately pay over all
2 such withheld funds to the appropriate state and federal taxing authorities. The Settlement
3 Administrator shall provide each Participating Settlement Class Member with appropriate
4 documentation setting forth the amount of any tax or other payment withheld, and employer
5 contribution made, in accordance with state and federal tax requirements.

6 57. The Settlement Administrator will notify Defendant of the amount of the
7 employer's share of FICA, FUTA and etc. due and owing as to each Settlement Class Member,
8 which the Defendant will pay separately and in addition to the Settlement Fund. The Settlement
9 Administrator will also give Defendant an estimate of the employer's share of payroll taxes
10 within five (5) calendar days of sending out the Settlement Notice, as described in Paragraph
11 70.

12 **IV. CLAIMS RELEASED BY SETTLEMENT AGREEMENT**

13 58. In exchange for the payments by Defendant as described herein, upon the final
14 approval by the Court of this Settlement Agreement, and except as to such rights or claims as
15 may be created by this Settlement Agreement, the Participating Settlement Class Members,
16 including the Named Plaintiff (who shall not opt out), jointly and severally, and any person
17 claiming any right through or on behalf of any of them shall be deemed to have, and by
18 operation of the Judgment shall have, fully, finally, unconditionally and forever released,
19 relinquished, and discharged all Claims Released (including Unknown Claims, as defined
20 above) against the Released Parties and their respective counsel, whether arising under federal,
21 state, local or common law. Upon the Effective Date, the releasing Plaintiff and Participating
22 Settlement Class Members will be forever barred and enjoined from commencing, instituting,
23 prosecuting or continuing to prosecute any action or other proceeding in any court of law or
24 equity, arbitration tribunal, or administrative forum, asserting the Claims Released against any of
25 the Released Parties, and their respective counsel.

26 59. The Parties intend that this Settlement Agreement shall be binding on all
27 members of the Settlement Class who have not timely exercised the right to opt out of the
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1 settlement, whether or not they actually receive a payment pursuant to this Settlement
2 Agreement. This Settlement Agreement shall constitute, and may be pleaded as, a complete and
3 total defense to any Claims Released if raised in the future.

4 60. Participating Settlement Class Members waive any right they may have to any
5 payments or damages for missed meal and rest periods, wage statement penalties, unpaid
6 overtime and minimum wage, and any other claims alleged in the Complaint and/or First
7 Amended Complaint or that could have been asserted therein based on the facts alleged,
8 including the Claims Released and all claims arising from or based upon unpaid wages,
9 penalties, or attorneys' fees, except as provided for in this Settlement Agreement.

10 61. In addition to the release made in Paragraph 58, Plaintiff makes the additional
11 following general release of all claims, known or unknown. Plaintiff releases the Released
12 Parties from all claims, demands, rights, liabilities and causes of action of every nature and
13 description whatsoever, known or unknown, asserted or that might have been asserted, whether
14 in tort, contract, or for violation of any local government, state or federal statute, rule or
15 regulation arising out of, relating to, or in connection with Plaintiff's relationship with
16 Defendant or any of Released Parties as well as any and all acts or omissions by or on the part
17 of Defendant or any of Released Parties. With respect to any and all Claims Released, the
18 Parties stipulate and agree that, upon the Effective Date, Plaintiff shall expressly waive, and,
19 with respect to claims asserted or that could have been asserted in the Action and all other
20 claims, the provisions, rights, and benefits of California Civil Code § 1542, or any other law of
21 the United States or any state or territory of the United States, or principle of common law that
22 is similar, comparable, or equivalent to Section 1542, which provides:

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

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1 The Named Plaintiff may hereafter discover facts in addition to or different from those
2 they may now know or believe to be true with respect to the subject matter of the Claims
3 Released, but, upon the Effective Date, she shall be deemed to have, and by operation of the
4 Order Granting Final Approval of the settlement in the Action shall have fully, finally, and
5 forever settled and released any and all of the Claims Released (including but not limited to
6 Unknown Claims), which now exist, or heretofore have existed, upon any theory of law or equity
7 now existing or coming into existence in the future, including, but not limited to, conduct that is
8 intentional, negligent, with or without malice, or a breach of any duty, federal, state or local
9 government law, or rule, without regard to the subsequent discovery or existence of such
10 different or additional facts. Accordingly, if the facts relating in any manner to this Settlement
11 are found hereafter to be other than or different from the facts now believed to be true, the
12 release of claims contained herein shall be effective as to all Unknown Claims. Plaintiff
13 acknowledges that she shall be deemed by operation of the Judgment to have acknowledged,
14 that the foregoing waiver was separately bargained for and is a key element of the Settlement
15 Agreement of which this release is a part.

16 62. The Parties agree that, for any claim that is not alleged in the Complaint and/or
17 the First Amended Complaint, the statute of limitations has and will continue to run on those
18 claims and no such claims will relate back to the filing of any of the pleadings in the Action.

19 **V. SCHEDULE FOR FINALIZING SETTLEMENT AGREEMENT**

20 63. Plaintiff and Defendant stipulate and agree to the following schedule and
21 procedures for obtaining the Court's approval of the settlement, including seeking certification
22 of the Settlement Class, notifying the Settlement Class, and processing all benefits provided
23 under this Settlement Agreement:

24 **A. Seeking Preliminary Approval of Settlement Agreement**

25 64. Upon the execution of this Settlement Agreement, Plaintiff will move the Court
26 for (a) conditional certification of the Settlement Class as a settlement class; (b) preliminary
27 approval of the terms of this Settlement Agreement, (c) approval of the Notice of Settlement
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1 (the "Settlement Notice"), settlement notice procedure, and appointment of the Settlement
2 Administrator, and (d) the scheduling of a settlement fairness hearing on the question of
3 whether the terms of this Settlement Agreement should be finally approved as fair, reasonable,
4 and adequate as to the Named Plaintiff and the Settlement Class (collectively, "Motion for
5 Preliminary Approval"). As a part of this motion, Plaintiff will submit (and attach a copy of)
6 this Settlement Agreement.

7 65. Class Counsel shall provide Defendant with a reasonable opportunity to review
8 and provide comments to the Motion for Preliminary Approval, before the motion and
9 supporting papers are filed with the Court.

10 66. Solely for settlement purposes, Plaintiff agrees to seek, and Defendant consent
11 to, certification by the Court of the Settlement Class as a conditional settlement class.

12 67. The conditional certification of the Settlement Class and appointment of Class
13 Counsel by the Court shall be binding only with respect to the settlement of this Action. In the
14 event that this Settlement Agreement is cancelled pursuant to its terms, the certification of the
15 Settlement Class shall be vacated, the Action shall proceed as if the Settlement Class had never
16 been certified, and this Settlement Agreement shall be of no force or effect.

17 68. Defendant shall not oppose the Motion for Preliminary Approval filed by Class
18 Counsel pursuant to this Settlement Agreement, so long as the motion and supporting papers are
19 consistent with the terms of this Settlement Agreement. If the Court grants preliminary
20 approval, the Parties will jointly move the Court to stay all proceedings and deadlines other than
21 necessary to effectuate the settlement. If the Court denies preliminary approval of the settlement
22 as set forth herein, the Parties will jointly move the Court to extend the current deadlines.

23 **B. Providing Class Data to Settlement Administrator**

24 69. Within twenty-one (21) calendar days of the Order Granting Preliminary
25 Approval, Defendant agrees to provide to the Settlement Administrator a "Class List" and the
26 following information for each Class Member: (a) full name; (b) last-known address; (c) e-mail
27 address, if available; (d) social security number or employee identification number; (e) work
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1 site(s) where he or she was employed by Defendant during the Class Period; (f) number of
2 Workweeks worked from October 15, 2015, to November 11, 2021; (g) number of Workweeks
3 worked during each calendar year during the Class Period. The Settlement Administrator will
4 then have an opportunity to review the data provided by Defendant to verify the accuracy of the
5 information and to calculate the Workweek Value, each class member's Workweeks and
6 projected individual payment. If numerous and/or substantial inconsistencies or inaccuracies are
7 discovered at any point, the Parties agree to jointly apply to the Court for an extension of the
8 schedule provided herein to allow the Parties to resolve the inconsistencies or inaccuracies. The
9 above-described information will be provided to the Settlement Administrator on a confidential
10 basis, and the Settlement Administrator agrees to use this information only for purposes of
11 verifying the accuracy of the information. The Settlement Administrator agrees not to use the
12 information for any purpose besides the administration of the settlement of the Action, and
13 agrees not to disclose the information to any third party. Notwithstanding the foregoing, the
14 Settlement Administrator may disclose to Class Counsel the number of Workweeks worked by
15 Settlement Class Members.

16 **C. Settlement Notice**

17 70. If the Court grants Preliminary Approval of the settlement terms described in this
18 Settlement Agreement, a Settlement Notice shall be provided to the Settlement Class as follows:

19 a. Upon receipt of the Class List, the Settlement Administrator shall perform a
20 search based on the National Change of Address Database maintained by the United States
21 Postal Service to update and correct any known or identifiable address changes. Fourteen (14)
22 calendar days after Defendant provide to the Settlement Administrator the Class List referenced
23 in Paragraph 69 above, the Settlement Administrator shall send a Settlement Notice to all
24 members of the Settlement Class by regular U.S. Mail, postage prepaid and supplement with e-
25 mail notice, if feasible. In order to provide the best notice practicable, any Settlement Notice
26 returned as undelivered shall be sent to the forwarding address affixed thereto, if any. If no
27 forwarding address is provided for a Settlement Notice that is returned as undelivered, the

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1 Settlement Administrator will use a skip-trace to locate a current address. If no current address
2 is located, the Settlement Notice for that individual will be deemed undeliverable. If the
3 procedures herein are followed, Defendant, Class Counsel, and the Settlement Administrator
4 shall be deemed to have satisfied their obligation to provide the Settlement Notice to the
5 Settlement Class. A copy of the proposed Settlement Notice is attached hereto as Exhibit B.

6 b. The Settlement Notice shall, at a minimum, include the following: the
7 number of Workweeks worked by the Settlement Class Member, the amount the class
8 member can expect to receive based on the number of Workweeks, the contact
9 information for Class Counsel and Defense Counsel, information informing Settlement
10 Class Members of their right to opt out, a statement that the Settlement Agreement may
11 have preclusive effect and participation in the Settlement shall result in a release of
12 Claims Released, notification that Settlement Class Members are solely responsible for
13 determining the tax consequences of payments made pursuant to this Settlement
14 Agreement; and notification that any payments under this Settlement Agreement shall
15 not have any effect on the eligibility or calculation of employee benefits nor will it be
16 considered compensation for determining eligibility in any employee pension benefit or
17 retirement plan, as discussed in Section II, above.

18 c. The Settlement Notice shall inform Settlement Class Members of their
19 right to opt out of the Settlement Class and be excluded from receiving any benefits
20 under this Settlement Agreement by completing and mailing a written opt-out request to
21 the Settlement Administrator no later than forty-five (45) calendar days after the
22 postmark date of the Settlement Notice. Any member of the Settlement Class who
23 submits a timely and valid request for exclusion will receive no settlement payment and
24 will not be bound by the terms of the Settlement Agreement nor have any right to object,
25 appeal, or comment thereon, with the exception of claims under the Private Attorneys
26 General Act. Settlement Class Members cannot opt out of PAGA claims, and will be
27 bound by the terms of this Settlement Agreement as to those claims. Late-submitted opt-

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1 out requests will not be accepted by the Settlement Administrator and shall not be
2 effective. The Settlement Administrator will certify jointly to Class Counsel and
3 Defense Counsel which requests for exclusion were valid and timely submitted.

4 d. If a member of the Settlement Class disagrees with the number of
5 Workweeks, the member must complete and send a notice of dispute to the Settlement
6 Administrator, together with any supporting written documentation. Such documentation
7 may consist of official records, pay stubs, weekly schedules, or personal logs. To be
8 considered, the notice of dispute and supporting written documentation must be received
9 by the Settlement Administrator no later than thirty (30) calendar days after the
10 postmark date of the Settlement Notice. The Settlement Administrator shall immediately
11 notify both Class Counsel and Defense Counsel of any disputes submitted by Settlement
12 Class Members.

13 e. The Settlement Administrator shall share with both Class Counsel and
14 Defense Counsel the notice of dispute and any documentation submitted by a Settlement
15 Class Member in support of his or her dispute. The Settlement Administrator shall make
16 the final determination regarding the dispute based on the written documentation
17 submitted by the Settlement Class Member and any materials submitted by counsel
18 within ten (10) calendar days of receipt of the notice of dispute and supporting written
19 documentation, or no later than forty (40) calendar days after the postmark date of the
20 Settlement Notice. The Settlement Administrator shall inform each Settlement Class
21 Member of the final determination by a telephone call, followed by an e-mail or regular
22 U.S. Mail if no email for that Settlement Class Member is available.

23 f. The Settlement Administrator shall create and maintain a website, which
24 will include links to the Class Notice, Motions for Preliminary and Final Approval and
25 Motion for Attorneys' Fees as they become available, until the Effective Date. The
26 website shall also include links to any other documents or information the Settlement
27 Administrator deems necessary to perform its duties. The Motion for Attorneys' Fees
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1 and any related filings shall be available on the website for a reasonable period of time
2 of no less than 14 calendar days prior to the deadline for class members to file an
3 objection to the Settlement Agreement.

4 g. At least twenty-one (21) calendar days before the Final Fairness Hearing,
5 the Settlement Administrator shall prepare a declaration of due diligence and proof of
6 mailing with regard to the mailing of the Settlement Notice and e-mail (if e-mail was
7 deemed feasible), and any attempts by the Settlement Administrator to locate the
8 members of the Settlement Class (Due Diligence Declaration), to Class Counsel and
9 Defense Counsel for presentation to the Court. The Settlement Administrator will attach
10 to the Due Diligence Declaration a report showing the name of each individual who
11 submitted a timely and valid opt-out. Class Counsel shall be responsible for filing the
12 Due Diligence Declaration with the Court.

13 h. If at any point the Settlement Administrator determines that it needs
14 additional time, the Settlement Administrator shall inform the Parties regarding the
15 situation, and the Parties will seek from the Court a modification of the schedules
16 contained in this Settlement Agreement or any Court Order, to be consistent with the
17 recommendations and requests of the Settlement Administrator.

18 **D. Objections to Settlement Agreement after Preliminary Approval**

19 71. Any Settlement Class Member who intends to object to the settlement or this
20 Settlement Agreement must submit a written objection, along with any supporting documents,
21 to the Court, no later than forty-five (45) calendar days after the postmark date of the Settlement
22 Notice by mailing it to or filing it in person with the Court. The written objection must set forth,
23 in clear and concise terms, the legal and factual arguments supporting the objection.

24 72. Members of the Settlement Class who fail to make objections in the manner
25 specified in Paragraph 71 shall be deemed to have waived any and all objections and shall be
26 foreclosed from making any objection, whether by appeal or otherwise, to the settlement or this
27 Settlement Agreement.

1 73. Settlement Class Members who timely submit a written objection have the
2 option to appear at the Final Approval Hearing, either in person or through their own counsel.
3 To appear, Class Members must include a statement about the intent to appear at the Final
4 Approval Hearing ("Notice of Intention to Appear") in the objection. No member of the
5 Settlement Class shall be entitled to be heard at the Final Approval Hearing unless the Class
6 Member includes the Notice of Intention to Appear, without permission of the Court. The
7 Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that
8 the objecting Settlement Class Member will present to the Court in connection with the Final
9 Approval Hearing.

10 **E. Duties of the Parties in Connection with Final Court Approval**

11 74. In connection with final approval by the Court of this Settlement Agreement,
12 Class Counsel and Defense Counsel will submit a proposed Judgment and a proposed Order
13 Granting Final Approval of Action Settlement, approving the settlement, adjudicating the terms
14 thereof to be fair, reasonable, and adequate, and directing consummation of all terms and
15 provisions as provided in this Settlement Agreement.

16 **F. Timing and Manner of Payments**

17 75. Within twenty-one (21) calendar days after either Preliminary Approval of the
18 Settlement or after Defendant receives an election statement from the Settlement Administrator,
19 whichever is later, Defendant shall execute the election statement provided by the Administrator
20 which shall be affixed to the initial tax return of the Qualified Settlement Fund ("QSF") in order
21 to establish the start date of the QSF. The Settlement Fund will thereafter be administered and
22 distributed as set forth in this Agreement. All interest with respect to the Settlement Fund will
23 accrue to the benefit of the Settlement Class Members. The monetary relief to the Settlement
24 Class Members, all fees and expenses of the Settlement Administrator, and any and all taxes
25 arising out of any interest or other income derived from the Settlement Fund shall be paid from
26 the Settlement Fund. Upon calculation of the individual payments, and at least three (3)
27 calendar days after Final Approval (if not sooner), the Settlement Administrator shall advise
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1 Defendant of the amount of the employer's share of payroll taxes. Defendant will provide that
2 amount to the Settlement Administrator within fourteen (14) calendar days after Final Approval.

3 77. Within ninety (90) calendar days of the Order Granting Preliminary Approval,
4 Defendant will wire the Settlement Fund of one million dollars and no cents (\$1,000,000.00) to
5 fund the Settlement to the Administrator, which shall be deposited by the Settlement
6 Administrator into a QSF pursuant to Internal Revenue Code §1.468B-1. These funds shall be
7 under the exclusive control of the Administrator, and shall be used solely for the purpose of
8 fulfilling the terms of the Agreement.

9 78. Within fifteen (15) business days after the Effective Date, the Settlement
10 Administrator shall make payments from the Settlement Fund as follows: (i) Attorneys' Fees
11 and Costs to Class Counsel, consisting of the total court-approved attorneys' fees, as well as the
12 total court-approved litigation costs accrued as of the date of the Final Approval Hearing; (ii)
13 Service Award to Plaintiff; (iii) seventy-five percent (75%) of the PAGA Penalties to the
14 LWDA; and (iv) Administration Costs to itself.

15 79. The Settlement Administrator shall make payments from the Settlement Fund
16 within fifteen (15) business days after the Effective Date. The Administrator will send
17 individual checks by regular U.S. Mail to the address provided to the Settlement Administrator
18 for mailing of the Settlement Notice. Each Settlement Class Member who is entitled to a
19 payment under this Settlement Agreement will receive a single check for the total of his or her
20 settlement payment (less applicable payroll deductions required by federal and state law for the
21 wage portion of the payment, as described below).

22 80. Checks sent to Settlement Class Members under this Settlement Agreement will
23 remain valid and negotiable for 180 calendar days from the date of their mailing, and thereafter
24 may be automatically canceled if not cashed by the payee within that time. The Settlement
25 Administrator will provide notice to Plaintiff's Counsel of any uncashed checks and the
26 Administrator shall have responsibility to attempt to locate the impacted Class Members and re-
27 issue checks with an expiration date 180 days following the re-issuing of the checks. In the

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1 event any Settlement Class Member(s) cannot be located within 180 days of the expiration of
2 the initial settlement checks, uncashed settlement check(s) will be awarded *cy pres* to Consumer
3 Justice Clinic at the East Bay Community Law Center, a clinic of Berkeley Law. Defendant will
4 not be responsible for the employer's share of taxes for any uncashed settlement checks and
5 shall be returned the proportional amount of the employer's share of taxes from any uncashed
6 settlement checks. No person shall have any claim against Defendant, Released Parties, Defense
7 Counsel, the Named Plaintiff, any member of the Settlement Class, Class Counsel, or the
8 Settlement Administrator based on distributions and payments made in accordance with this
9 Settlement Agreement.

10 **G. Payroll Deductions and Taxes**

11 81. For each Settlement Class Member who is entitled to payment under this
12 Settlement Agreement, Defendant will issue: (a) a W-2 Form on which the wage portion of the
13 settlement payment shall be reported and payroll deductions required by state and federal law
14 shall be taken; and (b) a 1099 Form on which the penalties and interest of the settlement
15 payment shall be reported and from which no deductions will be taken.

16 82. The Parties agree and understand that Defendant has not made any
17 representations regarding the tax obligations or consequences, if any, related to this Settlement
18 Agreement. The Parties agree that Plaintiff and each Settlement Class Member are solely
19 responsible for determining the tax consequences of payments made pursuant to this Settlement
20 Agreement and for paying taxes, if any, which are determined to be owed by each of them on
21 such payments (including penalties and interest related thereto) by any taxing authority, whether
22 state, local, or federal.

23 **VI. OTHER PROVISIONS**

24 **A. Voiding the Settlement Agreement**

25 83. A failure of the Court to approve any material condition of this Settlement
26 Agreement which effects a fundamental change of the terms of the settlement shall render the
27 entire Settlement Agreement voidable and unenforceable as to Plaintiff and Defendants, at the
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1 option of either Party. Each Party may exercise its option to void this Settlement Agreement as
2 provided above by giving notice, in writing, to the other and to the Court at any time before
3 final approval of this Settlement Agreement by the Court.

4 83. If more than five percent (5%) of the Settlement Class submit timely and valid
5 requests for exclusion pursuant to the terms and procedures of the Settlement Notice, this entire
6 Settlement Agreement shall become voidable and unenforceable as to Plaintiff and Defendant,
7 at Defendant's discretion. Defendant may exercise such option by giving notice, in writing, to
8 Class Counsel and to the Court at any time before final approval of this Settlement Agreement
9 by the Court. If Defendant exercises its option to revoke the Settlement Agreement, Defendant
10 will pay the Administration Costs incurred up to the date that their revocation in writing is
11 served on Class Counsel.

12 **B. Escalator**

13 84. This Settlement is based on Defendant's representation that there were
14 approximately eight hundred thirty-seven (837) Class Members and approximately fifty
15 thousand seven hundred ninety-two (50,792) Workweeks as of June 15, 2020. Should the total
16 number of Workweeks for the Class Period increase by more than ten percent (10%) (i.e.,
17 exceed fifty-five thousand eight hundred seventy-one (55,871) Workweeks), then there will be a
18 *pro rata* adjustment to the Gross Settlement Amount, which will automatically increase in
19 proportion to the amount of the increase above the ten percent (10%) threshold stated in this
20 paragraph. For example, if the number of Settlement Class members increases by fifteen percent
21 (15%), the Gross Settlement Amount shall be increased by five percent (5%).

22 **C. Notices**

23 85. Except for Settlement Class Member notices, which are required herein to be
24 made to or by the Settlement Administrator, all notices, requests, demands and other
25 communications related to or in connection with this Settlement Agreement shall be in writing,
26 and shall be provided by appropriate method depending on the urgency (e.g., personal delivery,
27 facsimile, overnight delivery, or first-class U.S. mail) to:

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2 TO DEFENDANT:

DANIEL A. CROLEY

Futterman Dupree Dodd Croley Maier LLP
601 Montgomery St. Suite 333
San Francisco, CA 94111

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5 TO THE SETTLING CLASS:

EDWIN AIWAZIAN and ARBY AIWAZIAN

Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, CA 91203

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7 **D. Mutual and Full Cooperation**

8 86. Plaintiff, Defendant, Class Counsel, and Defense Counsel agree to fully
9 cooperate with each other to accomplish the approval by the Court and of the terms of this
10 Settlement Agreement, including, but not limited to, execution of such documents and to take
11 such other action as may reasonably be necessary to implement the terms herein. The parties
12 agree to use their best efforts, including all efforts contemplated by this Settlement Agreement,
13 and any other efforts that may become necessary by Order of the Court, or otherwise, to
14 effectuate this Settlement Agreement.

15 87. The Parties agree that they will not attempt to encourage any members of the
16 Settlement Class to object to the proposed settlement or to opt out. Plaintiffs and Class Counsel
17 will make every reasonable effort to accurately explain the benefits of this Settlement
18 Agreement in response to any questions from any member of the Settlement Class.

19 **E. No Admission of Liability**

20 88. Nothing herein shall constitute any admission by Defendant or Released Parties
21 of wrongdoing or liability or of the truth of any factual allegations in the Action. Nothing herein
22 shall constitute an admission by Defendant that the Action was properly brought as a class or
23 representative action other than for settlement purposes. To the contrary, Defendant has denied
24 and continue to deny each and every material factual, procedural, and/or legal allegation and
25 alleged claim asserted in the Action. To this end, the settlement of the Action, the negotiation
26 and execution of this Agreement, and all acts performed or documents executed pursuant to or
27 in furtherance of this Agreement or the settlement are not, shall not be deemed to be, and may

1 not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant
2 or Released Parties, or any of them, or of the truth of any of the factual allegations in the
3 operative complaints, and are not, shall not be deemed to be, and may not be used as, an
4 admission or evidence of any fault or omission on the part of Defendant or Released Parties, or
5 any of them, in any civil, criminal or administrative proceeding in any court, administrative
6 agency or other tribunal.

7 **F. Binding Nature of Settlement Agreement**

8 89. This Settlement Agreement shall be binding upon, and inure to the benefit of, the
9 successors or assigns of the Released Parties. The Named Plaintiff and the Settlement Class
10 represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred,
11 or encumbered any claim, demand, action, cause of action, or rights released in the Claims
12 Released in this Settlement Agreement.

13 90. This Settlement Agreement may be amended or modified only by a written
14 instrument signed by counsel for all Parties or their successors-in-interest and approved by the
15 Court. No rights under this Settlement Agreement may be waived except in writing.

16 91. This Settlement Agreement and any attached exhibits constitute the entire
17 Settlement Agreement between the Named Plaintiff, Settlement Class, and Defendant relating to
18 the terms contained herein. All prior or contemporaneous settlement agreements,
19 understandings, and statements, whether oral or written, whether express or implied, and
20 whether by a Party or its counsel, are merged herein. No oral or written representations,
21 warranties, or inducements have been made to any Party concerning this Settlement Agreement
22 or its exhibits other than the representations, warranties, and covenants contained and
23 memorialized in such documents.

24 92. Paragraph titles or captions contained herein are inserted as a matter of
25 convenience and for reference, and in no way define, limit, extend, or describe the scope of this
26 Settlement Agreement or any of its provisions. Each term of this Settlement Agreement is
27 intended to be contractual and not merely a recital.

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2 **F. Dispute Resolution**

3 93. Except as authorized herein, all disputes concerning the interpretation,
4 implementation, calculation, or payment of the Settlement Amount or other disputes regarding
5 compliance with this Settlement Agreement will be resolved by the Court.

6 **G. Restriction on Publicity**

7 94. Class Counsel and Plaintiff agree that they have not and will not issue any press
8 release or press statement, or initiate media coverage, regarding Defendant, the Released
9 Parties, or this Settlement Agreement. Notwithstanding this restriction on publicity, Class
10 Counsel may refer to their role in this lawsuit (but not the financial terms of the settlement) in
11 pleadings in other Class Action cases for the purpose of establishing its adequacy as Class
12 Counsel.

13 **H. Governing Law and Joint Drafting of Settlement Documents**

14 95. All terms of this Settlement Agreement and related documents shall be governed
15 by and interpreted according to the laws of the State of California, without respect to choice of
16 law provisions of any state.

17 96. Class Counsel and Defense Counsel have arrived at this Settlement Agreement
18 as a result of a series of arm's-length negotiations, taking into account all relevant factors,
19 present and potential.

20 97. This Settlement Agreement has been drafted jointly by Class Counsel and
21 Defense Counsel and, therefore, in any construction or interpretation of this Settlement
22 Agreement, the same shall not be construed against any of the Parties.

23 98. The Named Plaintiff, Settlement Class, and Class Counsel agree that none of the
24 documents provided to them by Defendant shall be used for any purpose other than the
25 prosecution and settlement of the Action. Specifically, none of the documents provided shall be
26 used to pursue any subsequent claims or litigation against Defendant or the Released Parties.

27 **I. Counterparts**

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1 99. This Agreement may be executed in one or more counterparts, which may be filed
2 with the Court. All executed counterparts, and each of them, shall be deemed to be one and the
3 same instrument. Once available, a complete set of executed counterparts shall be filed with the
4 Court. All executed copies of this Agreement and photocopies thereof (including facsimile
5 and/or emailed copies of the signature pages) shall have the same force and effect and shall be as
6 legally binding and enforceable as the original.

7 **J. Parties' Authority**

8 101. The signatories hereto represent that they are fully authorized to enter into this
9 Settlement Agreement and are fully authorized to bind the Named Plaintiff, Settlement Class,
10 and Defendant to all terms stated herein.

11 **K. Court Retains Jurisdiction**

12 102. The Parties agree that the Court shall retain exclusive and continuing jurisdiction
13 over the Parties and the Settlement Class Members to interpret and enforce the terms,
14 conditions, and obligations under this Stipulation and Settlement Agreement.

15 IT IS SO STIPULATED.

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17 *[Signatures on Next Page]*
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DATED: _____, 2022

By: _____
Plaintiff Ciomara Ayala Dolores

DATED: 03/08/2022 _____, 2022

E-Signed : 03/08/2022 02:22 PM PST
Jennifer Sullivan
jsullivan@inlandmetal.com
IP: 162.246.147.22
Defendant Inland Marine Industries, Inc.
DocID: 20220307172947928

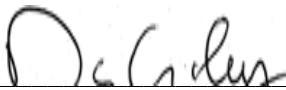
Name: Jennifer Sullivan

Title: President

APPROVED AS TO FORM:

DATED: March 18, 2022

FUTTERMAN DUPREE DODD CROLEY
MAIER LLP


Daniel A. Croley
Attorneys for Defendant
INLAND MARINE INDUSTRIES, INC


DATED: _____, 2022

LAWYERS *for* JUSTICE, PC

Edwin Aiwazian
Attorney for Plaintiff
CIOMARA AYALA DOLORES and
Settlement Class

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DATED: 03/01/2022, 2022

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By: 
Nintex AssureSign® 34b70e89-6f3c-44cd-bb59-ae4b0000771
Plaintiff Ciomara Ayala Dolores

DATED: _____, 2022

By: _____
Defendant Inland Marine Industries, Inc.
Name: _____
Title: _____

APPROVED AS TO FORM:

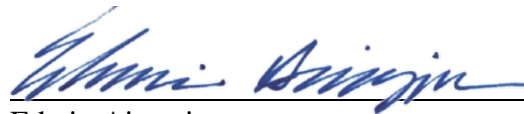
DATED: _____, 2022

FUTTERMAN DUPREE DODD CROLEY
MAIER LLP

Daniel A. Croley
Attorneys for Defendant
INLAND MARINE INDUSTRIES, INC

DATED: March 8, 2022, 2022

LAWYERS *for* JUSTICE, PC


Edwin Aiwazian
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CIOMARA AYALA DOLORES and
Settlement Class