

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

Civil Complex Center  
751 W. Santa Ana Blvd  
Santa Ana, CA 92701

**SHORT TITLE:** Alpirez Tapia vs. International Aluminum Corporation, a Texas Corporation

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC  
SERVICE**

**CASE NUMBER:**  
**30-2015-00819914-CU-OE-CXC**

I certify that I am not a party to this cause. I certify that the following document(s), dated , have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on August 27, 2019, at 3:58:51 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by: V. Harting, Deputy

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**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE**

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

MINUTE ORDER [X] Amended on 08/27/2019

DATE: 08/27/2019

TIME: 11:15:00 AM

DEPT: CX102

JUDICIAL OFFICER PRESIDING: Peter Wilson

CLERK: Virginia Harting

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Elizabeth A Perreault

CASE NO: 30-2015-00819914-CU-OE-CXC CASE INIT.DATE: 11/13/2015

CASE TITLE: **Alpirez Tapia vs. International Aluminum Corporation, a Texas Corporation**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

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EVENT ID/DOCUMENT ID: 73115740

EVENT TYPE: Under Submission Ruling

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**APPEARANCES**

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There are no appearances by any party.

On August 22, 2019, the Court took the Motion for Final Approval of Class Action Settlement under submission. The Court has received and reviewed the Supplemental Declaration of James Hawkins in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement.

Order Granting Plaintiffs' Motion for Final Approval of Class Action Settlement, Attorneys' Fees, Costs, Class Representative Awards, and Entering Judgment signed and filed on August 23, 2019 is attached hereto and incorporated herein by reference.

Court orders clerk to give notice.

DRAFT

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DATE: 08/27/2019

MINUTE ORDER

DEPT: CX102

Page 1  
Calendar No.

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

**AUG 23 2019**

DAVID H. YAMASAKI, Clerk of the Court

BY: \_\_\_\_\_, DEPUTY

ELECTRONICALLY RECEIVED  
Superior Court of California,  
County of Orange  
8-13-2019  
Clerk of the Superior Court  
By O'Lopez, Deputy Clerk

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Attorneys for DANIEL ALPIREZ TAPIA, MICHAEL  
TELLAS, JR., individually, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE, CIVIL COMPLEX CENTER

DANIEL ALPIREZ TAPIA, and MICHAEL  
TELLAS Jr., individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

INTERNATIONAL ALUMINUM  
CORPORATION dba INTERNATIONAL  
ALUMINUM COMPANY, a Texas  
Corporation, and DOES 1-50, inclusive,

Defendants.

Case No. 30-2015-00819914-CU-OE-CXC  
*Assigned for All Purposes To:*  
Hon. Peter Wilson  
CX-102

~~AMENDED [PROPOSED]~~ ORDER  
GRANTING PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT, ATTORNEYS' FEES,  
COSTS, CLASS REPRESENTATIVE  
AWARDS, AND ENTERING JUDGMENT

Date: August 22,, 2019  
Time: 2:00 p.m.  
Dept.: CX-102

~~AMENDED [PROPOSED]~~ ORDER RE MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT/JUDGMENT

1 This matter came on for hearing on August 22, 2019, at 02:00 p.m., in Department CX-  
2 102 of the above-captioned Court on Plaintiffs' Motion for Final Approval of Class Action  
3 Settlement, Attorneys' Fees, Costs, and Judgment. Having received and considered the  
4 Settlement Agreement (of which a true and correct copy is attached herein as **Exhibit 1**) and the  
5 Amendment to the Settlement Agreement (of which a true and correct copy is attached herein as  
6 **Exhibit 2**), the supporting papers filed by the Parties, and the evidence and argument received by  
7 the Court in conjunction with the Motion for Preliminary Approval of Class Action Settlement,  
8 and the instant Plaintiffs' Unopposed Motion for Final Approval, Attorneys' Fees, Costs, Class  
9 Representative Awards, and Entering of Final Judgment, the Court grants final approval of the  
10 Settlement and HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

11 1. Pursuant to the Preliminary Approval Order, the Class Notice was mailed to all  
12 members of the Class by first-class U.S. mail. The Notice informed the Class of the terms of the  
13 Settlement, of their right to receive their proportional Individual Settlement Payment, of their  
14 right to request exclusion from the Class and the Settlement, of their right to comment upon or  
15 object to the Settlement and to appear in person or by counsel at the final approval hearing and of  
16 the date set for the Final Approval hearing. Adequate periods of time were provided by each of  
17 these procedures.

18 2. In response to the Notice, the Court deems the 2 objection forms submitted by the  
19 Class Members as overruled. One (1) member of the Class, Jose Quezada Orozco, timely and  
20 validly requested to be excluded from the Settlement. There are no outstanding disputes regarding  
21 the Settlement.

22 3. The Court finds and determines that this notice procedure afforded adequate  
23 protections to Class Members and provides the basis for the Court to make an informed decision  
24 regarding approval of the Settlement based on the Class Members' response. The Court finds and  
25 determines that the Notice provided in the Action was the best notice practicable, which satisfied  
26 the requirements of law and due process.

27 4. The Court further finds and determines that the terms of the Settlement are fair,  
28 reasonable and adequate to the Class and to each Class Member and that the Settlement is ordered

1 finally approved, and that all terms and provisions of the Settlement Agreement should be and  
2 hereby are ordered to be consummated.

3 5. The Court has certified a Class, as that term is defined in and by the terms of the  
4 Settlement Agreement, and the Court deems this definition sufficient for purposes of California  
5 Rule of Court 3.765(a).

6 6. The Court hereby approves the terms set forth in the Settlement Agreement and  
7 finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties  
8 to effectuate the Settlement according to its terms. The Court finds that the Settlement was  
9 reached as a result of informed and non-collusive arm's-length negotiations facilitated by a  
10 neutral mediator. The Court further finds that the Parties conducted extensive investigation,  
11 research, and discovery and that their attorneys were able to reasonably evaluate their respective  
12 positions. The Court also finds that Settlement will enable the Parties to avoid additional and  
13 potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to  
14 litigate the case. The Court has reviewed the monetary recovery provided as part of the  
15 Settlement and recognizes the significant value accorded to the Class.

16 7. The Court hereby confirms James Hawkins, APLC as Class Counsel in this action.

17 8. The Court hereby confirms the Plaintiffs Daniel Tapia and Michael Telles, Jr. as  
18 the Class Representatives in this action.

19 9. The Court finds and determines that the Individual Settlement Payments provided  
20 for by the terms of the Settlement to be paid to the Class are fair and reasonable. The Court  
21 hereby gives final approval to and orders the payment of those amounts be made to the  
22 participating members of the Class in accordance with the terms of the Settlement.

23 10. The Court finds and determines that payment to the California Labor and  
24 Workforce Development Agency of \$7,500 as its share of the settlement of civil penalties in this  
25 case is fair, reasonable, and appropriate. The Court hereby gives final approval to and orders that  
26 the payment of that amount be paid in accordance with the Settlement.

27 11. The Court finds and determines the Class Representative Awards in the sum of  
28 \$5,000 each to Plaintiffs Daniel Tapia and Michael Telles, Jr. are fair and reasonable. The Court

1 hereby orders the Administrator to make this payment to the Plaintiffs/Class Representatives in  
2 accordance with the terms of the Settlement Agreement.

3 12. The Court finds and determines that the payment to be paid to the Settlement  
4 Administrator, Phoenix Settlement Administrators, in the sum of \$18,500 for its fee and expenses  
5 incurred is fair and reasonable. The Court hereby orders the Administrator to make this payment  
6 to itself in accordance with the terms of the Settlement Agreement.

7 13. Pursuant to the terms of the Settlement, and the authorities, evidence and argument  
8 submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in the sum of  
9 \$109,250.00 and litigation costs of \$8,059.29. The Court finds such amounts to be fair and  
10 reasonable. The Court hereby orders the Settlement Administrator to make these payments in  
11 accordance with the terms of the Settlement Agreement.

12 14. Neither Defendants nor any related persons or entities shall have any further  
13 liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability,  
14 except as provided for by the Settlement Agreement.

15 15. The Court finds and determines that the releases contained in the Settlement  
16 Agreement and Amendment thereto is appropriate and shall bind all Class Members who did not  
17 timely opt out of the Settlement.

18 16. Nothing in this Order shall preclude any action to enforce the Parties' obligations  
19 pursuant to the Settlement Agreement or pursuant to this Order, including the requirement that  
20 Defendants make payments to Participating Class Members in accordance with the Settlement  
21 Agreement.

22 17. The Court finds and determines that nothing in the Settlement Agreement, this  
23 Order, or the Judgment (1) is intended or will be construed as an admission of liability or  
24 wrongdoing by Defendants or (2) may be offered or admitted in evidence against Defendants  
25 (other than solely in connection with this Settlement).

26 18. The Court hereby enters final judgment in this case in accordance with the terms  
27 of the Settlement Agreement, Preliminary Approval Order and this Order.

28 19. The Parties shall bear their own costs and attorneys' fees except as otherwise

1 provided for by the Settlement Agreement and this Court's Order Granting Final Approval.

2 20. Without affecting the finality of this Order in any way, the Court retains  
3 jurisdiction of all matters relating to the interpretation, administration, implementation,  
4 effectuation and enforcement of this order and the Settlement.

5 21. A status conference for final accounting shall be held on March 9, 2020. Plaintiffs  
6 shall submit a final report at least 10 days prior to the status conference for final accounting  
7 regarding the status of the settlement administration. The final report must include all information  
8 necessary for the Court to determine the total amount actually paid to class members. Plaintiffs  
9 shall also submit, at least 10 days prior to the status conference for final accounting, a [Proposed]  
10 Amended Judgement directing Defendant or the Claims Administrator on Defendant's behalf to  
11 pay the sum of the unpaid residue or unclaimed or abandoned class member funds plus any  
12 interests that has accrued thereon as follows: 50% to the State Treasury for deposit in the Trial  
13 Court Improvement and Modernization Fund and 50% to the Equal Access Fund. *See* Cod Civ.  
14 Proc. § 384(b).

15 22. Notice to the Class of the judgement shall be provided as follows: The Claims  
16 Administrator shall post the signed Final Order & Judgement to their website under the  
17 "Judgement" tab (<http://www.phoenixclassaction.com/class-action-lawsuits/judgements/>).

18 **JUDGMENT**

19 23. This document shall constitute a judgment for purposes of California Rules of  
20 Court, Rule 3.769(h). In accordance with, and for the reasons stated in this Order, judgment shall  
21 be entered within the meaning and for purposes of Code of Civil Procedure sections 577,  
22 904.1(a), and Rules 3.769, and 8.104 of the California Rules of Court whereby named  
23 Plaintiffs/Class Representatives and all Class Members shall take nothing from Defendants except  
24 as expressly set forth in the Settlement Agreement, in conjunction with Plaintiffs' Unopposed  
25 Motion for Preliminary Approval of the Class Action Settlement. The Court pursuant to  
26 California Rule of Court 3.769(h) shall retain jurisdiction over the parties to enforce the terms of  
the judgment.

27 Date:

8-23-19

By:



**JUDGE PETER WILSON**

# **EXHIBIT 1**



1                   **STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2                                   **ARTICLE I**

3   **INTRODUCTION**

4                   This Stipulated Settlement Agreement and Release of Claims (hereafter "the Agreement") is  
5 entered into by and between Plaintiffs Daniel Tapia and Michael Telles, Jr. ("Representative  
6 Plaintiffs" or "Plaintiffs") individually and on behalf of the putative class, and Defendants  
7 International Aluminum Corp., ("Defendant") to effectuate the settlement reached by the Parties after  
8 a mediation session on August 27, 2018 with the Honorable James P. Gray of ADR Services, Inc.  
9 Representative Plaintiffs and Defendant collectively are referred to herein as "the Parties."

10                   Subject to the approval of the Court the Settlement of this Action shall be effectuated upon and  
11 subject to the terms and conditions as set forth herein. The terms used herein shall have the meanings  
12 set forth in the "Definitions" section or as defined elsewhere in the Agreement.

13                   The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and  
14 concluded by payment by Defendant of the Gross Settlement in an amount not to exceed Three  
15 Hundred Twenty Seven Thousand and Seven Hundred Fifty Dollars (\$327,750.00) as provided in  
16 Section 3.06.a below ("Gross Settlement Amount") and except as provided for herein, and upon the  
17 terms and conditions of this Agreement in exchange for a release of all claims by Representative  
18 Plaintiffs and the release of Class Claims by Class Members as set forth herein.

19   **ARTICLE II**

20   **DEFINITIONS**

21                   As used in the Agreement, the following terms have the meanings specified below:

22                   a.       "Action" or "Complaint" mean both the civil action commenced on November 13,  
23 2015, by Daniel Tapia and Michael Telles, Jr., in the Orange County Superior Court and captioned  
24 *Daniel Tapia, et. al., individually and on behalf of all other others similarly situated, Plaintiffs, v.*  
25 *International Aluminum Corp., et. al., and DOES 1-50, inclusive,* Defendant, Case No.30-2015-  
26 00819914, and as amended in Plaintiff's Third Amended Complaint filed by stipulation on or about  
27 October 31, 2018.

28                   b.       "Agreement" means this Stipulated Settlement Agreement and Release of Claims,

1 including the attached Exhibits.

2 c. "Settlement Administrator" means the third party administrator Phoenix Class Action  
3 or other Court approved administrator that will administer the settlement as set forth below.

4 d. "Settlement Administration Costs" means all costs incurred by the Settlement  
5 Administrator in administration of the Settlement including but not limited to address verification  
6 measures, mailing of notice to the Class, calculation of Individual Settlement Payments, preparation  
7 and issuance of Individual Settlement Payment checks, administration of unclaimed checks,  
8 preparation and issuance of checks to Class Counsel for attorneys' fees and costs, preparation and  
9 issuance of the check to Representative Plaintiff for his Enhancement, and submission of all tax related  
10 documents and any other costs incidental to or associated with the administration of this settlement,  
11 all pursuant to the terms of this Agreement. Settlement Administration costs are estimated at  
12 \$20,000.00.

13 e. "Class Counsel" means James Hawkins APLC.

14 f. "Class Member(s)" or "Participating Class Member(s)" means all persons who are or  
15 have been employed by Defendants to perform work in California during the Settlement Class Period  
16 (November 13, 2011 through the date of Preliminary Approval of the Settlement) and are or were  
17 classified by Defendants as non exempt employees, who do not timely and validly exclude themselves  
18 from the Class in compliance with the exclusion procedures set forth in this Agreement. Defendant  
19 represents there were approximately 300 Class Members as of the date of mediation.

20 g. "Class Settlement Notice" means the Notice of Proposed Class Action Settlement  
21 attached hereto as Exhibit "A" or in substantially the same form as ultimately approved by the Court.

22 h. "Class Released Claims" means all claims arising from or related to the facts and  
23 claims alleged in the Actions, or that could have been raised in the Action based on the facts and  
24 claims alleged. The Class Released Claims include, all claims for unpaid wages, including, but not  
25 limited to, failure to pay minimum wages; failure to pay overtime compensation, double-time  
26 compensation, reporting time compensation, and/or interest; missed, late short, or interrupted meal  
27 and rest periods, including any claim for any alleged failure to pay premiums for missed, late short  
28 or interrupted meal or rest periods, including any claim for any alleged failure to pay premiums for

1 missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate  
2 of compensation; reimbursement for business expenses or any other claim that Defendants allowed  
3 or required employees to bear any of the costs associated with the operation of Defendants'  
4 business; inaccurate or otherwise improper wage statements and/or failure to keep or maintain  
5 accurate records; unlawful deductions; unlawful payment instruments; any claim for unfair  
6 business practices arising out of or related to any or all of the aforementioned claims; any claim for  
7 penalties arising out of or related to any or all of the aforementioned claims, including, but not  
8 limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and  
9 waiting-time penalties and attorneys' fees and costs. The PAGA Released Claims include PAGA  
10 Claims asserted during the PAGA Settlement Period of November 13, 2014 through the date of  
11 Preliminary Approval. In addition, Settlement Class Members who endorse their settlement Check  
12 that Participating Class Member will also be deemed to have released his/her claims under Fair  
13 Labor Standards Act ("FLSA") as related to the claims asserted in the operative Complaint.

14 i. "Class Released Claims" means the "Class Claims" as released by the Participating  
15 Class Members pursuant to the Agreement.

16 j. "Class Period" means the period from November 13, 2011, through the date of  
17 Preliminary Approval.

18 k. "Defendant" means Defendant International Aluminum Corp. dba International  
19 Window Company.

20 l. "Defense Counsel" means counsel for Defendant, James T. Jackson of Merhab,  
21 Robinson, Jackson & Clarkson.

22 m. "Enhancement" means a monetary amount not to exceed Five Thousand Dollars  
23 (\$5,000.00), or such other amount as approved by the Court, for the Representative Plaintiffs which,  
24 subject to Court approval, shall be paid pursuant to Section 3.06.e of this Agreement, as provided  
25 below.

26 n. "Final" means the date on which the Court grants final approval of this Agreement on  
27 substantially the terms provided herein.

28 o. "Final Approval Order" refers to the order of the Court granting final approval of this

1 Agreement and entering a judgment approving this Agreement on substantially the terms provided  
2 herein or as the same may be modified by subsequent written agreement of the Parties.

3 p. "Final Effective Date" means twenty (20) days after the date on which the Court signs  
4 the Final Approval Order granting final approval of the Agreement in the event that no objections are  
5 made or filed to the Settlement. In the event that any such objections to the Settlement are made or  
6 filed with either the Court or with the Settlement Administrator, the Final Effective Date shall be sixty  
7 (60) days after the date of the Final Approval Order, unless any petition for writ of mandate or appeal  
8 is filed, in which case the Final Effective Date is twenty (20) days after the remittitur issues on the  
9 final ruling as to any petition for writ of mandate or appeal.

10 q. "Fairness Hearing" means the hearing at which Class Members who object to the  
11 settlement may be heard on whether the Agreement settling the Action should be approved as fair,  
12 reasonable, and adequate; whether the proposed plan of allocation of the Net Settlement Amount  
13 should be approved; whether the proposal concerning Representative Plaintiffs' Enhancement should  
14 be approved; and whether proposal concerning the application of Class Counsel for attorneys' fees  
15 and costs should be approved.

16 r. "Final Approval Hearing" means the hearing following the Fairness Hearing at which  
17 the Court determines finally whether the settlement herein is fair, reasonable and adequate and  
18 otherwise in conformity with law and awards an Enhancement and reasonable attorneys' fees and costs  
19 consistent with the Agreement and enters Judgment in conformity therewith.

20 s. "Judgment" refers to the judgment entered by the Court in conjunction with the Final  
21 Approval Order.

22 t. "Individual Settlement Payments" means the amounts of money from the Net  
23 Settlement Amount that shall be paid to the Class Members less employee's portion of required federal  
24 and state withholdings. Individual Settlement Payments shall be each Participating Class Member's  
25 *pro rata* share of the Net Settlement Amount (which share shall be determined by the calculations  
26 provided in this Agreement at 3.06.h).

27 u. "Gross Settlement Amount" means an amount not to exceed the sum of Three Hundred  
28 Twenty Seven Thousand and Seven Hundred Fifty Dollars (\$327,750.00) and includes all sums

1 required to be paid for settlement of this Action including all wages, damages, interest, penalties, Class  
2 Counsel's attorneys' fees and costs, any Enhancement Payment to the Representative Plaintiffs as  
3 awarded by the Court, and all costs of administration of this settlement, and the amount of the  
4 employer's share of payroll taxes and PAGA penalties in the amount of ten thousand dollars  
5 (\$10,000.00) of which seventy-five percent (75%) or Seven Thousand Five Hundred Dollars  
6 (\$7,500.00) will be paid to the Labor Workforce Development Agency ("LWDA") and twenty-five  
7 percent (25%) or Two Thousand Five Hundred Dollars (\$2,500.00) to Participating Class Members .

8 v. "Net Settlement Amount" means the amount paid to or on behalf of the Class Members  
9 and is the Gross Settlement Amount of Three Hundred Twenty Seven Thousand and Seven Hundred  
10 Fifty Dollars (\$327,750.00) less the following: (1) Class Counsel's attorney fees not to exceed One  
11 Hundred and Nine Thousand and Two Hundred Fifty Dollars (\$109,250.00) of the Gross Settlement  
12 Amount; (2) Class Counsel's reasonable costs according to proof not to exceed Thirty Thousand  
13 Dollars (\$30,000.00); (3) an Enhancement to be paid to each of Representative Plaintiffs not to exceed  
14 Five Thousand Dollars (\$5,000.00); (4) costs incurred by the Settlement Administrator of  
15 approximately Twenty Thousand Dollars (\$20,000.00) Dollars; (5) Seven Thousand Five Hundred  
16 Dollars (\$7,500.00) as PAGA penalties; and (6) employer and employee payroll taxes wherein a total  
17 of thirty-three percent (33%) of each payout will be for wages and a total of sixty-seven percent (67%)  
18 will be for penalties and any other non-taxable items. The Net Settlement Amount is anticipated to be  
19 approximately One Hundred and Fifty One Thousand Dollars (\$151,000.00).

20 w. "Preliminary Approval Order" means the Order Preliminarily Approving Class Action  
21 Settlement, Directing Distribution of the Class Settlement Notice, and Scheduling Fairness and Final  
22 Approval Hearings.

23 x. "Preliminary Approval Date" means the date on which the Court enters the Order of  
24 Preliminary Approval preliminarily approving the Settlement.

25 y. "Released Parties" means Defendant International Aluminum Corp. dba International  
26 Window Company individually, and each of their past, present and future agents, employees,  
27 servants, officers, directors, partners, trustees, representatives, shareholders, stockholders,  
28 attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or

1 partnerships (defined as a company/corporation and/or partnership that is, directly or indirectly,  
2 under common control with Defendants or any of their parents and/or affiliates), divisions ,  
3 assigns, predecessors, successors, insurers, consultants, joint ventures, joint employers,  
4 affiliates, and alter-egos, and all of their respective past, present and future employees,  
5 directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and  
6 assigns.

7 z. "Representative Plaintiffs" means Plaintiffs Daniel Tapia and Michael Telles, Jr.

8 aa. "Settlement" means the disposition of this Action and all claims released and settled  
9 by this Agreement.

### 10 **ARTICLE III**

#### 11 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

12 The Parties enter into this Agreement contingent upon the approval by the Court. If the Final  
13 Effective Date does not occur, this Agreement shall be deemed null and void, shall be of no force or  
14 effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

15 The Parties and their respective counsel shall take all steps that may be requested by the Court  
16 relating to the approval and implementation of this Agreement and shall otherwise use their respective  
17 best efforts to obtain Court approval and implement this Agreement. The procedure for obtaining  
18 Court approval of and implementing this Agreement is as follows.

#### 19 **Section 3.01: Motion for Preliminary Approval**

20 The Parties shall jointly bring a motion for an order granting preliminary approval of this  
21 Agreement, including the Class Settlement Notice. The date that the Court grants preliminary  
22 approval of this Agreement shall be the "Preliminary Approval Date."

#### 23 **Section 3.02: The Settlement Administrator**

24 The Parties have agreed that Phoenix Class Action will act as the third party administrator to  
25 administer this Settlement and to act as the Settlement Administrator, and the Parties estimate that the  
26 costs of the Settlement Administrator are estimated to be Twenty Thousand Dollars (\$20,000.00). The  
27 Settlement Administrator will administer the settlement by establishing a Qualified Settlement Fund  
28 for the settlement funds to be paid into, performing address verification for the Class Members,

1 distributing the Class Settlement Notice, performing skip traces, receiving Opt-Outs, providing Class  
2 Counsel and counsel for Defendant with weekly updates on the status (including Class Member names  
3 and percentages) of Opt-Outs, distributing settlement checks to Participating Class Members (along  
4 with a cover letter explaining the date by which settlement checks must be negotiated); making the  
5 payment to whatever taxing authorities as necessary and with respect to the payroll taxes withheld  
6 from the class member checks, and making the payments of the amounts awarded to Class Counsel  
7 for fees and costs and the Enhancement awarded to Representative Plaintiffs. The actions of the  
8 Settlement Administrator shall be governed by the terms of the Agreement. The Parties, through their  
9 counsel, may provide written information needed by the Settlement Administrator pursuant to the  
10 Agreement.

11 All costs of administering the Settlement shall be paid out of the Gross Settlement Amount.

12 **Section 3.03: Notice to Class Members**

13 **a. Identification of Class Members:** Within ten (10) days following entry of the  
14 Preliminary Approval Order, Defendant shall provide to the Settlement Administrator a confidential  
15 list in Excel spreadsheet format containing the name and last known address, telephone number, and  
16 social security number of each Class Member in addition to the start and end dates for each Class  
17 Member. **This information shall be treated as confidential and shall not be disclosed to the**  
18 **Representative Plaintiffs or to Class Counsel without prior written approval from Defendant's**  
19 **Counsel.**

20 **b. Mailing of Class Settlement Notice:** Promptly upon receipt of the Class Member  
21 information from Defendant, the Settlement Administrator shall attempt to obtain updated addresses  
22 for Class Members from the U.S. Postal Service and Accurant. Within ten (10) days after receipt of  
23 the Participating Class Member information from Defendant, or receipt of any updated addresses from  
24 the U.S. Postal Service, whichever is later, the Settlement Administrator shall mail the Class  
25 Settlement Notice to all Class Members via first-class mail using the updated address  
26 information. With respect to each Class Notice that is returned as undeliverable within thirty (30)  
27 days of initial mailing, the Settlement Administrator shall promptly attempt to determine a correct  
28 address using Experian and shall re-send the Class Notice via first-class mail to any new address

1 thereby determined. If no address can be determined by the Settlement Administrator after these  
2 efforts, no further efforts to determine an address shall be required. To the extent counsel become  
3 aware of any new addresses, those shall be forwarded to the Settlement Administrator.

4       **c. Notification to Counsel:** No later than fifteen (15) days prior to the Fairness Hearing,  
5 the Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration  
6 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses  
7 for and re-sending of any returned Class Settlement Notices. Compliance with the procedures  
8 described in this Section shall constitute due and sufficient notice to Class Members of this proposed  
9 Settlement and the Fairness Hearing, and shall satisfy the requirements of due process. Nothing else  
10 shall be required of the Parties, Class Counsel, Defense Counsel, or the Settlement Administrator to  
11 provide notice of the proposed Settlement and the Fairness Hearing.

12       **Section 3.04: Settlement Procedures**

13       **a. Claim Forms Not Required for Class Members to Receive Settlement Payment.**

14       The Parties to this Agreement agree that the entire Gross Settlement Amount will be paid out with  
15 no residuals kept by or reversion to Defendant. In order to receive funds hereunder, Class Members  
16 are not required to submit a claim form. Instead, a notice identifying the amount of each claim and a  
17 check for payment thereof, or such modified amount as a result of any challenge made by the Class  
18 Member, will be sent to them by first class mail as set forth herein.

19       **b. Objections to Settlement:** The Representative Plaintiffs may not object to this  
20 Agreement. The Representative Plaintiffs cannot object to the settlement because they have already  
21 approved the settlement and section 3.06.e below states the agreement remains in force if the Court  
22 does not approve the amount of the enhancement, thus the named plaintiffs do not have the conflict  
23 raised *Radcliffe v. Experian Information Solutions, Inc.* (9<sup>th</sup> Cir. May 2, 2013) 715 F.3d 1157, 1165.  
24 For any other Class Member to object to this Agreement, or any term of it, the person making the  
25 objection must be a Class Member, and must, by no later than sixty (60) days after the Class Settlement  
26 Notice was initially mailed to the Class Members, submit to the Settlement Administrator, a written  
27 statement of the grounds of objection, signed by the objecting Class Member or his or her attorney,  
28 along with all supporting papers. The Settlement Administrator will provide to Class Counsel and



1 Defense Counsel notice of any objection within five (5) days of receipt. The Settlement Administrator  
2 will submit any objection received to the Court with its Declaration in Support of Final Approval. For  
3 Class Notices re-mailed by the Settlement Administrator pursuant to section 3.03.b, written statements  
4 of the grounds for objection must be filed and served no later than sixty (60) days after the initial  
5 mailing of the Class Notice or fifteen (15) days of the re-mailing, whichever is later. The date of  
6 mailing or re-mailing of the Class Notice to the objecting Class Member shall be conclusively  
7 determined according to the records of the Settlement Administrator. The Court retains final authority  
8 with respect to the consideration and admissibility of any Class Member objections. Counsel for the  
9 Parties may file any response to the objections submitted by objecting Class Members at least ten (10)  
10 days before the date of the Fairness Hearing.

11 **c. Opt Out/Requests for Exclusion:** The Representative Plaintiff may not request  
12 exclusion from the Class. For any other Class Member to validly exclude himself or herself from the  
13 Class and this Settlement (*i.e.*, to validly opt-out), they must submit an Opt Out Form which must be  
14 signed by the Class Member or his or her authorized representative, and must be sent to the Settlement  
15 Administrator, postmarked by no later than sixty (60) days after the date the Settlement Administrator  
16 initially mails the Class Notice to the Class Members. For Class Notice Forms re-mailed by the  
17 Settlement Administrator pursuant to section 3.03.b, the Opt Out Form must be postmarked no later  
18 than sixty (60) days after the date the Settlement Administrator initially mails the Class Notice to the  
19 Class Members or fifteen (15) days of the re-mailing, whichever is later. The Class Notice packet  
20 shall contain an Opt Out Form. The date of the initial mailing (or re-mailing for Class Notices re-  
21 mailed) of the Class Notice and the date the signed request for exclusion was postmarked, shall be  
22 conclusively determined according to the records of the Settlement Administrator. Any Class Member  
23 who timely and validly requests exclusion from the Class and this Settlement shall become a Non-  
24 Participating Class Member and shall not be entitled to nor receive any Individual Settlement Payment,  
25 shall not be bound by the terms and conditions of this Agreement, and shall not have any right to  
26 object, appeal, or comment thereon.

27 **d. Failure to Object:** Any Class Member who fails to timely file and serve a written  
28 statement of his or her objection shall be foreclosed from making any objection to this settlement,

1 unless otherwise ordered by the Court.

2       **e. Failure to Submit Opt Out Form:** Any Class Member who fails to submit a timely  
3 and valid request for exclusion from the Class in response to the class notice ordered by the Court in  
4 its order granting Preliminary Approval shall automatically be deemed a Participating Class Member  
5 for purposes of this Agreement whose rights and claims with respect to the Class Claims are  
6 determined by the Court's Final Approval Order, and by the other rulings in the Action, regardless of  
7 whether he or she negotiates/cashes the check for his or her Individual Settlement Payment, with the  
8 exception of the Participating Class Members' claims under the FLSA which will only be released  
9 when they cash or deposit the settlement check.

10       **Section 3.05: Fairness Hearing**

11       On a date set forth in the Preliminary Approval Order and Class Settlement Notice, which date  
12 shall be at least ninety (90) days after the initial mailing of the Notice of Proposed Class Action  
13 Settlement, a Fairness Hearing shall be held before the Court to consider any timely objections made  
14 pursuant to Section 3.04.b above and all responses by the Parties to such objections. Following the  
15 Fairness hearing, the Parties shall ask the Court to give final approval to the Agreement and shall  
16 submit to the Court a proposed Final Approval Order and Judgment.

17       **a. Waiver of Right to Appeal:** Provided that the Final Approval Order is consistent with  
18 the terms and conditions of this Agreement, all Class Members who do not submit timely objections  
19 to the Settlement hereby waive any and all rights to appeal from the Final Approval Order and  
20 Judgment, including all rights to any post-Final Approval Order proceeding and appellate proceeding,  
21 such as a motion to vacate or set-aside the Final Approval Order and Judgment, a motion for new trial,  
22 and any extraordinary writ, and the Final Approval Order and Judgment therefore shall become final  
23 and non-appealable at the time it is entered. This waiver does not include any waiver of the right to  
24 oppose any appeal, appellate proceedings, or post-Final Order proceedings.

25       **b. Vacation, Reversal, or Material Modification of Final Order and Judgment on**  
26 **Appeal or Review:**

27       If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition, or  
28 application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such that

1 there is a material modification to the Settlement and that court's decision is not completely reversed,  
2 and the Final Order and Judgment is not fully affirmed on review by a higher court, then  
3 Representative Plaintiff and Defendant shall each have the right, but not the obligation, to void the  
4 Settlement, which the Party must do by giving written notice to the other Party, the final reviewing  
5 court, and the Court not later than thirty (30) days after the final reviewing court's decision vacating,  
6 reversing, or materially modifying the Final Order becomes final and non-appealable. A vacation,  
7 reversal, or modification of the Court's award of the Enhancement or Class Counsel's fees or costs  
8 shall not constitute a vacation, reversal, or material modification of the Final Order and Judgment  
9 within the meaning of this paragraph.

10 **Section 3.06: Settlement Payment Procedures**

11 **a. Settlement Sum.** In exchange for the releases set forth in this Agreement, Defendant  
12 agrees to pay the Gross Settlement Amount. The Gross Settlement Amount includes Class Counsel's  
13 attorneys' fees and costs, an Enhancement for Representative Plaintiffs, the Individual Settlement  
14 Payments to Participating Class Members, and all costs incurred by the Settlement Administrator.  
15 Under no circumstances shall Defendant be required to pay more than the Gross Settlement Amount  
16 inclusive payroll taxes as provided for in section f, below.

17 **b. Allocation of Settlement Amount:** In full and complete settlement of the Action and  
18 subject to this Settlement being approved by the Court, Defendant shall pay the Gross Settlement  
19 Amount into the Qualified Settlement Fund established by the Settlement Administrator, in the  
20 amounts specified and on or before the dates set forth in Section 3.06.i below, to be allocated as  
21 follows:

22 **c. Reasonable attorneys' fees and litigation expenses:** Class Counsel has stated they  
23 shall request that the Court award them attorneys' fees in an amount not to exceed (\$109,250.00).  
24 Class Counsel will request that the Court award them actual costs, subject to Court approval not to  
25 exceed \$30,000.00. Defendant has agreed to neither oppose nor comment on the fees and costs  
26 request. In the event that the Court awards less than requested amounts in attorney fees and costs, the  
27 difference between the amount actually awarded and the amounts requested shall be added to the Net  
28 Settlement Amount and distributed to the Class Members in accordance with the procedures set forth

1 herein.

2 The award of reasonable attorneys' fees and costs granted by the Court shall be paid out of the  
3 Gross Settlement Amount. Any award of attorneys' fees and costs shall include and satisfy all past  
4 and future attorneys' fees and costs incurred to prosecute, settle, and participate in administering the  
5 Settlement and the Agreement, including obtaining the Final Approval Order. Defendant shall have  
6 no obligation to Class Counsel for any attorneys' fees and costs incurred in prosecuting this Action  
7 other than as stated herein.

8 **d. Reasonable expenses of the Settlement Administrator:** The Settlement  
9 Administrator shall be paid out of the Gross Settlement Amount and the Parties estimate that said costs  
10 are Twenty Thousand Dollars (\$20,000.00) and such payment shall not constitute payment to any  
11 Participating Class Member(s).

12 **e. Enhancement to Representative Plaintiffs:** Subject to Court approval,  
13 Representative Plaintiffs shall each receive an enhancement not to exceed Five Thousand Dollars  
14 (\$5,000.00) each. If the Court does not approve the amount of the enhancement, the Agreement  
15 remains in full force and effect. The Enhancement shall be paid by check made payable to the  
16 Representative Plaintiff, which shall be delivered by the Settlement Administrator to Class Counsel.  
17 The Enhancement shall be paid out of the Gross Settlement Amount and shall not constitute payment  
18 to any Participating Class Member(s). Any reduction to the Enhancement Awards to the  
19 Representative Plaintiffs by the Court shall be included in the Net Settlement Amount.

20 Because it is the intent of the Parties that the Enhancement represents payment to  
21 Representative Plaintiffs for their service to the Class Members, and not wages, the Settlement  
22 Administrator shall not withhold any taxes from the Enhancement. The Enhancement shall be reported  
23 on a Form 1099, which shall be provided to Representative Plaintiff and to the pertinent taxing  
24 authorities as required by law. Although it is the contemplation of the Parties that the Enhancement  
25 does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some  
26 other taxing authority may take the position that some or all of the Enhancements constitute wages for  
27 income tax and withholding purposes. Representative Plaintiffs agree to assume the responsibility of  
28 remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant

1 taxing authority the amounts required by law, if any, to be withheld by Defendant from the  
2 Enhancement paid under this Agreement. In addition, Representative Plaintiffs shall hold Defendant,  
3 Released Parties and Class Counsel harmless and indemnify Defendant, Released Parties and Class  
4 Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendant by reason  
5 of any claims relating to the non-withholding of taxes from the Enhancement.

6 **f. Payroll Taxes.** Based on business records for each Participating Class Member  
7 provided by Defendant to the Settlement Administrator, the Settlement Administrator shall calculate  
8 the payroll taxes applicable to the wage portion of the Net Settlement Amount made to each Class  
9 Member. The employee share shall be withheld by the Settlement Administrator and paid to the  
10 appropriate governmental agencies. The employer share of payroll taxes will be paid out of the Gross  
11 Settlement Amount. For purposes of calculating payroll taxes, the Parties agree, for purposes of this  
12 Agreement only and for no other purpose that one-third of each Net Settlement Payment shall be  
13 considered to be interest, one-third shall be considered wages, and one-third shall be considered other  
14 payments.

15 **g. Allocation to Participating Class Members:** The amount remaining from the Gross  
16 Settlement Amount after deducting the requested attorneys' fees and litigation costs, Enhancement  
17 payment, and the costs incurred by the Settlement Administrator, (the "Net Settlement Amount") shall  
18 be distributed to the Class Members as their "Individual Settlement Payments" in accordance with the  
19 formula set forth below.

20 **h. Individual Settlement Payments:** The Individual Settlement Payments shall be  
21 calculated as follows:

22 **1. Calculation:** The Parties have estimated One Hundred and Fifty One Thousand  
23 Dollars (\$151,000.00) as the Net Settlement Amount to settle all Class Members claims covered by  
24 the Release. The actual Net Settlement Amount shall be subject to adjustment based on the amount  
25 of costs of the Settlement Administrator, the amount of the court approved Enhancement to be paid to  
26 Representative Plaintiff, and the amount of the court approved attorneys' fees and costs to Class  
27 Counsel. Participating Class Members' Individual Settlement Amount shall be based on a *pro rata*  
28 value equal to the Net Settlement Amount multiplied by the ratio of (a) the number of Eligible

1 Workweeks (as defined below) by that Participating Class Member to (b) the total number of Eligible  
2 Workweeks worked by all Participating Class Members. If a Class Member opts out of the Settlement,  
3 his or her Individual Settlement Payment will be redistributed and paid out to the other Participating  
4 Class Members based on the formula stated above.

5 i. **“Eligible Workweek”** means a workweek that occurred during the Class  
6 Period and during which a Class Member worked at least one-day as an hourly  
7 non-exempt worker for Defendant based on Defendant’s payroll records.

8 **2. Challenging Individual Settlement Payment Calculations.**

9 a. **Notice:** The notice from the Settlement Administrator advising the Class Members  
10 that the Court has granted Preliminary Approval shall also notify the Class Members that he/she may  
11 within sixty (60) days of the mailing of the notice challenge the data maintained by Defendant but not  
12 upon the formula approved by the Parties and the Court. Such challenges shall be mailed to the  
13 Settlement Administrator postmarked no later than the thirtieth day after the mailing of the notice and  
14 the Settlement Administrator shall provide a copy of the challenge and any supporting documentation  
15 to counsel for the Parties within ten (10) days thereafter.

16 b. **Dispute Resolution:** The Settlement Administrator shall have the initial  
17 responsibility of resolving all disputes that arise during the settlement administration process,  
18 including, without limitation, disputes, if any, regarding the calculation of each Class Member’s  
19 settlement share, where the information submitted by Defendant based on its employment records  
20 differs from the information submitted by the Class Member. In resolving such disputes, Defendant’s  
21 employment records shall be presumed to be accurate and correct, and shall be final and binding,  
22 unless the information submitted by the Class Member (e.g., pay stubs, employment records, etc.)  
23 proves otherwise. In the event the Settlement Administrator cannot resolve a dispute based on a review  
24 of the available information, the Settlement Administrator shall request a conference call between the  
25 Settlement Administrator, Class Counsel, and Defense Counsel to discuss and resolve the dispute. In  
26 advance of the conference call, the Settlement Administrator shall fax or email copies of all available  
27 information to all counsel. The Parties will resolve all disputes jointly, which shall be final and binding  
28 on any Class Member Disputes, and shall thereafter instruct the Settlement Administrator how to

1 proceed in processing the disputed claim. If the Parties cannot reach agreement, the Settlement  
2 Administrator's decision shall be final and binding unless the Court makes a different determination,  
3 in which case the Court's determination of the dispute shall be final and binding upon the Class  
4 Member and the Parties.

5 **i. Distribution of Residual:** Each member of the Settlement Class who receives an  
6 individual settlement payment must negotiate that check within one hundred eighty (180) days from  
7 the date of issuance. Neither Plaintiffs nor Defendant shall bear any liability for lost or stolen checks,  
8 forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts  
9 of omission or commission, the same is true for the Settlement Administrator. Any funds payable to  
10 Settlement Class Members whose checks were not cashed within one hundred eighty (180) days will  
11 be disbursed as follows, pursuant to California Code of Civil Procedure § 384:

12 (a) Fifty percent (50%) to the State Treasury for deposit in the Trial Court Improvement  
13 and Modernization Fund, established in Section 77209 of the Government Code, and  
14 subject to appropriation in the annual Budget Act for the Judicial Council to provide  
15 grants to trial courts for new or expanded collaborative courts or grants for Sargent  
16 Shriver Civil Counsel.

17 (b) Fifty percent (50%) to the State Treasury for deposit into the Equal Access Fund of the  
18 Judicial Branch, to be distributed in accordance with Sections 6216 to 6223, inclusive,  
19 of the Business and Professions Code, except that administrative costs shall not be paid  
20 to the State Bar or the Judicial Council from this sum.

21 **j. Fair Formula:** The Parties recognize and agree that the precise value of each  
22 Individual Settlement Payment, is difficult to determine with certainty for any given person, year, or  
23 at all, and is subject to differing calculations and formulas. The Parties hereby agree that the formula  
24 for allocating payments to Class Members as provided herein is reasonable and designed to provide a  
25 fair settlement to the Participating Class Members.

26 **k. Allocation of Net Settlement Amount Payments and Taxes:** All Individual  
27 Settlement Payments made to Class Members under this Agreement shall be allocated as follows: one-  
28 third to wages, one-third to interest, and one-third to other payments. The Settlement Administrator

1 shall deduct from each Individual Settlement Payment all employee portions of payroll taxes from the  
2 amount allocated to wages. The employer share of payroll taxes shall be paid from the Gross  
3 Settlement Amount. The amounts allocated to interest and other payments shall not be subject to tax  
4 withholding but Class Members will receive a 1099 for those payments. Defendant shall not make as  
5 part of this Agreement, nor be required to make, any deductions, nor pay any monthly contributions  
6 for any insurance, retirement, 401(k) or profit sharing plans, or any benefit plans related to monies  
7 paid as a result of this Agreement.

8 **l. Timing of Settlement Payments:** Defendant shall send by U.S. mail and/or wire  
9 transfer to the Settlement Administrator one check in the amount of Three Hundred Twenty Seven  
10 Thousand and Seven Hundred Fifty Dollars (\$327,750.00) and payable to the fund established by the  
11 Settlement Administrator, to be held in trust by the Settlement Administrator, no later than 15 business  
12 days (15) after the Final Effective Date. All of Defendant's obligations under this Agreement are  
13 deemed to be satisfied upon Defendant's mailing and/or wiring of the entire Gross Settlement Amount  
14 and acknowledgement of receipt of said funds and Defendant shall have no further obligations to the  
15 Class including, without limitation, any further obligations to make any other payments of any kind  
16 to, or on behalf of, the Class. Within five (5) business days after receipt and deposit of the Gross  
17 Settlement Amount, the Settlement Administrator shall issue all of the checks for the Individual  
18 Settlement Payments, wire transfer Counsel's fees and litigation costs to Class Counsel, and issue a  
19 check to the Representative Plaintiffs for the Enhancement Payments.

20 **m. No Additional Contribution by Defendant**

21 Other than as set forth above, Defendant shall not be called upon or required to contribute  
22 additional monies above the Gross Settlement Amount under any circumstances whatsoever except as  
23 specifically set forth herein. All costs and expenses arising out of or in connection with the  
24 performance of this Agreement shall be paid from the Gross Settlement Amount.

25 In the event that this Agreement is canceled, rescinded, terminated, voided, or nullified,  
26 however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated,  
27 or ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have any  
28 obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this



1 Agreement and this action shall resume as though no Settlement had occurred with the action  
2 proceeding in Orange County Superior Court.

3 **ARTICLE IV**

4 **LIMITATIONS ON USE OF THIS SETTLEMENT**

5 **Section 4.01: No Admission**

6 Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with  
7 the law in any respect, that it has any liability to anyone under the claims asserted in the Action, and  
8 that but for this Settlement a class should not be certified in this Action. This Agreement is entered  
9 into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is  
10 intended or shall be construed as an admission of liability or wrongdoing by Defendant.

11 **Section 4.02: Non-Evidentiary Use**

12 Whether or not the Final Effective Date occurs, neither this Agreement nor any of its terms nor  
13 the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or  
14 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties  
15 including but not limited to evidence of a presumption, concession, indication, or admission by any of  
16 the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b)  
17 disclosed, referred to, or offered in evidence against any of the Released Parties in any further  
18 proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except  
19 for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish  
20 that a Class Member has resolved any of his/her claims released through this Agreement.

21 **Section 4.03. Nullification of Settlement by Parties.**

22 Defendant shall retain the right, in the exercise of their sole discretion, to nullify the settlement  
23 if Class Members possessing or representing more than an aggregate total of 10% of the Net Settlement  
24 Amount, opt out of the Settlement. Defendant will have the right to void this settlement within  
25 fourteen days of the expiration of the Opt-Out/Objection period. If Defendant exercises its right under  
26 this paragraph, it shall be solely liable for administrative costs. Defendant agrees that it will not in  
27 any manner take any actions to encourage settlement class members to opt out.

28 Plaintiffs shall retain the right, in the exercise of their sole discretion, to nullify the settlement

1 if the workweeks exceed 17,076 by more than 10%. The Settlement Administrator shall forward the  
2 total number of workweeks calculated based upon the data provided by Defendant within one week of  
3 the calculations. Plaintiffs will have the right to void this settlement within fourteen days of the  
4 expiration of the Opt-Out/Objection period. If Plaintiffs exercise its right under this paragraph, it shall  
5 be solely liable for administrative costs.

6 **Section 4.04: Nullification**

7 If the Court (a) should for any reason fail to approve this Settlement in the form agreed to by  
8 the Parties (except for the amount of attorney fees and costs, Enhancement award, or allocation of the  
9 Net Settlement Amount), or (b) the Court should for any reason fail to enter the Final Order, or (c) the  
10 Final Order is reversed, modified, or declared or rendered void, or (d) the Defendant exercises its right  
11 under Section 4.03 of this Agreement, then (i) this Agreement shall be considered null and void; (ii)  
12 neither this Agreement nor any of the related negotiations or proceedings shall be of any force or  
13 effect; (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the  
14 Agreement had been neither entered into nor filed with the Court.

15 Invalidation of any material portion of this Agreement, except for the amount of attorneys'  
16 fees, costs, Enhancement, and allocation of the Net Settlement Amount, shall invalidate this  
17 Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining  
18 provisions shall remain in full force and effect. In the event the Court invalidates any material portion  
19 of this Agreement, said order does not preclude any Party from appealing the Court's order in that  
20 regard.

21 **ARTICLE V**

22 **RELEASES**

23 **Section 5.01: Releases by Class Members**

24 On the Final Effective Date, all Class Members shall be bound by this Agreement.

25 **Section 5.02: Release of All Claims Relating To The Action**

26 **a. Representative Plaintiff's Individual General Release**

27 As of the date of Judgment, Plaintiffs fully and finally release  
28

1 Defendants for themselves individually, and each of their past, present and future agents,  
2 employees, servants, officers, directors, partners, trustees, representatives, shareholders,  
3 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations  
4 and/or partnerships (defined as a company/corporation and/or partnership that is, directly or  
5 indirectly, under common control with Defendants or any of their parents and/or affiliates),  
6 divisions, assigns, predecessors, successors, insurers, consultants, joint ventures, joint  
7 employers, affiliates, and alter-egos, and all of their respective past, present and future  
8 employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents,  
9 subsidiaries, and assigns (collectively, the "Released Parties"), from any and all claims,  
10 known and unknown, under federal, state and/or local law, statute, ordinance, regulation,  
11 common law, or other source of law, including but not limited to claims arising from or related  
12 to their employment with Defendants and/or the termination of their employment ("Plaintiffs'  
13 Released Claims"). Plaintiffs' Released Claims include, but are not limited to, all claims  
14 asserted in, arising from or related in any way to the Actions, including without limitation any  
15 and all claims that could have been asserted as part of the Actions based on the facts alleged.  
16 Plaintiffs' Released Claims include all claims for unpaid wages, including, but not limited to,  
17 failure to pay minimum wages; failure to pay straight time compensation, overtime  
18 compensation, double- time compensation, reporting time compensation, and/or interest;  
19 missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged  
20 failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay  
21 such premiums at the regular rate of compensation; reimbursement for business expenses or  
22 any other claim that Defendants allowed or required employees to bear any of the costs  
23 associated with the operation of Defendants' business; inaccurate or otherwise improper wage  
24 statements and/or failure to keep or maintain accurate records; unlawful deductions; unlawful  
25 payment instruments; any claim for unfair business practices arising out of or related to any or  
26 all of the aforementioned claims; any claim for penalties arising out of or related to any or  
27 all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage  
28 statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees

1 and costs. Plaintiffs Released Claims include all claims arising under the California Labor  
2 Code (including, but not limited to, sections 200, 201, 201.3, 201.5, 202,203,204,205.5,  
3 210,212,216,218,218.5,218.6, 221,222,222.5, 223,224,225,225.5, 226,226.7, 226.8,  
4 227.3, 450,510, 511,512,516,558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198,  
5 1199, 2698 *et seq.*, 2800 and 2802); all claims arising under the Wage Orders of the  
6 California Industrial Welfare Commission; California Business and Professions Code section  
7 17200, *et seq.*; the California Civil Code, including but not limited to, sections 3287, 3289,  
8 3336 and 3294; 12 CCR§ 11040; 8 CCR§ 11060; California Code of Civil Procedure§  
9 1021.5; the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. §  
10 201 *et seq.*; federal common law; and the Employee Retirement Income Security Act, 29  
11 U.S.C. § 1001, *et seq.* Plaintiffs' Released Claims include any and all claims under the  
12 private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.* ("PAGA"), of any kind,  
13 including but not limited to the PAGA claims asserted in the Actions.

14 Plaintiffs' Released Claims also include all claims for lost wages and benefits,  
15 emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under  
16 federal, state, or local laws for discrimination, harassment, retaliation, and wrongful  
17 termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title VII  
18 of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination  
19 in Employment Act, and the California Fair Employment and Housing Act; and the law of  
20 contract and tort. This release excludes the release of claims not permitted by law.

21 Plaintiffs' Released Claims include all claims, whether known or unknown. Even if  
22 Plaintiffs discover facts in addition to or different from those that they now know or believe to  
23 be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will  
24 remain released and forever barred. Thus, Plaintiffs expressly waive and relinquish the  
25 provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

1  
2           Plaintiffs' Released Claims Apply only to Plaintiffs ' individually and not to  
3 the Settlement Class.

4           **b. Settlement Class Members Release.** As of the date of the Judgment, all  
5 Settlement Class Members fully and finally release the Released Parties from any and all  
6 Class Released Claims during the Settlement Period. The Class Released Claims include, all  
7 claims arising from or related to the facts and claims alleged in the Actions, or that could have  
8 been raised in the Action based on the facts and claims alleged. The Class Released Claims  
9 include, all claims for unpaid wages, including, but not limited to, failure to pay minimum  
10 wages; failure to pay overtime compensation, double-time compensation, reporting time  
11 compensation, and/or interest; missed, late, short or interrupted meal and or rest periods,  
12 including any claim for any alleged failure to pay premiums for missed, late, short or  
13 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;  
14 reimbursement for business expenses or any other claim that Defendants allowed or required  
15 employees to bear any of the costs associated with the operation of Defendants' business;  
16 inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate  
17 records; unlawful deductions; unlawful payment instruments; any claim for unfair business  
18 practices arising out of or related to any or all of the aforementioned claims; any claim for  
19 penalties arising out of or related to any or all of the aforementioned claims, including, but not  
20 limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and  
21 waiting-time penalties; and attorneys' fees and costs. The PAGA Released Claims include  
22 PAGA Claims asserted during the PAGA Settlement Period of November 13, 2014 through  
23 the date of Preliminary Approval. In addition, Settlement Class Members who endorse their  
24 settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C.  
25 § 201 *et seq.* ("FLSA") arising during the Settlement Class Period and reasonably related to  
26 any or all of the aforementioned claims. This release excludes the release of claims not  
27 permitted by law.

28           If a Participating Class Member cashes or deposits a Settlement Check, that Participating Class

1 Member will also be deemed to have released his/her claims under FLSA. The above release language  
2 shall also be included in the Class Notice, and each settlement check distributed to Participating Class  
3 Members shall include the following language, or words of similar import and effect, on the reverse  
4 side immediately above the place designated for endorsement: "By endorsing this check I  
5 acknowledge that I am bound, and so agree to be bound, by the release of Class Claims described in  
6 the Class Settlement Notice, including claims under the Fair Labor Standards Act." This language  
7 will be in both English and Spanish.

## 8 **ARTICLE VI**

### 9 **MISCELLANEOUS PROVISIONS**

#### 10 **Section 6.01: Amendments or Modifications**

11 The terms and provisions of this Agreement may be amended or modified only by an express  
12 written agreement that is signed by all the Parties or their Counsel (or their successors-in-interest) and  
13 their counsel.

#### 14 **Section 6.02: Assignment**

15 None of the rights, commitments, or obligations recognized under this Agreement may be  
16 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written  
17 consent of each other Party and their respective counsel. The representations, warranties, covenants,  
18 and agreements contained in this Agreement are for the sole benefit of the Parties under this  
19 Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

#### 21 **Section 6.03: Governing Law**

22 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties  
23 shall be determined, in accordance with the laws of the State of California.

#### 24 **Section 6.04: Entire Agreement**

25 This Agreement, including the Exhibits referred to herein, which forms an integral part hereof,  
26 contains the entire understanding of the Parties hereto with respect of the subject matter contained  
27 herein. In case of any conflict between text contained in Articles I through VI of this Agreement and  
28 text contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be

1 controlling. There are no restrictions, promises, representations, warranties, covenants, or  
2 undertakings governing the subject matter of this Agreement other than those expressly set forth or  
3 referred to herein. This Agreement supersedes all prior agreements and understandings among the  
4 Parties hereto with respect to the settlement of the Action including correspondence between Class  
5 Counsel and Defense Counsel.

6 **Section 6.05: Counterparts and Fax Signatures**

7 This Agreement, and any amendments hereto, may be executed in any number of counterparts  
8 and any Party and/or their respective counsel hereto may execute any such counterpart, each of which  
9 when executed and delivered shall be deemed to be an original and all of which counterparts taken  
10 together shall constitute one instrument. It shall not be necessary in making proof of this Agreement  
11 or any counterpart hereof to produce or account for any of the other counterparts. A fax signature on  
12 this Agreement shall be as valid as an original signature.

13 **Section 6.06: Meet and Confer Regarding Disputes**

14 Should any dispute arise among the Parties or their respective counsel regarding the  
15 implementation or interpretation of this Agreement, a representative of Class Counsel and a  
16 representative of Defense Counsel shall meet and confer in good faith in an attempt to resolve such  
17 disputes prior to submitting such disputes to the Court.

18 **Section 6.07: Agreement Binding on Successors**

19 This Agreement shall be binding upon, and inure to the benefit of, the successors in interest of  
20 each of the Parties.

21 **Section 6.08: Cooperation in Drafting**

22 The Parties have cooperated in the negotiation and preparation of this Agreement. This  
23 Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel,  
24 was the drafter or participated in the drafting of this Agreement.

25 **Section 6.09: Fair Settlement**

26 Representative Plaintiffs, Defendant, Class Counsel, and Defense Counsel believe that this  
27 Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this  
28 Agreement through arm's-length negotiation, taking into account all relevant factors, current and

1 potential, including Defendant's financial condition, and is consistent with public policy, and fully  
2 complies with applicable provisions of law.

3 **Section 6.10: Headings**

4 The descriptive heading of any section or paragraph of this Agreement is inserted for  
5 convenience of reference only and does not constitute a part of this Agreement and shall not be  
6 considered in interpreting this Agreement.

7 **Section 6.11: Notice**

8 All notices, demands, or other communications given under this Agreement shall be in writing  
9 and deemed to have been duly given as of the third business day after mailing by first-class United  
10 States mail, addressed as follows:

11 *To Plaintiff and the Class:*

12 James Hawkins, Esq.  
13 james@jameshawkinsaplc.com  
14 Gregory Mauro, Esq.  
15 greg@jameshawkinsaplc.com  
16 **James Hawkins APLC**  
17 9880 Research Drive, Suite 200  
18 Irvine, CA 92618  
19 (949) 387-7200

17 *To Defendant:*

19 James Jackson, Esq.  
20 jjackson@mrjclaw.com  
21 Jessica Crabbe, Esq.  
22 jcrabbe@mrjclaw.com  
23 Merhab Robinson Jackson & Clarkson  
24 1551 N. Tustin Ave., Suite 1020  
25 Santa Ana, CA 92705  
26 Telephone: (714) 972-2333

23 **Section 6.12: Enforcement and Continuing Jurisdiction of the Court**

24 To the extent consistent with class action procedure, this Agreement shall be enforceable by  
25 the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain  
26 continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent  
27 to enforce and effectuate the terms and intent of this Agreement, and to adjudicate any claimed  
28



1 breaches of this Agreement. The Court may award attorneys' fees and costs to the prevailing party in  
2 any motion or action taken and based on an alleged violation of any material term of the within  
3 settlement agreement.

4 **Section 6.13: Mutual Full Cooperation**

5 The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement,  
6 including but not limited to execution of any necessary documents, and to take such other action as  
7 may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement  
8 shall use their best efforts, including all efforts contemplated by this Agreement, to effectuate this  
9 Agreement and the terms set forth herein. In the event the Parties are unable to reach agreement on  
10 the form or content of any document needed to implement the Settlement, or on any supplemental  
11 provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to  
12 seek the assistance of the Court.

13 **Section 6.14: Authorization to Act**

14 Class Counsel warrants and represents that they are authorized by Representative Plaintiff, and  
15 Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action required  
16 to effectuate the terms of this Agreement, except for signing the documents, including but not limited  
17 to this Agreement, that are required to be signed by the Parties.

18 **Section 6.15: No Reliance on Representations**

19 The Parties have made such investigation of the facts and the law pertaining to the matters  
20 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,  
21 on any statement, promise, or representation of fact or law, made by any of the other Parties, or any  
22 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted  
23 rights, or with regard to the advisability of making and executing this Agreement, or with respect to  
24 any such matters that would alter or change the terms of this Agreement. No representations,  
25 warranties, or inducements have been made to any party concerning this Agreement other than those  
26 expressly set forth or referred to herein.

27 **Section 6.16: Stay As to All Proceedings Except for Approval of Settlement**

28 The Parties agree that for purposes of California Code of Civil Procedure § 583.310, the Parties

1 agree to a formal stay of all proceedings from the date of execution of this Agreement to the date the  
2 Court issues an order on preliminary approval of the Settlement. If the Court grants preliminary  
3 approval the stay shall remain in effect until such time as the Court issues an order on final approval.  
4 If preliminary approval is denied, the stay expires upon the denial of preliminary approval. This stay  
5 will not affect the Parties ability to present this settlement for approval to the Court.

6 **EXECUTION BY PARTIES AND COUNSEL**

7  
8 Dated: \_\_\_\_\_, 2018

Michael Telles, Jr.

9 Dated: Nov 20, 2018

  
Daniel Tapia, Plaintiff

11  
12 Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_

Its: \_\_\_\_\_

International Aluminum Corp.

14  
15 **APPROVED AS TO FORM:**

16 Dated: \_\_\_\_\_, 2018

James Hawkins

Gregory Mauro

Attorneys for Plaintiffs

19  
20 Dated: \_\_\_\_\_, 2018

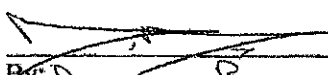
James Jackson

Attorneys for Defendant International Aluminum Corp.


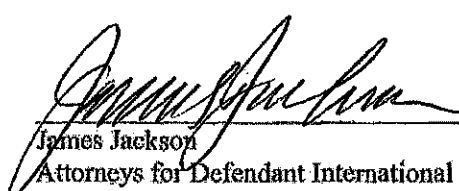
1 agree to a formal stay of all proceedings from the date of execution of this Agreement to the date the  
2 Court issues an order on preliminary approval of the Settlement. If the Court grants preliminary  
3 approval the stay shall remain in effect until such time as the Court issues an order on final approval.  
4 If preliminary approval is denied, the stay expires upon the denial of preliminary approval. This stay  
5 will not affect the Parties ability to present this settlement for approval to the Court.

6 **EXECUTION BY PARTIES AND COUNSEL**

7  
8 Dated: 11/28/, 2018   
9 Dated: \_\_\_\_\_, 2018 \_\_\_\_\_  
10 Daniel Tapia, Plaintiff

11  
12 Dated: 1/24, 2018   
13 By: Dominick Barone  
14 Its: Chairman  
International Aluminum Corp.

15 **APPROVED AS TO FORM:**

16 Dated: November 28, 2018   
17 James Hawkins  
18 Gregory Mauro  
Attorneys for Plaintiffs  
19  
20 Dated: 1/24, 2018   
21 James Jackson  
22 Attorneys for Defendant International Aluminum Corp.

## **EXHIBIT 2**

1 **AMENDMENT TO STIPULATED SETTLEMENT AGREEMENT**

2 **AND RELEASE OF CLAIMS**

3 **ARTICLE I**

4 Pursuant to Article Section 6.01 of the Stipulated Settlement Agreement and Release of Claims  
5 ("Settlement Agreement"), the Parties hereby modify the following provisions of the Settlement  
6 Agreement as follows:

7 **ARTICLE II**

8 **DEFINITIONS**

9 h. "Class Released Claims" means all claims arising from or related to the facts and  
10 claims alleged in the Actions, or that could have been raised in the Action based on the facts and  
11 claims alleged. The Class Released Claims include, all claims for unpaid wages, including, but not  
12 limited to, failure to pay minimum wages; failure to pay overtime compensation, double-time  
13 compensation, reporting time compensation, and/or interest; missed, late short, or interrupted meal  
14 and rest periods, including any claim for any alleged failure to pay premiums for missed, late short  
15 or interrupted meal or rest periods, including any claim for any alleged failure to pay premiums for  
16 missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate  
17 of compensation; inaccurate or otherwise improper wage statements and/or failure to keep or  
18 maintain accurate records; unlawful deductions; unlawful payment instruments; any claim for  
19 unfair business practices arising out of or related to any or all of the aforementioned claims; any  
20 claim for penalties arising out of or related to any or all of the aforementioned claims, including,  
21 but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties,  
22 and waiting-time penalties and attorneys' fees and costs. The PAGA Released Claims include  
23 PAGA Claims asserted during the PAGA Settlement Period of November 13, 2014 through the  
24 date of Preliminary Approval. In addition, Participating Class Member will also be deemed to have  
25 released his/her claims under Fair Labor Standards Act ("FLSA") as related to the claims asserted  
26 in the operative Complaint.

27 i. Deleted and left blank

28 q. "Final Approval Hearing" means the hearing at which Class Members who object to

1 the settlement may be heard on whether the Agreement settling the Action should be approved as fair,  
2 reasonable, and adequate; whether the proposed plan of allocation of the Net Settlement Amount  
3 should be approved; whether the proposal concerning Representative Plaintiffs' Enhancement should  
4 be approved; and whether proposal concerning the application of Class Counsel for attorneys' fees  
5 and costs should be approved.

6 r. Deleted and left blank

7 **Section 3.06: Settlement Payment Procedures**

8 **a. Settlement Sum.** In exchange for the releases set forth in this Agreement, Defendant  
9 agrees to pay the Gross Settlement Amount. The Gross Settlement Amount includes Class Counsel's  
10 attorneys' fees and costs, an Enhancement for Representative Plaintiffs, the Individual Settlement  
11 Payments to Participating Class Members, and all costs incurred by the Settlement Administrator.  
12 Under no circumstances shall Defendant be required to pay more than the Gross Settlement Amount  
13 inclusive payroll taxes as provided for in section f, below.

14 **b. Allocation of Settlement Amount:** In full and complete settlement of the Action and  
15 subject to this Settlement being approved by the Court, Defendant shall pay the Gross Settlement  
16 Amount into the Qualified Settlement Fund established by the Settlement Administrator, in the  
17 amounts specified and on or before the dates set forth in Section 3.06.i below, to be allocated as  
18 follows:

19 **c. Reasonable attorneys' fees and litigation expenses:** Class Counsel has stated they  
20 shall request that the Court award them attorneys' fees in an amount not to exceed (\$109,250.00).  
21 Class Counsel will request that the Court award them actual costs, subject to Court approval not to  
22 exceed \$30,000.00. Defendant has agreed to neither oppose nor comment on the fees and costs  
23 request. In the event that the Court awards less than requested amounts in attorney fees and costs, the  
24 difference between the amount actually awarded and the amounts requested shall be added to the Net  
25 Settlement Amount and distributed to the Class Members in accordance with the procedures set forth  
26 herein.

27 The award of reasonable attorneys' fees and costs granted by the Court shall be paid out of the  
28 Gross Settlement Amount. Any award of attorneys' fees and costs shall include and satisfy all past

1 and future attorneys' fees and costs incurred to prosecute, settle, and participate in administering the  
2 Settlement and the Agreement, including obtaining the Final Approval Order. Defendant shall have  
3 no obligation to Class Counsel for any attorneys' fees and costs incurred in prosecuting this Action  
4 other than as stated herein.

5 **d. Reasonable expenses of the Settlement Administrator:** The Settlement  
6 Administrator shall be paid out of the Gross Settlement Amount and said costs are not to exceed  
7 Twenty Thousand Dollars (\$20,000.00) and such payment shall not constitute payment to any  
8 Participating Class Member(s).

9 **e. Enhancement to Representative Plaintiffs:** Subject to Court approval,  
10 Representative Plaintiffs shall each receive an enhancement not to exceed Five Thousand Dollars  
11 (\$5,000.00) each. If the Court does not approve the amount of the enhancement, the Agreement  
12 remains in full force and effect. The Enhancement shall be paid by check made payable to the  
13 Representative Plaintiff, which shall be delivered by the Settlement Administrator to Class Counsel.  
14 The Enhancement shall be paid out of the Gross Settlement Amount and shall not constitute payment  
15 to any Participating Class Member(s). Any reduction to the Enhancement Awards to the  
16 Representative Plaintiffs by the Court shall be included in the Net Settlement Amount.

17 Because it is the intent of the Parties that the Enhancement represents payment to  
18 Representative Plaintiffs for their service to the Class Members, and not wages, the Settlement  
19 Administrator shall not withhold any taxes from the Enhancement. The Enhancement shall be reported  
20 on a Form 1099, which shall be provided to Representative Plaintiff and to the pertinent taxing  
21 authorities as required by law. Although it is the contemplation of the Parties that the Enhancement  
22 does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some  
23 other taxing authority may take the position that some or all of the Enhancements constitute wages for  
24 income tax and withholding purposes. Representative Plaintiffs agree to assume the responsibility of  
25 remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant  
26 taxing authority the amounts required by law, if any, to be withheld by Defendant from the  
27 Enhancement paid under this Agreement. In addition, Representative Plaintiffs shall hold Defendant,  
28 Released Parties and Class Counsel harmless and indemnify Defendant, Released Parties and Class

1 Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendant by reason  
2 of any claims relating to the non-withholding of taxes from the Enhancement.

3 **f. Payroll Taxes.** Based on business records for each Participating Class Member  
4 provided by Defendant to the Settlement Administrator, the Settlement Administrator shall calculate  
5 the payroll taxes applicable to the wage portion of the Net Settlement Amount made to each Class  
6 Member. The employee share shall be withheld by the Settlement Administrator and paid to the  
7 appropriate governmental agencies. The employer share of payroll taxes will be paid by Defendant  
8 separate and apart from the Gross Settlement Amount. For purposes of calculating payroll taxes, the  
9 Parties agree, for purposes of this Agreement only and for no other purpose that one-third of each Net  
10 Settlement Payment shall be considered to be interest, one-third shall be considered wages, and one-  
11 third shall be considered other payments.

12 **g. Allocation to Participating Class Members:** The amount remaining from the Gross  
13 Settlement Amount after deducting the requested attorneys' fees and litigation costs, Enhancement  
14 payment, and the costs incurred by the Settlement Administrator, (the "Net Settlement Amount") shall  
15 be distributed to the Class Members as their "Individual Settlement Payments" in accordance with the  
16 formula set forth below.

17 **h. Individual Settlement Payments:** The Individual Settlement Payments shall be  
18 calculated as follows:

19 **1. Calculation:** The Parties have estimated One Hundred and Fifty One Thousand  
20 Dollars (\$151,000.00) as the Net Settlement Amount to settle all Class Members claims covered by  
21 the Release. The actual Net Settlement Amount shall be subject to adjustment based on the amount  
22 of costs of the Settlement Administrator, the amount of the court approved Enhancement to be paid to  
23 Representative Plaintiff, and the amount of the court approved attorneys' fees and costs to Class  
24 Counsel. Participating Class Members' Individual Settlement Amount shall be based on a *pro rata*  
25 value equal to the Net Settlement Amount multiplied by the ratio of (a) the number of Eligible  
26 Workweeks (as defined below) by that Participating Class Member to (b) the total number of Eligible  
27 Workweeks worked by all Participating Class Members. If a Class Member opts out of the Settlement,  
28 his or her Individual Settlement Payment will be redistributed and paid out to the other Participating



1 Class Members based on the formula stated above.

- 2 i. "Eligible Workweek" means a workweek that occurred during the Class  
3 Period and during which a Class Member worked at least one-day as an hourly  
4 non-exempt worker for Defendant based on Defendant's payroll records.

5 2. **Challenging Individual Settlement Payment Calculations.**

6 a. **Notice:** The notice from the Settlement Administrator advising the Class Members  
7 that the Court has granted Preliminary Approval shall also notify the Class Members that he/she may  
8 within sixty (60) days of the mailing of the notice challenge the data maintained by Defendant but not  
9 upon the formula approved by the Parties and the Court. Such challenges shall be mailed to the  
10 Settlement Administrator postmarked no later than the sixtieth (60<sup>th</sup>) day after the mailing of the notice  
11 or fifteen (15) days from the date the notice is re mailed and the Settlement Administrator shall provide  
12 a copy of the challenge and any supporting documentation to counsel for the Parties within ten (10)  
13 days thereafter.

14 **Section 5.02: Release of All Claims Relating To The Action**

15 a. **Representative Plaintiff's Individual General Release**

16 As of the date of Judgment, Plaintiffs fully and finally release  
17 Defendant for themselves individually, and each of their past, present and future agents,  
18 employees, servants, officers, directors, partners, trustees, representatives, shareholders,  
19 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations  
20 and/or partnerships (defined as a company/corporation and/or partnership that is, directly or  
21 indirectly, under common control with Defendant or any of their parents and/or affiliates),  
22 divisions, assigns, predecessors, successors, insurers, consultants, joint ventures, joint  
23 employers, affiliates, and alter-egos, and all of their respective past, present and future  
24 employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents,  
25 subsidiaries, and assigns (collectively, the "Released Parties"), from any and all claims,  
26 known and unknown, under federal, state and/or local law, statute, ordinance, regulation,  
27 common law, or other source of law, including but not limited to claims arising from or related  
28 to their employment with Defendant and/or the termination of their employment ("Plaintiffs'

Released Claims"). Plaintiffs' Released Claims include, but are not limited to, all claims asserted in, arising from or related in any way to the Actions, including without limitation any and all claims that could have been asserted as part of the Actions based on the facts alleged. Plaintiffs' Released Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages; failure to pay straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and/or interest; missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; reimbursement for business expenses or any other claim that Defendant allowed or required employees to bear any of the costs associated with the operation of Defendant's business; inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; unlawful deductions; unlawful payment instruments; any claim for unfair business practices arising out of or related to any or all of the aforementioned claims; any claim for penalties arising out of or related to any or all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiffs' Released Claims include all claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 201.3, 201.5, 202, 203, 204, 205.5, 210, 212, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.7, 226.8, 227.3, 450, 510, 511, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2698 *et seq.*, 2800 and 2802); all claims arising under the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200, *et seq.*; the California Civil Code, including but not limited to, sections 3287, 3289, 3336 and 3294; 12 CCR§ 11040; 8 CCR§ 11060; California Code of Civil Procedure§ 1021.5; the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* Plaintiffs' Released Claims include any and all claims under the

1 private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.* ("PAGA"), of any kind,  
2 including but not limited to the PAGA claims asserted in the Actions.

3 Plaintiffs' Released Claims also include all claims for lost wages and benefits,  
4 emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under  
5 federal, state, or local laws for discrimination, harassment, retaliation, and wrongful  
6 termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title VII  
7 of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination  
8 in Employment Act, and the California Fair Employment and Housing Act; and the law of  
9 contract and tort. This release excludes the release of claims not permitted by law.

10 Plaintiffs' Released Claims include all claims, whether known or unknown. Even if  
11 Plaintiffs discover facts in addition to or different from those that they now know or believe to  
12 be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will  
13 remain released and forever barred. Thus, Plaintiffs expressly waive and relinquish the  
14 provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

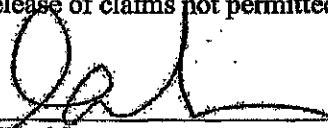
15 A general release does not extend to claims which the creditor does not  
16 know or suspect to exist in his or her favor at the time of executing the  
17 release, which if known by him or her must have materially affected his  
or her settlement with the debtor.

18 Plaintiffs' Released Claims Apply only to Plaintiffs' individually and not to  
19 the Settlement Class.

20 **b. Settlement Class Members Release.** As of the date of the Judgment, all  
21 Settlement Class Members fully and finally release the Released Parties from any and all  
22 Class Released Claims during the Settlement Period. The Class Released Claims include, all  
23 claims arising from or related to the facts and claims alleged in the Actions, or that could have  
24 been raised in the Action based on the facts and claims alleged. The Class Released Claims  
25 include, all claims for unpaid wages, including, but not limited to, failure to pay minimum  
26 wages; failure to pay overtime compensation, double-time compensation, reporting time  
27 compensation, and/or interest; missed, late, short or interrupted meal and or rest periods,  
28 including any claim for any alleged failure to pay premiums for missed, late, short or

1 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;  
2 inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate  
3 records; unlawful deductions; unlawful payment instruments; any claim for unfair business  
4 practices arising out of or related to any or all of the aforementioned claims; any claim for  
5 penalties arising out of or related to any or all of the aforementioned claims, including, but not  
6 limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and  
7 waiting-time penalties; and attorneys' fees and costs. The PAGA Released Claims include  
8 PAGA Claims asserted during the PAGA Settlement Period of November 13, 2014 through  
9 the date of Preliminary Approval. In addition, Settlement Class Members waive and release  
10 any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") arising  
11 during the Settlement Class Period and reasonably related to any or all of the aforementioned  
12 claims. This release excludes the release of claims not permitted by law.

13  
14 Dated: 3/18, 2019

  
James Hawkins  
Gregory Mauro  
Attorneys for Plaintiffs

15  
16  
17  
18 Dated: 3/18, 2019

  
James Jackson  
Attorneys for Defendant International Aluminum Corp.