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18
19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF LOS ANGELES**

21 BRANDEN BAGGOT, as a private attorney
22 general and as an individual and on behalf of all
others similarly situated,

23 Plaintiff,

24 vs.

25 FOTO-KEM INDUSTRIES, INC., a California
26 corporation; and DOES 1 through 50, inclusive,

27 Defendants.
28

Case No. 20STCV31051

[Hon. William F. Highberger, Department 10]

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

Complaint Filed: August 17, 2020

Trial Date: None Set

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiff, Branden Baggot, on the one hand, and Defendant, Foto-Kem Industries, Inc., on the other hand.

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1. Action. “Action” (or “Class Action” or “Lawsuit”) means the civil lawsuit originally entitled *Branden Baggot v. Foto-Kem Industries, Inc.*, filed on or about August 17, 2020, in the Superior Court of the State of California for the County of Los Angeles designated as Case No. 20STCV31051 and the July 24, 2020 notice of Labor Code violations (“Notice to the LWDA”) sent by Plaintiff to the Labor & Workforce Development Agency (“LWDA”).

1.2. Agreement. “Agreement” means this Joint Stipulation of Class Action and PAGA Settlement.

1.3. Attorneys’ Fees and Costs Award. “Attorneys’ Fees and Costs Award” means the Court approved attorneys’ fees and costs payment from the Gross Settlement Amount for Class Counsel’s attorneys’ fees and costs associated with the litigation and resolution of the Action (excluding third-party Settlement Administration Costs which are separately identified and defined below).

1.4. Class Counsel. “Class Counsel” means Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group.

1.5. Class Member. “Class Member” means any person whom Defendant employed in California as a non-exempt employee who earned shift premium wages in the same workweek he/she took paid time off (“PTO”) at any time during the Class Period and did not execute a severance agreement at any time during the Class Period. Based on data available at mediation, Defendant represents that there are 419 Class Members.

1.6. Class Notice. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

1.7. Class Period. “Class Period” means April 6, 2016, through January 18, 2021.

1 **1.8. Class Representative Award.** “Class Representative Award” means the Court approved
2 payment to Plaintiff from the Gross Settlement Amount in recognition of his efforts and work in
3 prosecuting the Action on behalf of Class Members and additional general release.

4 **1.9. Court.** “Court” means the Superior Court of California for the County of Los Angeles,
5 the Honorable William F. Highberger presiding. Court shall also mean any other Court that acquires
6 proper jurisdiction of this Action.

7 **1.10. Defendant.** “Defendant” means Foto-Kem Industries, Inc.

8 **1.11. Defendant’s Counsel.** “Defendant’s Counsel” means Alfred J. Landegger, Roxana E.
9 Verano, and Evelyn Zarraga of Landegger Rivas Verano & Davis, ALC.

10 **1.12. Effective Date.** “Effective Date” means: (a) if no objections to the settlement are filed,
11 the date the Final Approval Order is signed by the Court; (b) if objections to the settlement are filed, the
12 day following the expiration of the time for the filing of an appeal of the Final Approval Order; or (c) if
13 any appeals of the Final Approval Order are filed, the day following the expiration of time to further
14 appeal an order affirming the Final Approval Order.

15 **1.13. Final Approval Order.** “Final Approval Order” means an order granting final approval
16 of a class action and PAGA settlement.

17 **1.14. Individual Settlement Payment.** “Individual Settlement Payment” means each
18 Settlement Class Member’s potential payment from the Net Settlement Amount.

19 **1.15. Gross Settlement Amount.** “Gross Settlement Amount” means the maximum potential
20 settlement amount—inclusive of any Attorneys’ Fees and Costs Award, Class Representative Award,
21 Settlement Administration Costs, PAGA Payment, and allocations for Individual Settlement Payments—
22 that Defendant may be required to pay in connection with a Final Approval Order (but not including the
23 employer’s shares of payroll taxes to be paid on any payments characterized as wages).

24 **1.16. Net Settlement Amount.** “Net Settlement Amount” means the portion of the Gross
25 Settlement Amount available for allocation to Settlement Class Members for Individual Settlement
26 Payments and employees’ share of payroll taxes, after deductions for the Attorneys’ Fees and Costs
27 Award, Class Representative Award, Settlement Administration Costs, and PAGA Payment.
28

1 **1.17. PAGA Employee.** “PAGA Employee” means any Class Member employed at any time
2 during the period from April 6, 2019 through January 18, 2021 (the “PAGA Period”) and who earned
3 shift premium wages in the same workweek he/she took PTO at any time during the PAGA Period.

4 **1.18. PAGA Payment.** “PAGA Payment” means the Court approved payment to the Labor &
5 Workforce Development Agency of 75% of the PAGA Penalty Fund.

6 **1.19. PAGA Penalty Fund.** “PAGA Penalty Fund” means the portion of the Gross Settlement
7 Amount allocated to PAGA penalties.

8 **1.20. Parties.** “Parties” means Plaintiff and Defendant, and each may be individually referred
9 to as “Party”.

10 **1.21. Plaintiff.** “Plaintiff” means Branden Baggot.

11 **1.22. Preliminary Approval Order.** “Preliminary Approval Order” means an order granting
12 preliminary approval of a class action and PAGA settlement.

13 **1.23. Released Party.** “Released Party” means Defendant and any of its respective present and
14 former owners, officers, directors, employees, shareholders, managing agents, trustees, representatives,
15 attorneys, insurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors,
16 assigns, and any individual or entity that could be jointly liable with Defendant.

17 **1.24. Settlement Administrator.** “Settlement Administrator” means the third-party settlement
18 administrator approved by the Court to administer the settlement.

19 **1.25. Settlement Administration Costs.** “Settlement Administration Costs” means the Court
20 approved payment from the Gross Settlement Amount to the Settlement Administrator for administering
21 the settlement, which includes but is not limited to printing, distributing, or tracking Class Notices,
22 processing any required tax payments or reportings, providing any required tax forms, distributing
23 payments pursuant to a Final Approval Order, and providing necessary reports or declarations, as
24 requested by the Court or Class Counsel and Defendant’s Counsel.

25 **1.26. Settlement Class Member.** “Settlement Class Members” means any and all Class
26 Members who do not exclude themselves from the settlement by complying with the procedures set
27 forth in the Class Notice to opt out of the settlement.
28

1 **2. RECITALS**

2 **2.1. Initiation of Action.** On or about August 17, 2020, Plaintiff filed the original complaint
3 initiating the Action on behalf of a putative class of “all current and former non-exempt employees of
4 Defendants in the State of California since April 6, 2016, who earned non-discretionary incentive wages,
5 including, but not limited to, shift premium wages, in workweeks that they took paid sick leave.” The
6 Action pursued class action and representative action claims under the Labor Code Private Attorneys
7 General Act of 2004 (“PAGA”) for Defendant’s alleged failure to pay sick pay at the regular rate of pay
8 by no later than the payday for the next regular payroll period after sick leave was taken or upon
9 termination of employment.

10 **2.2. Class Counsel’s Investigation.** On or about September 3, 2020, the Court stayed the
11 Action. Thereafter, the Parties met and conferred about Plaintiff’s allegations and Defendant’s defenses.
12 Plaintiff and Defendant met and conferred on numerous occasions, discussed Plaintiff’s claims
13 described above, discussed Defendant’s defenses, and requested and exchanged informal discovery to
14 assist the Parties explore the possibility of a mediated resolution. In addition to the exchange of
15 information and documentation pursuant to informal discovery from Defendant, Class Counsel
16 continued investigating the claims against Defendant in the Action. Class Counsel also analyzed any and
17 all applicable defenses raised by Defendant. On October 14, 2020, the Parties submitted a Joint Initial
18 Status Conference Class Action Response Statement, which described informal discovery the Parties
19 would conduct in preparation for an early mediation on January 18, 2021.

20 **2.3. Mediation and Settlement.** On or about January 18, 2021, the Parties attended a
21 mediation before Gig Kyriacou, an experienced mediator knowledgeable of both the wage and hour laws
22 and class and representative claims at issue in the Action. With the mediator’s assistance and based upon
23 the mediator’s proposal, the Parties agreed to a settlement, which was negotiated in light of all known
24 facts and circumstances—including the uncertainty associated with litigation, the risks of significant
25 delay, and numerous potential appellate issues—and was reached after extensive arm’s-length
26 negotiations both during and in the weeks leading up to the mediation.

1 **2.4. No Admission of Liability.** Defendant denied and continues to deny all of the allegations
2 made by Plaintiff in the Action. Although Defendant denied and continues to deny all of the allegations
3 made by Plaintiff in the Action, Defendant—without admitting or conceding any liability or wrongdoing
4 whatsoever—has agreed to settle the Action on the terms and conditions set forth in this Agreement for
5 the sole purpose of avoiding the burden, expense, and uncertainty of continuing the Action.

6 **2.5. Class Counsel’s Evaluation.** Based on Class Counsel’s ongoing investigation and
7 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable,
8 adequate, and in the best interests of Class Members.

9 **2.6. Certification of Settlement Class.** This Agreement is contingent upon the approval and
10 certification by the Court of a class for purposes of settlement. The Parties agree to cooperate and take
11 all steps necessary and appropriate to effectuate all aspects of this Agreement, to obtain a Preliminary
12 Approval Order, and Final Approval Order.

13 **3. NOTICE TO CLASS MEMBERS**

14 **3.1. Settlement Administrator.** Plaintiff and Class Counsel shall request that the Court
15 appoint a Settlement Administrator for purposes of sending notice of the settlement to Class Members.
16 The Parties agree that Settlement Administration Costs should not exceed \$9,000.00.

17 **3.2. Class Data for Settlement Administrator.** Within seven calendar days of the
18 Preliminary Approval Order, Defendant shall provide to the Settlement Administrator each Class
19 Member’s name, last known mailing address, as well as data sufficient for the Settlement Administrator
20 to perform all necessary responsibilities pursuant to this Agreement.

21 **3.3. Class Notice of Settlement.** The Settlement Administrator shall send Class Notice to
22 Class Members in English (in the form attached as Exhibit A to this Agreement) to provide notice of
23 settlement within 14 calendar days of the Preliminary Approval Order, pursuant to the procedures
24 below. The Class Member are proficient in English and there is not a significant number of non-English
25 speaking Class Members. This shall be the sole means of notice to Class Members.

26 **3.4. Mailing of Notice.** The Settlement Administrator shall send Class Notice to each Class
27 Member via First Class U.S. Mail, using the last known mailing address for each Class Member, based
28 on class data provided by Defendant or the most recent address known for each Class Member as

1 determined by the Settlement Administrator. Before mailing the Class Notice, the Settlement
2 Administrator shall review the national change of address registry for all Class Members and/or skip
3 trace to determine the most up-to-date addresses of all Class Members. Any Class Notice returned to the
4 Settlement Administrator as undeliverable shall be sent promptly via First Class U.S. Mail to the
5 forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator
6 shall promptly attempt to determine the correct address using a single skip-trace search and shall then
7 promptly send a single re-mailing.

8 **3.5. Proof of Mailing.** The Settlement Administrator shall provide Class Counsel and
9 Defendant's Counsel a declaration of due diligence and proof of mailing with regard to mailing of Class
10 Notice.

11 **4. CLASS MEMBERS' RESPONSE OPTIONS**

12 **4.1. Consideration Period.** Class Members shall be provided 45 calendar days after the
13 postmark date of the initial mailing of Class Notice to exercise any rights to opt out of the settlement.
14 Except as provided herein, no Class Member responses that are postmarked more than 45 calendar days
15 after the initial mailing of Class Notice shall be considered. The Parties shall do nothing to encourage or
16 solicit Class Members to opt out or object to the settlement.

17 **4.2. Objection Right and Effect.** Settlement Class Members shall be given the opportunity to
18 object to the terms of the settlement. Settlement Class Members may object to the settlement by mailing
19 to the Settlement Administrator an Objection postmarked no later than 45 calendar days after the
20 postmark date of the initial mailing of Class Notice, which describes the objection and states any
21 intention to appear at the final approval hearing. Alternatively, the Settlement Class Member may appear
22 at the final approval hearing to object to the settlement. Any Settlement Class Member who does not
23 comply with the Objection procedures in the Class Notice shall be deemed to have waived any
24 objections and shall be foreclosed from making any objection, whether by appeal or otherwise, to the
25 settlement. Settlement Class Members who object to the settlement pursuant to the terms of the Class
26 Notice shall remain subject to being bound by the release provisions in the Agreement pursuant to a
27 Final Approval Order and shall remain eligible to receive an Individual Settlement Payment.
28

1 **4.3. Opt-Out Right and Effect.** Class Members shall be given the opportunity to opt out of
2 the settlement. Class Members may opt out of the settlement by mailing to the Settlement Administrator
3 a Request for Exclusion, which expresses their desire to be excluded from the Settlement Class. Any
4 Request for Exclusion that does not comply with the procedures in the Class Notice shall be deemed
5 void and ineffective. Class Members who opt out of the settlement pursuant to the terms of the Class
6 Notice shall not receive any Individual Settlement Payments (except for PAGA Employees who retain a
7 right to receive a pro-rata share of the portion of the PAGA Penalty Fund allocated to the PAGA
8 Employees), shall not be bound by the release provisions in the Agreement and Final Approval Order
9 (other than as it applies to the PAGA claim with respect to the PAGA Employees), and shall not be
10 permitted to object to the settlement or appeal. Each Class Member who does not opt out of the
11 settlement shall be a Settlement Class Member eligible to receive an Individual Settlement Payment and
12 be bound by the release provisions in the Agreement pursuant to a Final Approval Order. If a Class
13 Member submits both a Request for Exclusion and an Objection, the Settlement Administrator shall
14 attempt to determine whether the Class Member would like to withdraw either the Request for Exclusion
15 or the Objection. If the Class Member does not withdraw the Request for Exclusion or if the Settlement
16 Administrator cannot contact a Class Member who submits both a Request for Exclusion and an
17 Objection, the Request for Exclusion shall be deemed valid and shall be deemed to invalidate the
18 Objection.

19 **4.4. Dispute as to Pay Periods and Effect.** Settlement Class Members shall be given the
20 opportunity to dispute the number of relevant pay periods allocated to them in their Class Notice.
21 Settlement Class Members may challenge the number of relevant pay periods allocated to them by
22 mailing to the Settlement Administrator a written, signed dispute challenging the information along with
23 supporting documents postmarked no later than 45 calendar days after the postmark date of the initial
24 mailing of Class Notice. If Settlement Class Member does not provide any documents or other evidence
25 to support the challenge, the Settlement Administrator may reject the dispute. The Settlement
26 Administrator will evaluate the evidence submit and, the Settlement Administrator, together with the
27 Parties' counsel, will attempt to informally resolve any timely submitted disputes. Unresolved disputes
28 will be decided by the Settlement Administrator. The Settlement Administrator's decision on all disputes

1 will be final and binding, subject to final approval by the Court. Settlement Class Members who submit
2 a dispute to the number of relevant pay periods allocated to them shall remain subject to being bound by
3 the release provisions in the Agreement pursuant to a Final Approval Order and shall remain eligible to
4 receive an Individual Settlement Payment.

5 **4.5. Objection Response.** The Settlement Administrator must provide a copy of any
6 objection received to Class Counsel and Defendant's Counsel upon receipt. Either of the Parties may file
7 a response to any written objection no later than five court days before the final approval hearing.

8 **4.6. Proof of Class Members' Responses.** As soon as practicable after the end of the Class
9 Member response deadline, the Settlement Administrator shall prepare and submit a declaration attesting
10 to (by number of relevant individuals), its mailing of Class Notice, its inability to deliver Class Notice
11 due to invalid addresses, and its receipt of valid Requests for Exclusion or Objections. Prior to the
12 hearing on a motion seeking a Final Approval Order, the Settlement Administrator shall prepare any
13 supplemental declarations regarding the administration of the settlement, as necessary or as jointly
14 requested by the Parties or the Court.

15 **5. SETTLEMENT PROCEEDS**

16 **5.1. Gross Settlement Amount.** Defendant agrees to pay a non-reversionary potential Gross
17 Settlement Amount of \$350,000. To the extent that there are more than 419 Class Members, and the
18 number of Class Members increases by more than 7.5% (i.e., by more than 31 Class Members), the
19 Gross Settlement Amount shall increase on a pro rata basis equal to the percentage increase in the
20 number of Class Members above 7.5% ("Escalator Clause").

21 **5.1.1. Attorneys' Fees and Costs.** Class Counsel intends to request—and Defendant
22 agrees not to oppose—that the Court approve an Attorneys' Fees and Costs Award in the amount of (a)
23 33 $\frac{1}{3}$ % of the Gross Settlement Amount (or \$116,666.67) and (b) litigation costs (not to exceed
24 \$15,000.00).

25 **5.1.2. Class Representative Award.** Class Counsel intends to request—and Defendant
26 agrees not to oppose—that the Court approve a Class Representative Award of \$10,000. Any Class
27 Representative Award is supplemental to Plaintiff's Individual Settlement Payment.
28

1 **5.1.3. Settlement Administration Costs.** Class Counsel intends to request—and
2 Defendant agrees not to oppose—that the Court approve Settlement Administration Costs of up to
3 \$9,000.00. The Parties agree to cooperate in the settlement administration process and to make all
4 reasonable efforts to control and minimize Settlement Administration Costs.

5 **5.1.4. PAGA Penalty Fund and LWDA Payment.** Class Counsel intends to request—
6 and Defendant agrees not to oppose—that the Court approve allocation of \$10,000 to the PAGA Penalty
7 Fund, to be distributed pursuant to statute with 75% of the PAGA Penalty Fund payable as an LWDA
8 Payment. The remaining 25% of the PAGA Penalty Fund is to remain allocated to the Net Settlement
9 Amount to be distributed to the PAGA Employees.

10 **5.1.5. Differences in Requested and Approved Payments.** If the Court does not
11 approve the requested Attorneys' Fees and Costs Award, Class Representative Award, or Settlement
12 Administration Costs, any amounts of the requested but unapproved allocations shall be allocated to the
13 Net Settlement Amount. If the Court does not approve the requested PAGA Penalty Fund, any
14 difference in the requested and approved allocation shall be allocated to the Net Settlement Amount or
15 from the Gross Settlement Amount.

16 **5.2. Individual Settlement Payments.** Individual Settlement Payments shall be distributed to
17 those Class Members who are Settlement Class Members and/or PAGA Employees in separate checks,
18 without the need to submit a claim form.

19 **5.2.1.** The Net Settlement Amount less \$2,500 (or the Court approved amount from the
20 PAGA Penalty Fund allocated for PAGA penalties to PAGA Employees) shall be allocated among
21 Settlement Class Members on a pro rata basis based on the number of pay periods during the Class
22 Period that each Settlement Class Member was paid shift premium wages and took paid time off during
23 the same pay period. Ninety percent (90%) of this portion each Settlement Class Member's Individual
24 Settlement Payment shall be characterized as penalties and interest, and ten percent (10%) shall be
25 characterized as wages.

26 **5.2.2.** In addition, the Individual Settlement Payment of each PAGA Employee will
27 include a pro rata share of the \$2,500 (or the Court approved amount from the PAGA Penalty Fund
28 allocated for PAGA penalties to PAGA Employees) allocated for PAGA penalties to PAGA Employees

1 based on the number of pay periods during the PAGA Period that each PAGA Employee was paid shift
2 premium wages and took paid time off during the same pay period.

3 **5.2.3.** Class Members who are PAGA Employees will not be permitted to exclude
4 themselves from the PAGA claim portion of the settlement. PAGA penalty settlement payments in the
5 appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA
6 Employees including to those Class Members who are PAGA Employees who submitted a Request for
7 Exclusion. One hundred percent (100%) of this portion of each PAGA Employees' Individual
8 Settlement Payment shall be characterized as penalties.

9 **5.2.4.** In accordance with applicable tax laws, required tax withholdings for the
10 employee share of payroll taxes will be taken from each Individual Settlement Payment for the portion
11 characterized as wages and remitted to the appropriate taxing authorities. The Settlement Administrator
12 shall issue any necessary Internal Revenue Service ("IRS") Form W-2 to Settlement Class Members for
13 the portion characterized as wages. The Settlement Administrator shall issue an IRS Form 1099 for
14 those portions of Individual Settlement Payments attributable to penalties and interest, and Settlement
15 Class Members and PAGA Employees will be responsible for correctly characterizing this compensation
16 for tax purposes and to pay any taxes owing.

17 **5.3. Payroll Taxes and Required Withholdings.** To the extent that any portions of the
18 Settlement Class Members' settlement proceeds constitute wages, Defendant will be separately
19 responsible for any employer share of payroll taxes and other required withholdings. Except for any
20 employer payroll taxes and withholdings, and as provided in the Escalator Clause, under no
21 circumstances shall Defendant be required to pay more than the Gross Settlement Amount. The
22 Settlement Administrator will calculate and submit the Defendant's employer share of payroll taxes and
23 withholdings after advising Defendant of the total amount owed, in aggregate, as employer-side payroll
24 taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement
25 Amount is delivered to the Settlement Administrator.

26 **5.4. Funding and Distribution.** By seven days after the Final Approval Order, or October 1,
27 2021, whichever is later, Defendant shall deposit the Gross Settlement Amount with the Settlement
28 Administrator. By seven days after the Effective Date, or seven days after October 1, 2021, whichever is

1 later, the Settlement Administrator shall distribute all amounts to be paid pursuant to the Final Approval
2 Order. Upon completion of administration of the settlement, the Settlement Administrator shall provide
3 written certification of such completion to Class Counsel and Defendant's Counsel.

4 **5.5. Undeliverable or Uncashed Checks.** All uncashed or undeliverable settlement checks
5 will expire after 180 calendar days after the postmarked date of their initial mailing. After 180 calendar
6 days, the sum value of all expired checks will be tallied by the Settlement Administrator. The Settlement
7 Administrator shall direct the principal for any expired checks in accordance with the Final Approval
8 Order. The Parties shall request that the Court order that the principal for any expired checks be
9 distributed to the State Controller Unclaimed Property Fund in the name of the Settlement Class
10 Member.

11 **5.6. Payment Considerations.** Except as described in Section 5.2.4, all other payments shall
12 be characterized as IRS Form 1099 payments. The Settlement Administrator shall issue an IRS Form
13 1099 to Plaintiff for any Class Representative Award, to Class Counsel for any Attorneys' Fees and
14 Costs Award, to the LWDA for any LWDA Payment, and to the Settlement Administrator for any
15 Settlement Administration Costs.

16 **5.6.1. No Tax Advice or Liability.** The Parties have had an opportunity to consult with
17 independent tax counsel. The Parties are not giving any tax advice in connection with the settlement or
18 any payments to be made pursuant to the Agreement. The Parties do not intend anything contained in
19 this Agreement, or any written communication or disclosure between or among the parties or their
20 attorneys and other advisers, to constitute legal advice regarding the taxability of any amount paid
21 hereunder, nor shall anything in this Agreement, nor any written communication or disclosure between
22 or among the parties or their attorneys and other advisers, constitute or be relied upon as such. By
23 participating in the settlement, each Settlement Class Member shall agree to be solely and legally
24 responsible for paying all other applicable taxes on their respective Individual Settlement Payments and
25 shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest
26 arising as a result of the payments.

27 **5.6.2. No ERISA Impact.** Payments made under the Agreement shall not have any
28 effect on the eligibility for—or calculation of—any employee benefit (e.g., vacations, holiday pay,

1 retirement plans, etc.) provided by Defendant. The Parties agree these payments do not represent any
2 modification of any employee's previously credited hours of service or other eligibility criteria under
3 any employee pension benefit plan, employee welfare benefit plan, or other program or policy. None of
4 the payments made pursuant to the settlement and this Agreement shall be considered for purposes of
5 determining eligibility for, vesting or participation in, or contributions to any benefit plan, including,
6 without limitation, all plans subject to the Employee Retirement and Income Security Act of 1974
7 ("ERISA").

8 **6. RELEASES**

9 **6.1. Releases by Settlement Class Members and PAGA Employees.** By operation of the
10 entry of the Final Approval Order and upon full funding of the Gross Settlement Amount, and except as
11 to such rights or claims as may be created by this Agreement, all Settlement Class Members hereby fully
12 release Defendant, and each Released Party from any and all claims or causes of action during the Class
13 Period that were alleged in the Action or that reasonably could have been alleged based on the facts
14 alleged in the Action, including claims for failures to pay sick pay at the regular rate of pay and all
15 penalties related thereto, violations of California Labor Code §§ 201, 202, 203, 204, 246, and Business
16 and Professions Code § 17200, *et seq.*, including all attorneys' fees and costs related thereto. All PAGA
17 Employees, whether requesting exclusion from the settlement or not, fully release and discharge
18 Defendant, and each Released Party from any and all claims for civil penalties under PAGA [Cal. Lab.
19 Code §§ 2699, *et seq.*] that are based on the facts alleged in the Action and/or Notice to the LWDA,
20 arising during and/or with respect to the PAGA Period, including all attorneys' fees and costs related
21 thereto.

22 **6.2. Additional Release by Plaintiff.** In addition to the above release applicable to Plaintiff
23 as a Settlement Class Member, Plaintiff also irrevocably and unconditionally generally releases all
24 claims, known or unknown, in favor of each Released Party, including a waiver of Civil Code section
25 1542. Plaintiff expressly waives all rights provided by Civil Code section 1542 that Plaintiff may have
26 against each Released Party. Civil Code section 1542 states:

27 **A general release does not extend to claims that the creditor or releasing party does**
28 **not know or suspect to exist in his or her favor at the time of executing the release**
and that, if known by him or her, would have materially affected his or her

1 **settlement with the debtor or released party.**

2 Plaintiff acknowledges that he has read the entirety of the Agreement, including the above language
3 from the Civil Code, and that he fully understands both the Agreement and Civil Code section 1542. By
4 executing this Agreement, Plaintiff expressly waives any benefits and rights granted pursuant to Civil
5 Code section 1542.

6 **7. COURT APPROVAL**

7 **7.1. Preliminary Approval.** Plaintiff shall submit a motion seeking a Preliminary Approval
8 Order, which would, among other things: (i) preliminarily approve the proposed settlement according to
9 the terms of this Agreement; (ii) set a date for a final approval hearing; and (iii) provide for Class Notice
10 to be sent to Class Members as specified herein. On the same day that Plaintiff applies to the Court for
11 approval of the settlement, Class Counsel shall submit the Agreement to the LWDA in conformity with
12 California Labor Code § 2699(1)(2).

13 **7.2. Final Approval.** Not later than 16 court days before the date set by the Court for a final
14 approval hearing, or such other time as the Court requires, Plaintiff shall submit a motion seeking a
15 Final Approval Order, which would, among other things: (i) approve the settlement, (ii) deem the terms
16 to be fair, reasonable, and adequate, (iii) approve the release, (iv) direct that the settlement's terms and
17 provisions be carried out; (v) enter final judgment; and (vi) retain jurisdiction to oversee administration
18 and enforcement of the terms of this Agreement and the Court's orders. Upon entry of the Final
19 Approval Order by the Court, Class Counsel shall submit the Final Approval Order to the LWDA in
20 conformity with California Labor Code § 2699(1)(2).

21 **7.3. Effect of Failure to Obtain Final Approval.** In the event the Court effects a material
22 change or fails to enter a Final Approval Order in accordance with this Agreement, or such Final
23 Approval Order is vacated, then this entire Agreement shall be void and unenforceable, subject to the
24 Parties' agreement to the contrary, and the costs of administration shall be split equally between the
25 Parties. The Action shall proceed as if no settlement has been attempted, unless the Parties jointly agree
26 to seek reconsideration or appellate review or to seek Court approval of a renegotiated settlement.
27
28

1 Moreover, in the event the Court does not approve this Agreement, Defendant will not be deemed to
2 have waived, limited, or affected in any way any of its objections, or defenses in this Action.

3 **8. MISCELLANEOUS**

4 **8.1. Entire Agreement.** This Agreement, along with any exhibits attached hereto, constitutes
5 the entire agreement between the Parties with regard to the subject matter contained herein, and all prior
6 and contemporaneous negotiations and understandings between the Parties, oral or written, express or
7 implied, shall be deemed merged into this Agreement. The signatories represent that they are fully
8 authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms stated
9 herein.

10 **8.1.1. Counterparts and Signatures.** This Agreement may be executed in counterparts,
11 and when all signatories have signed and delivered at least one such counterpart, each counterpart shall
12 be deemed an original, and when taken together with other signed counterparts, shall constitute one
13 signed Agreement, which shall be binding upon and effective as to all Parties. Any party may sign and
14 deliver this Agreement by signing on the designated signature block and transmitting that signature page
15 via e-mail to counsel for the other party. Any signature transmitted via e-mail shall be deemed an
16 original signature and shall be binding upon the party who transmits the signature page.

17 **8.1.2. Waivers, Modifications, Etc. to Be in Writing.** No waiver, modification, or
18 amendment of the terms of this Agreement, whether purportedly made before or after the Court's
19 approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all
20 Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject
21 to any required Court approval. Any failure by any Party to insist upon the strict performance by the
22 other Party of any of the provisions of this Agreement shall not be deemed a waiver of future
23 performance of the same provisions or of any of the other provisions of this Agreement, and such Party,
24 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
25 any and all of the provisions of this Agreement.

26 **8.1.3. Construction.** The determination of the terms and conditions of this Agreement
27 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this
28 Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be,

1 construed against any party by virtue of draftsmanship. The captions of paragraphs of this Agreement
2 have been inserted for convenience of reference only and shall have no effect upon the construction or
3 interpretation of any part of this Agreement.

4 **8.1.4. Invalidity of Any Provision.** Before declaring any provision of this Agreement
5 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so as to
6 render all provisions of this Agreement valid and enforceable.

7 **8.2. Further Acts and Cooperation Between the Parties.** The Parties shall cooperate and
8 use their best efforts to obtain the Court's approval of this Agreement and its terms. Each of the Parties,
9 upon the request of another, agrees to perform such further acts and to execute and deliver such other
10 documents as are reasonably necessary to carry out the provisions of this Agreement.

11 **8.3. Right to Withdraw.** Notwithstanding any other provision contained in this Agreement, if
12 more than Ten Percent (10%) of the Class Members submit timely and valid Requests for Exclusion
13 from the Settlement during the Opt-Out Period outlined herein, Defendant shall have the option but not
14 the obligation, in its sole discretion, to withdraw from this Agreement ("Right to Withdraw"),
15 whereupon the Agreement shall be null and void for any and all purposes and may not be used or
16 introduced in the Action or any other proceeding. The Parties will be restored to their respective
17 positions in the litigation as if this Agreement was never negotiated, drafted or agreed upon. However,
18 if Defendant exercises its Right to Withdraw, Defendant will be responsible for all Settlement
19 Administration Costs incurred up to the date when the Defendant exercises its Right to Withdraw. The
20 Settlement Administrator shall notify Class Counsel and Defendant's Counsel of the number of timely
21 opt-outs within five (5) calendar days after the period to file an Opt-Out has expired. If Defendant elects
22 to exercise its Right to Withdraw under this provision, Defendant will so notify Class Counsel and the
23 Court no later than five (5) calendar days after receiving notice of the number of opt-outs and/or value of
24 the valid claims made by the Authorized Claimants.

25 **8.4. Non-Evidentiary Use.** Neither this Agreement nor any of its terms, nor any statements or
26 conduct in the negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class
27 Member (including any individual who requested to be excluded from the Class), Defendant, or its or
28 their respective counsel, in the Action or any other proceeding, except as is reasonably necessary to

1 effectuate its purpose and terms. This Agreement may be used by Defendant and/or any Released Party
2 to prove or defend against any claim released herein by any Class Member in any judicial, quasi-
3 judicial, administrative, or governmental proceeding. Nothing in this Agreement abridges a Class
4 Member's right to file a charge or participate in any manner in an investigation, hearing, or proceeding
5 under the laws enforced by Equal Employment Opportunity Commission.

6 **8.5. No Publicity.** Plaintiff and Class Counsel agree not to disclose or publicize the
7 settlement, including the fact of this Agreement, its terms or contents, and the negotiations underlying
8 the settlement, in any manner or form, directly or indirectly, to any person or entity, except as may be
9 strictly required to effectuate the terms of the settlement. For the avoidance of doubt, this section means
10 Plaintiff and Class Counsel agree not to issue press releases, communicate with, or respond to any media
11 or publication entities, publish information in manner or form, whether printed or electronic, on any
12 medium or otherwise communicate, whether by print, video, recording or any other medium, with any
13 person or entity, including the general public, concerning the settlement, its terms or contents and the
14 negotiations underlying this Agreement, or identify Defendant or its principals owners as associated
15 with the underlying lawsuit, except as shall be contractually required to effectuate the terms of this
16 Agreement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class
17 counsel in other actions for purposes of seeking approval of an unrelated settlement, Class Counsel may
18 refer to any information in the public record for such purposes.

19 **8.6. No Inducement.** Plaintiff and Defendant acknowledge that they are entering into this
20 Agreement as a free and voluntary act without duress or undue pressure or influence of any kind or
21 nature whatsoever and that neither Plaintiffs nor Defendant have relied on any promises, representations,
22 or warranties regarding the subject matter hereof other than as set forth in this Agreement.

23 **8.7. No Prior Assignment.** The Parties hereto represent, covenant, and warrant that they
24 have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
25 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or
26 rights herein released and discharged except as set forth herein. If any claims are made by any Class
27 Member between the start of the Class Period and the date in which the Court approves the settlement
28 outlined in this Agreement as final, such a claim will be deemed covered and released by the individual

1 Class Member making the claim unless such Class Member has timely exercised the right to be excluded
2 from this Agreement under the terms set forth herein. Any Class Member covered by this Agreement
3 will be barred from proceeding with any such claim.

4 **8.8. Review of Noticed Motions And/Or Other Pleadings.** Class Counsel expressly agrees
5 that prior to any filing concerning the terms herein, including but not limited to the Motion for
6 Preliminary Approval and the Motion for Final Approval, it shall e-mail a draft of said motion and/or
7 pleading to Defendant's Counsel at least 7 calendar days prior to its filing.

8 **8.9. Destruction of Informal Discovery.** Plaintiff and Class Counsel agree to treat and
9 maintain all informally disclosed documents and information confidential, protect it, and take any and
10 all reasonable steps to maintain it confidentially and treat it as a trade secret. However, the Parties
11 expressly agree that Class Counsel may disclose such information to the Court as is necessary to
12 consummate and finalize the approval process of the settlement by the Court.

13 **8.9.1.** The Parties agree that in the event the Court does not approve the settlement for
14 any reason, or if the settlement cannot be consummated for any reason, Class Counsel expressly agrees
15 to either: (1) return all informally produced discovery by Defendant to Defendant or Defendant's
16 Counsel; or (2) immediately destroy all informal discovery, and provide sufficient proof (such as a
17 declaration under oath by Class Counsel) that the information was destroyed within 10 calendar days
18 after becoming aware that the settlement has failed to become final. Retaining any copy of direct or
19 derivative information shall be a violation of this provision. Such informal discovery shall include, but is
20 not limited to: (1) Class Members' time and payroll records; (2) written policies and procedures; and (3)
21 information disclosed pursuant to the mediation and/or settlement privilege. If Class Counsel fails to
22 either destroy or return such information within a reasonable time, the Parties expressly agree that
23 Defense Counsel may apply to the Court to seek enforcement of this specific provision (including any
24 and all reasonable attorney's fees and costs in seeking such enforcement).

25 **8.9.2.** If the Court approves the settlement, Plaintiffs and Class Counsel agree to
26 maintain the information provided by Defendant only for as long as it is necessary to consummate and
27 finalize the approval process of the settlement by the Court, up to and including the Effective Date.
28 After such time, the Parties agree that Class Counsel will return the information to Defendant or

1 Defendant’s Counsel, or destroy the information (including any derivative information) as provided
2 herein, except as provided in Plaintiffs’ personnel file.

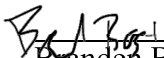
3 **8.10. Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of
4 this Agreement as well as any and all matters arising out of, or related to, the implementation of this
5 Agreement and of the settlement contemplated thereby. The Court will retain jurisdiction to enforce the
6 terms of this Agreement following the entry of the Final Approval Order pursuant to California Code of
7 Civil Procedure section 664.6. The Parties agree to the exclusive jurisdiction of the Court to enforce the
8 terms and conditions contained herein.

9 **8.11. Disputes.** If the Parties have a dispute with regard to the language of this Agreement,
10 they agree to engage mediator Gig Kyriacou to mediate any such dispute. The Parties will split the costs
11 of the mediator, and the Parties will bear their own fees and costs.

12 **8.12. Governing Law and Enforcement Actions.** All terms of this Agreement shall be
13 governed by and interpreted according to the laws of the State of California. In the event that one or
14 more of the Parties institutes any legal action or other proceeding against any other Party or Parties to
15 enforce the provisions of this Agreement, or to declare rights or obligations under this Agreement, the
16 prevailing Party or Parties shall be entitled to recover from the non-prevailing Party or Parties
17 reasonable attorneys’ fees and costs, including expert witness fees incurred in connection with any
18 enforcement actions.

19
20 **PLAINTIFF**

21 Dated: April 19, 2021

DocuSigned by:

Brandon Baggot
9AABFD13972D451...

22
23 **COUNSEL FOR PLAINTIFF AND CLASS**


24 Dated: April 20, 2021


Larry W. Lee
Simon L. Yang
DIVERSITY LAW GROUP, P.C.

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Dated: April 16, 2021

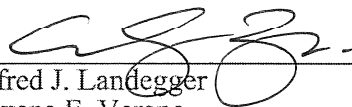
DEFENDANT



William F. Brødersen, President
FOTO-KEM INDUSTRIES, INC.

COUNSEL FOR DEFENDANT

Dated: April 16, 2021



Alfred J. Landegger
Roxana E. Verano
Evelyn Zarraga
LANDEGGER RIVAS VERANO & DAVIS, ALC