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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

vs.

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

Defendants.

Case No. 4:19-cv-00718 JST

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

Attachments:

- Exhibit 1** – First Amended Class Action Complaint
- Exhibit 2** – (Proposed) Order of Preliminary Approval
- Exhibit 3** – (Proposed) Notice of Pendency of Class Action and Proposed Settlement
- Exhibit 4** – (Proposed) Order and Decree Granting Final Approval to Class Action Settlement; (Proposed) Final Judgment

This Stipulation of Settlement is intended to resolve all class action and individual claims set forth in the above-entitled action.

1. DEFINITIONS

1.1 “Agreement,” “Settlement” or “Settlement Agreement” means the instant Stipulation of Settlement to settle the Class Action.

1 **1.2** “**Claims Administrator**” means the firm of Phoenix Settlement Administrator or
2 another mutually agreed upon third-party administrator.

3 **1.3** “**Class**” or “**Class Member**” means the following individuals:

4 a. All of Defendant’s past and present non-exempt California employees who were paid
5 shift pay and overtime in the same workweek at any time during the Class Period (“SHIFT
6 DIFFERENTIAL OVERTIME CLASS”); and

7 b. All of Defendant’s past and present California exempt and non-exempt employees who
8 worked for Defendant and were paid wages by Defendant from January 3, 2018, through the date the
9 Court grants Preliminary Approval, and who are not members of the Shift Differential Overtime Class
10 (“WAGE STATEMENT CLASS”).

11 The Class shall exclude individuals that previously executed a general release of claims against
12 Defendant, and have not worked for Defendant since they executed such release. Such individuals are
13 excluded from the definition of Class or Class Member, including the definitions of Shift Differential
14 Overtime Class and Wage Statement Class.

15 **1.4** “**Class Period**” means the period from August 11, 2015 through the date the Court
16 grants Preliminary Approval.

17 **1.5** “**Class Representative Enhancement**” means the sums to be paid to Ricky Manier,
18 Jr. as an enhancement for his work associated with his role and participation as the class representative
19 and for the risks attendant to such role and participation.

20 **1.6** “**Court**” as used herein means the United States District Court for the Northern District
21 of California.

22 **1.7** “**Defendant**” means Sims Group USA Corporation, a Delaware corporation, and refers
23 generally to all defendants.

24 **1.8** “**Final Approval**” means the date on which the Court’s Judgment becomes final, which
25 shall be deemed to be the last to occur of the following:

26 (a) if there are no objections to the settlement, then the date of final approval by the Court;

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1 (b) if there are objections to the settlement, the day immediately following the expiration
2 of the time period for filing an appeal, request for review or writ; or

3 (c) if an appeal, review or writ is sought from the Judgment, the day after the Judgment is
4 affirmed or the appeal, review or writ is dismissed or denied, and the Judgment is no longer subject to
5 further judicial review.

6 **1.9 “First Mailing Date”** means the date on which the Claims Administrator sends the first
7 Notice of Preliminary Approval to any Class Member.

8 **1.10 “Judgment”** means the entry of judgment of final approval for the settlement. The
9 proposed Order and Decree Granting Final Approval to Class Action Settlement is attached hereto as
10 Exhibit 4. The Judgment shall: (1) retain the Court’s jurisdiction to enforce the terms of this
11 Agreement and (2) permanently enjoin all the Class Members from pursuing and/or seeking to reopen
12 claims of any type based upon any of the conduct alleged in the Litigation.

13 **1.11 “Litigation”** as used herein means the lawsuit filed in this action.

14 **1.12 “Net Settlement Amount”** means the Settlement Amount minus the amounts awarded
15 for Plaintiff’s Counsel’s fees and costs, the charges and expenses of the Claims Administrator, the
16 Class Representative’s Enhancement, and seventy-five percent (75%) of the total PAGA Penalties
17 paid to the Labor and Workforce Development Agency as set forth in Section 7 below. The Net
18 Settlement Amount shall be further allocated as 80% to the Shift Differential Overtime Class and 20%
19 to the Wage Statement Class.

20 **1.13 “Notice of Preliminary Approval”** means the notice sent to Class Members upon the
21 Court’s Preliminary Approval in the form attached to this Stipulation of Settlement as Exhibit 3.

22 **1.13 “PAGA or PAGA Penalties”** refers to California Labor Code section 2698, *et seq.*
23 and/or any civil penalties provided for by that statutory scheme.

24 **1.14 “Parties”** shall refer to Plaintiff and Defendant together.

25 **1.15 “Plaintiff”** as used herein shall mean Ricky Manier, Jr.

26 **1.16 “Plaintiff’s Counsel”** as used herein means the law firms of Diversity Law Group,
27 P.C., Polaris Law Group LLP, Hyun Legal, APC, and Law Offices of Choi & Associates.

1 admission or acknowledgment of any kind by Defendant that any class should be certified or given
2 collective treatment in the Litigation or in any other action or proceeding. Further, neither this
3 Agreement nor the Court's actions with regard to this Agreement, nor the actions of any Class Member
4 with respect to this Agreement, will be admissible in any court or other tribunal regarding the propriety
5 of class certification or collective treatment. In the event that this Agreement is not approved by the
6 Court or any appellate court, or is terminated, or otherwise fails to be enforceable, Defendant will not
7 be deemed to have waived, limited, or affected in any way, any of its objections or defenses in the
8 Litigation, including, but not limited to, its opposition to the certification of a class for the purposes
9 of litigation.

10 **4.5 No Preclusive Effect.** Neither Plaintiff nor Defendant concedes the merits of the
11 other's contentions regarding the suitability of the Litigation for class certification under the Federal
12 Rules of Civil Procedure, but have agreed to resolve the action through this Settlement in recognition
13 of the expense and risk of continuing with the action and in the belief that the settlement is fair,
14 adequate and reasonable. Therefore, in entering into this Agreement, it is the parties' mutual intention
15 and agreement that if the Settlement does not become final as a consequence of any appeal taken from
16 the Court's grant of Final Approval other than with regard to the award of attorneys' fees and costs,
17 the class certification will be vacated, Plaintiff and Defendant will retain all rights to support or oppose
18 certification for the purposes of litigation, and any certification arising from the Court's Final
19 Approval of this Settlement may not be used by Plaintiff or Defendant in support of any argument for
20 or against certification of any class. Neither the provisional certification nor, if ultimately approved,
21 the certification of the Class to consummate this Settlement constitutes a determination by the Court
22 that a plaintiff class should be certified for purposes of trial. Thus, if any appeal is successful in the
23 Court of Appeal that does not relate to an award of attorneys' fees and costs, the Court's certification
24 of the class for settlement purposes shall be deemed void *nunc pro tunc*. This Agreement is explicitly
25 conditioned on the Court's confirmation that its approval of class certification for settlement purposes
26 pursuant to this Agreement shall not be accorded *res judicata*, judicial estoppel, collateral estoppel, or
27 any other form of preclusive effect concerning the suitability of the Litigation for certification under
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1 the Federal Rules of Civil Procedure in the event that the Settlement other than the award of attorneys’
2 fees and costs does not become final as a consequence of any appeal from the Court’s Order of Final
3 Approval. In the event that the Court fails to adopt the foregoing acknowledgement in its orders,
4 Defendant shall be entitled, in its sole discretion, to withdraw from this Settlement and the Parties
5 shall return to the *status quo ante* as though they had not entered into this Agreement.

6 **5. WAIVER AND RELEASE**

7 **5.1 Release and Waiver of Claims.** Upon final approval of this Settlement by the
8 Court, Plaintiff, for himself only, and Defendant and its related persons and entities, hereby agree to
9 release any and all claims each may have against each other. Furthermore, Plaintiff and all Class
10 Members (except any Class Members who timely “opt-out” pursuant to Section 6.3 below), including
11 each of their respective executors, representatives, guardians ad litem, heirs, successors, and assigns
12 will be adjudged to, waive, release and promise never to assert in any forum any and all claims, rights,
13 demands or causes of action known and unknown, against Defendant or any of its Releasees, as
14 follows:

15 (a) For the Shift Differential Overtime Class: Any and all claims that accrued
16 during the Class Period for the payment of unpaid overtime wages, including but not limited to,
17 penalties (including, without limitation, penalties for alleged violations of California Labor Code
18 sections 201, 202, 203, 204, 226, 510, 558, 1194 and 2698, *et seq.*), interest, costs, attorneys’ fees,
19 restitution, unjust enrichment, compensatory damages, liquidated damages, injunctive relief, and any
20 other remedies available at law or equity for wages allegedly owed to Plaintiff and with respect to the
21 Class Members only to the extent that such claims were asserted or could have been asserted in the
22 Litigation based upon the facts alleged in the First Amended Complaint (“FAC”) in this Litigation.
23 The claims being waived include any and all claims, rights, demands or causes of action, that were
24 brought or could have been brought in the Litigation on behalf of the Plaintiff and all members of the
25 Settlement Class upon the facts alleged in the FAC under any state or local statutory or common law,
26 including, but not limited to, California Labor Code §§ 201-203, 226, 226.3, 510, 558, and 1194,
27 1194.2, as well as the Private Attorneys General Act or “PAGA” (Labor Code § 2698, *et seq.*) based
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1 on the claims alleged in the FAC, all related provisions of the California Industrial Welfare
2 Commission Wage Orders based on the claims alleged in the FAC, California Business and
3 Professions Code § 17200 *et seq.* based on the claims alleged in the FAC, California Code of Civil
4 Procedure § 1021.5, and the laws of contract, torts and equity.

5 For the Wage Statement Class: Any and all claims that accrued between January 3,
6 2018, through the date the Court grants Preliminary Approval, for inaccurate wage statements,
7 including without limitation, any and all claims under Labor Code § 226 and derivative penalties under
8 the PAGA, including Labor Code § 226.3, that were brought or could have been brought in the
9 Litigation on behalf of the Plaintiff and all members of the Settlement Class upon the facts alleged in
10 the FAC.

11 As to Plaintiff, only, he releases any and all claims, known or unknown, that he may have
12 against Defendant, this release does not release any claims other than those described above or claims
13 held by Class Members for unlawful employment discrimination under Title VII of the Civil Rights
14 Act of 1964 (Title VII, as amended), 42 U.S.C. § 2000e *et seq.*, the Americans with Disabilities Act
15 (the “ADA”), 42 U.S.C., § 12101 *et seq.*, the Age Discrimination in Employment Act (the “ADEA”),
16 29 U.S.C. § 621 *et seq.*, or the California Fair Employment and Housing Act (the “FEHA”), California
17 Government Code § 12940 *et seq.* or any other claims for wrongful termination based on state or
18 federal law.

19 (b) Subject to the foregoing, and as to Plaintiff only, this waiver and release
20 encompasses both known and unknown claims as described above. Specifically, Plaintiff is deemed
21 to waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

22 **A general release does not extend to claims that the creditor or releasing party**
23 **does not know or suspect to exist in his or her favor at the time of executing the**
24 **release and that, if known by him or her, would have materially affected his or**
25 **her settlement with the debtor or released party.**

26 Accordingly, if the facts relating in any manner to this Settlement are found to be other
27 than or different from the facts now believed to be true, the release of claims contained herein shall
28 remain effective.

1 (c) Upon Final Approval of the Settlement, this waiver and release of claims shall be
2 binding on Plaintiff and all Class Members who have not exercised the right to “opt-out” pursuant to
3 Section 6.3, including each of their respective agents, spouses, registered domestic partners, executors,
4 representatives, guardians ad litem, heirs, successors, and assigns. Further, this wavier and release of
5 claims shall inure to the benefit of Defendant and its predecessors and successors, as well as all of its
6 current, former and future subsidiaries, affiliates, parent companies, fiduciaries, insurers, agents,
7 partners, employees, assigns, subrogees, privies, officers, officials, directors, shareholders, attorneys,
8 benefit plans, administrators and trustees (collectively, “Releasees” or “Released Parties”).

9 **6. NOTICE, OBJECTIONS, AND OPPORTUNITY TO OPT-OUT**

10 **6.1 Notice.** Within ten (10) business days after entry of the Preliminary Approval Order,
11 Defendant shall submit to the Claims Administrator, in electronic form, a list which sets forth: 1) each
12 Class Member’s name; 2) last known address and telephone number; and 3) social security number
13 and employee identification number, and 4) data regarding the number of Workweeks each Class
14 Member worked in his/her respective Class, including each Class Member’s inclusive dates of
15 employment. Within thirty (30) days of Preliminary Approval of this Settlement, the Claims
16 Administrator will send Class Members by first-class mail, at their last known address, the Court-
17 approved Notice of Preliminary Approval of this Settlement in a form attached hereto as Exhibit 3.
18 This notice includes, among other things, a summary of the claims, the settlement, a calculation of the
19 Class Member’s estimated share of the Net Settlement Amount, and the right to object and/or opt-out.
20 Prior to mailing this notice, the Class Administrator shall conduct a “national change of address
21 search.” The Claims Administrator will use reasonable efforts, including tracing, to identify the
22 correct address and re-mail all returned, undelivered mail within five (5) days of receiving notice that
23 a Notice of Preliminary Approval was undeliverable. The parties agree to cooperate with the Claims
24 Administrator to locate Class Members, if necessary.

25 **6.2 Objections.** All objections to the Settlement must be filed with the Court no later than
26 45 calendar days after the Claims Administrator’s First Mailing Date of the Notice of Preliminary
27 Approval. The objection must be submitted to the Court either by mailing them to the Class Action
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1 Clerk, United States District Court for the Northern District of California, Oakland Courthouse,
2 Courtroom 6 - 2nd Floor, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any
3 location of the United States District Court for the Northern District of California. To be considered
4 valid, the objection must be in writing and include (1) the case name and number: *Manier v. Sims*
5 *Metal Mgmt. Northwest*, Case No. 4:19-cv-00718-JST; (2) the Class Member's name, (3) the grounds
6 for the objection, (4) a statement of whether the Class Member intends to appear at the final approval
7 hearing, (5) a list of any documents or witnesses that support the objection, and (6) a dated signature.
8 If the Claims Administrator performs the duties that it is required to perform pursuant to the terms of
9 this Settlement, the deadline to file objections shall be enforced notwithstanding any assertion that the
10 Notice of Preliminary Approval was not received. If any objector intends to appear at the final fairness
11 hearing, either in person or through counsel, he or she must include notice of that fact and state the
12 grounds for his or her objection. The parties will be permitted to respond in writing to such objections
13 within the time period set by the Court. If any Class Member fails to file and serve a Timely Written
14 Objection, he or she will not be permitted to contest the settlement at the final fairness hearing.
15 Submitting an objection is not the equivalent of opting out.

16 **6.3 Opportunity to Opt-Out.** To opt-out of the Settlement, a Class Member must provide
17 the Claims Administrator with a Timely Written Request To Opt Out (*i.e.*, must be postmarked no
18 later than 45 calendar days after the First Mailing Date). Within 10 days following the last day to opt
19 out, the Claims Administrator shall provide to counsel for the Parties the names and addresses of those
20 Class Members who have submitted timely opt-out requests. In order to be valid, a request to opt-out
21 must state the Class Member name and address, reference the case name and number: *Manier v. Sims*
22 *Metal Mgmt. Northwest*, Case No. 4:19-cv-00718-JST, contain the last four digits of his/her social
23 security number, be dated and signed by the Class Member and be timely submitted to the Claims
24 Administrator, and contain a written statement that the Class Member has reviewed the notice and
25 wishes to be excluded from the settlement. All Class Members shall be bound by all of the terms of
26 the Settlement Agreement and Final Judgment unless a timely request for exclusion is submitted to
27 the Claims Administrator. Any Class Member that opts out of the Settlement Class shall not be
28 allowed to object to the Settlement.

1 **8.1 Claims Administrator.** The Claims Administrator will mail the Notice of Preliminary
2 Approval to the Class Members. The Claims Administrator will date stamp all incoming written
3 communications from the Class Members. The Claims Administrator will also disburse and calculate
4 claims to be paid from the Net Settlement Amount. All charges assessed by the Claims Administrator
5 for the administration of this case shall be paid from the Settlement Amount subject to the Court's
6 approval.

7 **8.2 Determination of Settlement Class Awards.** Payments from the Net Settlement
8 Amount to Class Members shall be determined from Defendant's records (*e.g.*, identification of Class
9 Members and Workweeks for each Class Member) and calculated pursuant to Section 9 below. The
10 information that Defendant is required to provide shall be provided to the Claims Administrator in
11 electronic form. The Claims Administrator shall perform the required calculations pursuant to Section
12 9 below and shall provide Plaintiff's Counsel and Defendant, in electronic form, the proposed
13 payments that were calculated pursuant to Section 9 below.

14 **8.3 Class Members' Payments.** Payments to Class Members shall be sent by United
15 States mail, first class, postage prepaid to the Class Member's last known address. Notwithstanding
16 the foregoing, no payment shall be mailed to any Class Member whose notice package was returned
17 to the Claims Administrator after fully complying with Section 6 above. Checks issued to Class
18 Members shall contain a legend that they are in accord and satisfaction of all claims alleged in the
19 Lawsuit and shall be valid for 180 days. Settlement checks may be negotiated in any lawful manner
20 subject to applicable law and the requirements of the institution that is negotiating such checks. The
21 funds represented by any checks that were not issued because a current address could not be obtained
22 for a Class Member by the Claims Administrator, or checks that were mailed but not timely cashed,
23 shall be deemed residue. Any funds remaining uncashed after 180 days shall be distributed in
24 accordance with Section 384 of the California Code of Civil Procedure to Legal Services for Children.

25 The Parties further agree, to the extent permitted by law, that the provisions of Labor Code
26 section 96.7 and Code of Civil Procedure section 1500, *et seq.* relating to unclaimed wages and/or
27 settlement funds are not applicable.

1 **9. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

2 **9.1 Distribution Formulas.** Each Class Member will receive as compensation for the
3 claims alleged in the Litigation and for the waiver and release of claims set forth above in Section 5,
4 an amount determined by the Claims Administrator in accordance with the following formulas:

5 **9.1.1 Calculation of Settlement Awards.** The Parties recognize that the damages
6 and penalty claims in this action are difficult to determine with any certainty for any given
7 employee or time period, and are subject to myriad different methods of potential calculation
8 and formulas. As to the Shift Differential Overtime Class, the Parties have agreed that from
9 the Net Settlement Amount allocated to the Shift Differential Overtime Class, the Claims
10 Administrator will calculate the amount of individual Settlement Awards based on the number
11 of weeks worked during the Class Period, as reflected by Defendant’s payroll data.
12 Specifically, each Shift Differential Overtime Class Member’s Settlement Award will be
13 calculated by multiplying the fraction x/y by the total of the Net Settlement Amount allocated
14 to the Shift Differential Overtime Class, where “x” equals the total number of Workweeks
15 during the Class Period in which the Shift Differential Overtime Class Member was employed
16 and receiving wages and “y” equals the total number of Workweeks during the Class Period in
17 which all Shift Differential Overtime Class Members were employed and receiving wages
18 during the Class Period. As to the Wage Statement Class, the Parties have agreed that from
19 the Net Settlement Amount allocated to the Wage Statement Class, the Claims Administrator
20 will calculate the amount of individual Settlement Awards based on the number of weeks
21 worked between January 3, 2018, through the date the Court grants Preliminary Approval, as
22 reflected by Defendant’s payroll data. Specifically, each Wage Statement Class Member’s
23 Settlement Award will be calculated by multiplying the fraction x/y by the total of the Net
24 Settlement Amount allocated to the Wage Statement Class, where “x” equals the total number
25 of Workweeks between January 3, 2018, through the date the Court grants Preliminary
26 Approval in which the Wage Statement Class Member was employed and receiving wages and
27 “y” equals the total number of Workweeks between January 3, 2018, through the date the Court
28 grants Preliminary Approval in which all Wage Statement Class Members were employed and
receiving wages between January 3, 2018, through the date the Court grants Preliminary

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Approval. The Parties agree that these formulas are reasonable and that the payments provided for herein are designed to provide a fair settlement to all Settlement Class Members, in light of the uncertainties concerning the compensation claimed to be owed to Settlement Class Members and the calculation of such amounts. The Shift Differential Overtime Class' Settlement Awards shall be deemed to consist of 1/3 back wages, subject to normal payroll withholding, 1/3 interest, and 1/3 penalties. The Wage Statement Class' Settlement Awards shall be deemed 1/2 penalties and 1/2 interest. All back wages will be reported via IRS Form W2 and all interest and penalties will be reported via IRS Form 1099

9.2 Within 20 days following the last day to opt out, the Claims Administrator shall provide the parties with a declaration stating the number of notices mailed, undeliverable notices, notices forwarded, address traces performed, notices re-mailed, opt-out requests and/or objections. Ten (10) business days after the Final Approval, Defendant shall fund the settlement by wiring the Settlement Amount into an account established by the Claims Administrator. Ten (10) business days after the wiring of the funds, the Claims Administrator will distribute the settlement (minus the cost of administration approved by the Court) to the Settlement Class Members, the LWDA, Plaintiff, and Plaintiff's Counsel.

9.3 Maintenance of Records. The Claims Administrator shall maintain complete, accurate, and detailed records regarding the administration of the Settlement Amount, including but not limited to, any and all receipts by and disbursements from the Settlement Amount. The Claims Administrator shall make such records available to Counsel for the Parties or to their designee upon reasonable request and at reasonable times. The documentation maintained by the Claims Administrator shall be sufficient to audit the administration of the settlement including, without limitation, the addresses to which claims packages and/or checks were sent and a list of checks which were sent to Settlement Class Members, but not cashed. Upon request, the Claims Administrator shall provide such records to Counsel for the Parties in electronic form. The Claims Administrator shall also provide counsel for the Parties with periodic reports of the number of requests for exclusion received from Settlement Class Members. The Claims Administrator shall maintain all records for a period of not less than four years after the date of Final Approval.

1 additional charge to either the Class Members or Defendant. Defendant agrees not to oppose such
2 motion. To the extent the Court awards less than the requested attorneys' fees, the difference shall
3 revert to the Class.

4 **11.2 Costs.** Included with the motion for final approval, Plaintiff's Counsel shall seek
5 approval of an award of actual and reasonable costs. Defendant agrees not to oppose such motion and,
6 subject to Court approval, such sums shall be paid from the Settlement Amount as approved by the
7 Court. To the extent the Court awards less than the requested costs, the difference shall revert to the
8 Class.

9 **12. TAXATION**

10 **12.1** The parties agree that appropriate withholding of federal, state, and local income taxes,
11 and each Class Member's share of FICA and Medicare taxes, will be made from payments to the Class
12 Members, including Plaintiff, except for the Class Representative Enhancement, and the settlement
13 amounts attributed to penalties and interest, and that said withholdings will be deducted from the
14 Settlement Amount. Defendant shall separately pay its share of payroll taxes. The amounts paid as
15 the Class Representative Enhancement, penalties, and interest shall be reported via 1099 Forms.

16 **12.2** The amount of federal income tax withholdings will be made pursuant to applicable
17 federal, state and/or local withholding codes or regulations.

18 **12.3** W-2 Forms and/or 1099 Forms will be distributed at times and in the manner required
19 by the Internal Revenue Code of 1986, as amended (the "Code") and consistent with this Agreement
20 with respect to payments made to the Class Members.

21 **12.4** If the Code, the regulations promulgated thereunder, or other applicable tax law
22 changes after the date of this Agreement, the processes set forth in this section may be modified with
23 the approval of the Court in a manner to bring Defendant into compliance with any such changes.

24 **12.5** The Parties warrant, represent and agree that no one has provided tax advice to the
25 other and that any responsibility or liability for any tax matters relating to any payments made under
26 this Agreement including, but not limited to, the withholding of, or reporting of taxes, belongs to the
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1 individual Class Member. Each Class Member is advised to consult with his or her own tax advisor
2 concerning the tax consequences of the Settlement to him or her.

3 **13. COURT APPROVAL**

4 **13.1** This Agreement is contingent upon Preliminary and Final Approval of this Stipulation
5 of Settlement (including any appeals thereof) and the non-withdrawal of Defendant from the
6 Settlement in accordance with Section 6.4 above.

7 **13.2** The parties agree to take all steps as may be reasonably necessary to secure approval
8 of the Agreement, to the extent not inconsistent with the terms of this Agreement, and will not take
9 any action adverse to each other in obtaining Court approval, and, if necessary, appellate approval, of
10 the Agreement in all respects. Plaintiff and his counsel expressly agree that they will not file any
11 objection (as opposed to request for correction) to the terms of this Stipulation of Settlement. The
12 Parties agree that neither will assist or encourage any person or entity to file any such objection or to
13 opt-out of the Settlement Class.

14 **14. FINAL ACCOUNTING**

15 **14.1 Final Accounting.** No later than 30 calendar days after the occurrence of both the
16 Final Approval and the distribution of all payments to be paid pursuant to the terms of this Agreement,
17 the Claims Administrator shall submit to the Parties and file with the Court a final accounting of all
18 monies paid from the Settlement Amount, as well as an accounting as to the uncashed class member
19 funds.
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21 **14.2 No Further Obligations.** Upon receipt of the final accounting referenced in
22 Section 14.1 and the payment of the monies required to be paid from the Settlement Amount,
23 Defendant shall have no obligation to provide further funding pursuant to this Agreement.
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25 **15. NOTICES**

26 **15.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed to in
27 writing by the Party receiving such communication, all notices, requests, or other required
28 communications hereunder shall be in writing and shall be sent by one of the following methods: (a)

1 first class mail, postage prepaid; (b) by facsimile, with the original by first class mail, postage prepaid;
2 or (c) by personal delivery (including by Federal Express or other courier service). All such
3 communications shall be sent to the undersigned persons at their respective addresses as set forth
4 herein.

5
6 **Plaintiff's Counsel**

7 **Larry W. Lee, Esq.**
8 **Diversity Law Group, P.C.**
9 **515 S. Figueroa St., Suite 1250**
10 **Los Angeles, CA 90071**
11 **(213) 488-6555**
12 **(213) 488-6554 facsimile**

13
14 **Defendant's Counsel**

15 **Bonnie Glatzer, Esq.**
16 **Nixon Peabody LLP**
17 **One Embarcadero Center, 18th Floor**
18 **San Francisco, CA 94111**
19 **Telephone: (415) 984-8200**
20 **Facsimile: (415) 984-8300**

21 **15.2 Changes in Designated Recipients.** Any Party may re-designate the Person to receive
22 notices, requests, demands, or other communications required or permitted by this Agreement by
23 providing written notice to the other Parties and the Claims Administrator.

24 **16. MISCELLANEOUS PROVISIONS**

25 **16.1 Stay of Litigation.** The parties agree to a stay of the Litigation, pending Final
26 Approval of the Agreement.

27 **16.2 Interpretation of the Agreement/Continuing Jurisdiction.** The Agreement will be
28 interpreted and enforced under the laws of the State of California. The Court shall retain jurisdiction
with respect to the interpretation, implementation and enforcement of the terms of this Agreement and
all orders and judgments entered in connection therewith, and the Parties and their counsel hereto
submit to the exclusive jurisdiction of the Court and consent to the personal jurisdiction of this Court
over each of them for the purpose of interpreting, implementing and enforcing the settlement embodied
in this Agreement and all orders and judgments entered in connection therewith. Except as otherwise

1 set forth herein, all disputes concerning the interpretation, calculation, or payment of settlement
2 claims, or other disputes regarding compliance with this Revised Settlement Agreement, shall be
3 resolved as follows:

- 4
5 1. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Class Member, or
6 Defendant or Defendant's Counsel at any time believes the other party has
7 materially breached the Settlement Agreement, that Party shall notify the
8 other Party in writing of the alleged violation.
- 9 2. Upon receiving notice of the alleged violation or dispute, the responding Party
10 shall have ten (10) days to correct the alleged violation and/or respond in
11 writing to the initiating Party with the reasons why the Party disputes all or
12 part of the allegation.
- 13 3. If the response does not address the alleged violation to the initiating Party's
14 satisfaction, the Parties shall negotiate in good faith for up to ten (10) days to
15 resolve their differences.
- 16 4. If the Parties are unable to resolve their differences after twenty (20) days,
17 either Party may file an appropriate motion to enforce the Settlement
18 Agreement with the Court. The briefing of such motion should be in letter
19 brief form and shall not exceed five (5) single-spaced pages (excluding
20 exhibits).

21 The prevailing party shall be entitled to his/its reasonable attorneys' fees and costs.

22 **16.3 Final Agreement.** The terms and conditions of this Agreement constitute the exclusive
23 and final understanding and expression of all agreements between the parties with respect to the
24 resolution of the Litigation. Plaintiff, on his own behalf and on behalf of the class he represents, and
25 Defendant, have agreed to enter into this Agreement based solely upon its terms and not in reliance
26 upon any representations or promises other than those contained in this Agreement. Notwithstanding
27 the foregoing, this Agreement may be amended or modified by a written instrument signed by counsel
28 for all Parties or their successors-in-interest, subject to approval by the Court.

16.4 Counterparts. This Agreement may be executed in one or more actual or telecopied
counterparts, and by DocuSign, all of which will be considered one and the same instrument and all
of which will be considered duplicate originals.

1 **16.5 Authority.** Counsel for the Parties warrant and represent that they are expressly
2 authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate
3 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate the
4 terms hereof, and to execute any other documents required to effectuate the terms of this Agreement.
5 Each individual signing below warrants that she or he has the authority to execute this Agreement on
6 behalf of the party for whom or which that individual signs.

7 **16.6 No Third Party Beneficiaries.** The individual Plaintiff, Class Members and attorneys
8 for Plaintiff, and Defendant, are direct beneficiaries of this Agreement, but there are no third party
9 beneficiaries.

10 **16.7 Costs of Administration.** The Class Members and Plaintiff's Counsel shall not have
11 any responsibility or liability with respect to any administrative costs incurred in connection with the
12 administration of this settlement. All charges for administration shall be paid from the Settlement
13 Amount as required by this Agreement and as approved by the Court.

14 **16.8 No Continuing Liability.** No person shall have any claim against Defendant, the Class
15 Members, Plaintiff or Plaintiff's Counsel based on distributions or payments made in accordance with
16 this Agreement.

17 **16.9 Lapse.** If this Agreement is not approved, or is terminated, rescinded, canceled, or fails
18 to become effective for any reason, and Final Approval does not occur, then no funds shall be paid
19 from the Settlement Amount and any previously paid monies, except costs of administration, shall be
20 returned to Defendant.

21 **16.10 Injunctive Relief.** As part of this Agreement, Defendant shall not be required to
22 enter into any consent decree, nor shall Defendant be required to agree to any provision for injunctive
23 or prospective relief.

24 **16.11 Effect of Payments to Class Members.** Neither the payments paid to Class Members
25 or Plaintiff pursuant to this Agreement nor any other term of this Agreement shall have any effect on
26 the eligibility or calculation of any employee benefits. The Parties agree that any payments paid to
27 Class Members under the terms of this Agreement do not represent any modification of any Class
28

1 Member's previously credited hours of service or other eligibility criteria under any employee pension
2 benefit plan, employee welfare benefit plan or other program or policy sponsored by Defendant.
3 Further, such payments shall not be considered compensation or annual earnings for benefits in any
4 year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit
5 plan, employee welfare benefit plan or other program or policy sponsored by Defendant.

6 **16.12 Confidentiality.** The Parties agree that neither of the parties or their counsel will issue
7 any press release about this Settlement, initiate any contact with the media, respond to media inquiries,
8 or otherwise publicize the settlement. In all other cases, whether oral, written or electronic (including
9 the world wide web), the Parties and their Counsel agree to limit their statements regarding the terms
10 of this Settlement Agreement to say that the Action has been settled and that they are satisfied with
11 the settlement terms. This provision shall not prevent either Defendant's or Plaintiff's counsel from
12 taking all actions necessary to obtain preliminary or final approval, nor shall it prevent Defendant from
13 making disclosures for legitimate business purposes, or Plaintiff's counsel from responding to
14 questions from Class Members.

15 **16.13 Exhibits.** The terms of this Agreement include the terms set forth in any of the attached
16 Exhibits 1 through 4, which are incorporated by this reference as though fully set forth herein. The
17 Exhibits to this Agreement are an integral part of the Agreement. In the event of any conflict between
18 the Agreement and the Exhibits, the terms of the Agreement shall control.

19 **16.14 Further Acts.** The Parties and their respective counsel will cooperate with each other
20 and use their best efforts to effect the implementation of the Agreement. In the event the Parties are
21 unable to reach agreement on the form or content of any document needed to implement the
22 Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of
23 this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

24 **16.15 Construction.** Each of the Parties has cooperated in the drafting and preparation of
25 this Agreement. Hence, any construction of this Agreement shall not be construed against any of the
26 Parties and before declaring any provision of this Agreement invalid, the Court shall first attempt to
27 construe the provisions valid to the fullest extent possible consistent with applicable precedents so as
28

1 to render all provisions of this Agreement valid and enforceable. However, the Parties understand and
2 agree that this Agreement shall be interpreted and governed by California law.

3 **16.16 Defendant's Costs.** All of Defendant's attorney's fees and costs incurred in this
4 Action shall be borne by Defendant from Defendant's separate funds and not paid from the Settlement
5 Amount.

6 **16.17 Plaintiff's Duties.** Plaintiff agrees to sign this Agreement and by signing this
7 Agreement is bound by the terms herein stated, and further agrees not to request to be excluded from
8 the Settlement Class or to object to any of the terms of this Agreement. Non-compliance by Plaintiff
9 with this paragraph shall be void and of no force and effect.

10 Dated: 6/6/2020

DocuSigned by:
11 
B19DF87043DC476 RICKY MANIER, JR.

12
13 Dated:

SIMS GROUP USA CORPORATION

14
15 By: _____
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1 to render all provisions of this Agreement valid and enforceable. However, the Parties understand and
2 agree that this Agreement shall be interpreted and governed by California law.

3 **16.16 Defendant's Costs.** All of Defendant's attorney's fees and costs incurred in this
4 Action shall be borne by Defendant from Defendant's separate funds and not paid from the Settlement
5 Amount.

6 **16.17 Plaintiff's Duties.** Plaintiff agrees to sign this Agreement and by signing this
7 Agreement is bound by the terms herein stated, and further agrees not to request to be excluded from
8 the Settlement Class or to object to any of the terms of this Agreement. Non-compliance by Plaintiff
9 with this paragraph shall be void and of no force and effect.

10
11 Dated:

By: _____

RICKY MANIER, JR.

12
13 Dated: 6/23/2020

SIMS GROUP USA CORPORATION

14
15 By: _____

Secretary / Scott A. Miller

1 **Approved as to form and content:**

2 Dated:

NIXON PEABODY LLP


4 By: _____

BONNIE GLATZER
Attorneys for Defendant
Sims Group USA Corporation

7 Dated: 6/23/2020

DIVERSITY LAW GROUP, P.C.


9 By: _____


LARRY W. LEE
Attorneys for Plaintiff
Ricky Manier, Jr.

12 Dated: 6/19/2020

POLARIS LAW GROUP LLP

14 By: _____


WILLIAM L. MARDER
Attorneys for Plaintiff
Ricky Manier, Jr.

17 Dated: June 23, 2020

HYUN LEGAL, APC


19 By: _____


DENNIS S. HYUN
Attorneys for Plaintiff
Ricky Manier, Jr.

22 Dated: 6/23/2020

LAW OFFICES OF CHOI & ASSOCIATES


24 By: _____


EDWARD W. CHOI
Attorneys for Plaintiff
Ricky Manier, Jr.

1 **Approved as to form and content:**

2 Dated: June 23, 2020

NIXON PEABODY LLP

3 
4 By: _____
5 BONNIE GLATZER
6 Attorneys for Defendant
7 Sims Group USA Corporation

8 Dated:

DIVERSITY LAW GROUP, P.C.

9 By: _____
10 LARRY W. LEE
11 Attorneys for Plaintiff
12 Ricky Manier, Jr.

13 Dated:

POLARIS LAW GROUP LLP

14 By: _____
15 WILLIAM L. MARDER
16 Attorneys for Plaintiff
17 Ricky Manier, Jr.

18 Dated:

HYUN LEGAL, APC

19 By: _____
20 DENNIS S. HYUN
21 Attorneys for Plaintiff
22 Ricky Manier, Jr.

23 Dated:

LAW OFFICES OF CHOI & ASSOCIATES

24 By: _____
25 EDWARD W. CHOI
26 Attorneys for Plaintiff
27 Ricky Manier, Jr.

EXHIBIT 1

1 Larry W. Lee (State Bar No. 228175)
2 lwlee@diversitylaw.com
3 **DIVERSITY LAW GROUP, P.C.**
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5 Los Angeles, California 90071
6 (213) 488-6555
7 (213) 488-6554 facsimile

8 **WILLIAM L. MARDER, ESQ. (CBN 170131)**
9 bill@polarislawgroup.com
10 **Polaris Law Group LLP**
11 501 San Benito Street, Suite 200
12 Hollister, CA 95023
13 Tel: (831) 531-4214
14 Fax: (831) 634-0333

15 Attorneys for Plaintiff and the Class

16 [Additional Counsel on Next Page]

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

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

21 Plaintiff,

22 vs.

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

26 Defendants.

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

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) **VIOLATION OF LABOR CODE §§ 510, 558, and 1194;**
- (2) **VIOLATION OF LABOR CODE § 226;**
- (3) **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.; AND**
- (4) **VIOLATION OF LABOR CODE § 2698, ET SEQ.**

DEMAND OVER \$25,000

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1 Plaintiff Ricky Manier, Jr. (“Plaintiff”) hereby submits this First Amended Class Action
2 Complaint (“Complaint”) against Defendants Sims Metal Management – Northwest, an unknown
3 corporate entity (“Sims Metal”), and Does 1-50 (hereinafter collectively referred to as “Defendants”),
4 individually and on behalf of a class of all other similarly situated current and former employees of
5 Defendants for penalties and/or damages for failure to pay overtime wages based on the correct,
6 higher regular rate of pay and provide accurate itemized wage statements as follows:

7 INTRODUCTION

8 1. Defendants contend in their Notice of Removal that this Court has federal question
9 jurisdiction pursuant to 28 U.S.C. § 1331, based on its incorrect contention that Plaintiff’s claims are
10 somehow preempted by the Labor Management Relations Act (the “LMRA”). Plaintiff disputes
11 Defendant’s contentions and reserves his right to seek remand. *Angeles v. U.S. Airways, Inc.*, 2013
12 WL 622032, at *3-9 (N.D. Cal. Feb. 19, 2013) (holding that regular rate of pay claims not subject to
13 LMRA preemption); *Placencia v. Amcor Packaging Distribution, Inc.*, 2014 WL 2445957, at *3 (C.D.
14 Cal. May 12, 2014) (same).

15 2. This Complaint challenges systemic illegal employment practices resulting in
16 violations of the California Labor Code, the Industrial Welfare Commission (“IWC”) Wage Orders
17 and the Unfair Competition Law (the “UCL”), Business & Professions Code § 17200, *et seq.* UCL
18 against employees of Defendants.

19 3. Plaintiff is informed and believes and based thereon alleges that Defendants jointly and
20 severally have acted intentionally and with deliberate indifference and conscious disregard to the
21 rights of all employees by failing to pay all earned overtime wages, as well as waiting time penalties
22 and provide accurate itemized wage statements to its employees.

23 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
24 engaged in, among other things a system of knowing and intentional violations of the California Labor
25 Code and the UCL.

26 5. The policies, practices and customs of defendants described above and below have
27 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that
28

1 routinely adhere to the strictures of the California Labor Code and the California Business and
2 Professions Code.

3 **JURISDICTION AND VENUE**

4 6. Again, Defendants contend that this Court has federal question jurisdiction based on
5 Defendants' incorrect contention that the LMRA preempts Plaintiff's claims. Plaintiff disputes
6 Defendants' contentions and reserves his right to seek remand. However, Plaintiff agrees that this
7 Court is the proper United States District Court for removal from Contra Costa County Superior
8 Court.

9 **PARTIES**

10 7. Plaintiff began employment with Defendant on or about December 11, 2017. Plaintiff
11 ended his employment in or around December 2018. Plaintiff worked as a heavy equipment operator
12 at Defendant's facility located in Redwood City, California. Plaintiff was and is a victim of the
13 policies, practices, and customs of Defendants complained of in this action in ways that have deprived
14 Plaintiff of the rights guaranteed by California Labor Code §§ 201-203, 226, 510, 558, and 1194, and
15 the UCL.

16 8. Plaintiff is informed and believes and based thereon alleges that Defendant was and is
17 an unknown corporate entity doing business in the State of California, including in this County.

18 9. Plaintiff is informed and believes and based thereon alleges that at all times herein
19 mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and
20 partnerships, licensed to do business and actually doing business in the State of California.

21 10. As such, and based upon all the facts and circumstances incident to Defendants'
22 business in California, Defendants are subject to California Labor Code §§ 201-203, 226, 510, 558,
23 and 1194, and the UCL.

24 11. Plaintiff does not know the true names or capacities, whether individual, partner or
25 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said
26 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
27 when the true names and capacities are known. Plaintiff is informed and believes and based thereon
28 alleges that each of said fictitious Defendants was responsible in some way for the matters alleged

1 herein and proximately caused Plaintiff and members of the general public and class to be subject to
2 the illegal employment practices, wrongs and injuries complained of herein.

3 12. At all times herein mentioned, each of said Defendants participated in the doing of the
4 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
5 and each of them, were the agents, servants and employees of each of the other Defendants, as well as
6 the agents of all Defendants, and at all times herein mentioned, were acting within the course and
7 scope of said agency and employment.

8 13. Plaintiff is informed and believes and based thereon alleges that at all times material
9 hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer
10 of, or working in concert with each of the other co-Defendants and was acting within the course and
11 scope of such agency, employment, joint venture, or concerted activity. To the extent said acts,
12 conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants
13 confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

14 14. At all times herein mentioned, Defendants, and each of them, were members of, and
15 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
16 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

17 15. At all times herein mentioned, the acts and omissions of various Defendants, and each
18 of them, concurred and contributed to the various acts and omissions of each and all of the other
19 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
20 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
21 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts
22 and omissions of each and all of the other Defendants in proximately causing the damages as herein
23 alleged.

24 **CLASS ACTION ALLEGATIONS**

25 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
26 California Code of Civil Procedure § 382 of the following classes and sub-classes:

27 a. All of Defendant's past and present non-exempt California employees who
28 worked for Defendant from January 2, 2015 through the present who earned non-discretionary

1 incentives, including but not limited to “Shift Pay,” and overtime wages in the same work
2 week (“OVERTIME CLASS”).

3 b. All of Defendant’s past and present California employees who worked for
4 Defendant and were paid wages by Defendant from January 2, 2018, through the present
5 (“WAGE STATEMENT CLASS”)

6 c. All of Defendant’s past and present California employees who worked for
7 Defendant and were paid “Shift Pay” wages by Defendant from January 2, 2018, through the
8 present (“SHIFT PAY WAGE STATEMENT CLASS”)

9 17. **Numerosity and Ascertainability:** The members of the Class are so numerous that
10 joinder of all members would be impractical, if not impossible. The identity of the members of the
11 Class is readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
12 informed and believes and based thereon alleges that Defendants failed to pay all overtime wages
13 based on the correct, higher regular rate of pay, as well as waiting time penalties and provide accurate
14 itemized wage statements in violation of Labor Code §§201-203, 226, 510, 558, and 1194, and the
15 UCL.

16 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
17 necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff’s
18 attorneys are ready, willing and able to fully and adequately represent the class and individual
19 Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and
20 currently have a number of wage-and-hour class actions pending in California courts.

21 19. Defendants uniformly administered a corporate policy, practice of failing to pay all
22 overtime wages based on the correct, higher regular rate of pay, as well as waiting time penalties and
23 provide accurate itemized wage statements in violation of Labor Code §§201-203, 226, 510, 558, and
24 1194, and the UCL for Plaintiff and the Class.

25 20. **Common Question of Law and Fact:** There are predominant common questions of
26 law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning
27 Defendants failing to pay all overtime wages based on the correct, higher regular rate of pay, as well
28 as waiting time penalties and provide accurate itemized wage statements in violation of Labor Code

1 §§201-203, 226, 510, 558, and 1194, and the UCL for Plaintiff and the Class.

2 21. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
3 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner
4 as the Class members. Plaintiff is a victim of Defendant’s violation Labor Code §§201-203, 226, 510,
5 558, and 1194, and the UCL. Defendant failed to pay overtime wages based on the correct, higher
6 regular rate of pay. Specifically, Plaintiff and Class Members earned additional non-discretionary
7 incentive pay, including “Shift Pay” wages in work weeks in which Plaintiff and Class Members also
8 earned overtime wages. Defendant, however, failed to factor such incentive pay into the regular rate
9 of pay for purposes of paying overtime wages to Plaintiff and Class Members. Rather, Defendant paid
10 Plaintiff and Class Members only 1.5x their base rate of pay for the overtime rate. Therefore,
11 Defendant owes Plaintiff and Class Members additional overtime pay. Further, Defendant violated
12 Labor Code § 226(a)(9) by failing to list the applicable rate and hours with respect to the “Shift Pay”
13 wages on wage statements issued to Plaintiff and Class Members. Rather, whenever “Shift Pay” wages
14 were paid to the employees, the pay stubs only showed a flat amount without any applicable rate and
15 hours to show how the “Shift Pay” amount was calculated. Moreover, the pay stubs issued to Plaintiff
16 and Class Members do not identify the legal name of the employer. While the paystubs that were
17 issued to the employees identified by a company named Sims Metal Management- Northwest, this
18 company does not appear on the California Secretary of State website. As such, Plaintiff is a member
19 of the Class and has suffered the alleged violations of California Labor Code §§201-203, 226, 510,
20 558, and 1194, and the UCL.

21 22. The California Labor Code and upon which Plaintiff bases these claims is broadly
22 remedial in nature. These laws and labor standards serve an important public interest in establishing
23 minimum working conditions and standards in California. These laws and labor standards protect the
24 average working employee from exploitation by employers who may seek to take advantage of
25 superior economic and bargaining power in setting onerous terms and conditions of employment.

26 23. The nature of this action and the format of laws available to Plaintiff and members of
27 the Class identified herein make the class action format a particularly efficient and appropriate
28

1 procedure to redress the wrongs alleged herein. If each employee were required to file an individual
2 lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since it would
3 be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
4 superior financial and legal resources. Requiring each Class member to pursue an individual remedy
5 would also discourage the assertion of lawful claims by employees who would be disinclined to file an
6 action against their former and/or current employer for real and justifiable fear of retaliation and
7 permanent damage to their careers at subsequent employment.

8 24. The prosecution of separate actions by the individual class members, even if possible,
9 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
10 Class members against the Defendants and which would establish potentially incompatible standards
11 of conduct for the Defendants, and/or (b) adjudications with respect to individual Class members
12 which would, as a practical matter, be dispositive of the interest of the other Class members not parties
13 to the adjudications or which would substantially impair or impede the ability of the Class members to
14 protect their interests. Further, the claims of the individual members of the Class are not sufficiently
15 large to warrant vigorous individual prosecution considering all of the concomitant costs and
16 expenses.

17 25. Such a pattern, practice and uniform administration of corporate policy regarding
18 illegal employee compensation described herein is unlawful and creates an entitlement to recovery by
19 the Plaintiff and the Class identified herein, in a civil action, for unpaid overtime, including interest
20 thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of
21 California Labor Code §§ 226, 1194 and Code of Civil Procedure § 1021.5.

22 26. Proof of a common business practice or factual pattern, which the named Plaintiff
23 experienced and are representative of, will establish the right of each of the members of the Class to
24 recovery on the causes of action alleged herein.

25 27. The Class is commonly entitled to a specific fund with respect to the compensation
26 illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those
27 funds being improperly withheld by Defendants. This action is brought for the benefit of the entire
28 class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 510, 558, and 1194

(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE CLASS)

28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 27 as though fully set for herein.

29. At all times relevant herein, Defendants failed to pay all earned overtime wages by not including all non-discretionary remuneration in the regular rate of pay, including without limitation, shift pay. Specifically, whenever non-discretionary incentives were paid to the employees, such amounts were not included/factored into the regular rate of pay for purposes of overtime wages. As such, the overtime wage rates should have been paid at a higher rate than 1.5 times the base rate of pay.

30. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other members of the Class their correct wages pursuant to Labor Code §§ 510, 558, and 1194 and accordingly owe waiting time penalties pursuant to Labor Code § 203 to separated employees.

31. The conduct of Defendants and their agents and employees as described herein was willfully done in violation of Plaintiff and other members of the Class' rights, and done by managerial employees of Defendants.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226

(AGAINST ALL DEFENDANTS BY PLAINTIFF AND THE WAGE STATEMENT CLASS)

32. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 31 as though fully set for herein.

33. Defendants failed in their affirmative obligation to provide accurate itemized wage statements. Labor Code § 226(a) requires that an employer provide an itemized wage statement every time wages are paid to an employee. Here, Defendant violated Labor Code § 226(a) as to Plaintiff and Class Members in two respects. First, Defendant violated Labor Code § 226(a)(9) by failing to list the applicable rate and hours with respect to the "Shift Pay" wages on wage statements issued to Plaintiff

1 and Class Members. Rather, whenever “Shift Pay” wages were paid to the employees, the pay stubs
2 only showed a flat amount without any applicable rate and hours to show how the “Shift Pay” amount
3 was calculated. Second, the pay stubs issued to Plaintiff and Class Members do not identify the legal
4 name of the employer. While the paystubs that were issued to the employees identified by a company
5 named Sims Metal Management- Northwest, this company does not appear on the California Secretary
6 of State website.

7 34. Such a pattern, practice and uniform administration of corporate policy as described
8 herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified
9 herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
10 thereon, attorneys’ fees, and costs of suit according to the mandate of California Labor Code § 226.

11 **THIRD CAUSE OF ACTION**

12 **FOR VIOLATIONS OF THE UCL, BUSINESS & PROFESSIONS § 17200 *ET SEQ.***
13 **(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE CLASS)**

14 35. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 34 as though
15 fully set for herein.

16 36. Defendants, and each of them, have engaged and continue to engage in unfair and
17 unlawful business practices in California by practicing, employing and utilizing the employment
18 practices outlined above, include, to wit, by failing to pay proper overtime wages based on the correct,
19 higher regular rate of pay.

20 37. Defendants’ utilization of such unfair and unlawful business practices constitutes
21 unfair, unlawful competition and provides an unfair advantage over Defendants’ competitors.

22 38. Plaintiff seeks, on his own behalf and on behalf of other members of the Class similarly
23 situated, full restitution of monies, as necessary and according to proof, to restore any and all monies
24 withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of
25 herein.

26 39. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
27 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as
28 proscribed by California Business and Professions Code § 17200 *et seq.*, including those set forth

1 herein above thereby depriving Plaintiff and other members of the class the minimum working
2 condition standards and conditions due to them under the California laws as specifically described
3 therein.

4 **FOURTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

6 **(AGAINST ALL DEFENDANTS BY PLAINTIFF AS PROXY FOR STATE OF**
7 **CALIFORNIA)**

8 40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 as though
9 fully set for herein.

10 41. Plaintiff brings this cause of action as a proxy for the State of California pursuant to the
11 Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*, and in this capacity seeks
12 penalties on behalf of the State and Aggrieved Employees as set forth in the PAGA arising from
13 Defendants’ violations of Labor Code §§ 201-203, 226, 510, 558, and 1194, from January 2, 2018,
14 through the present. As alleged herein, Defendant failed to pay overtime wages based on the correct,
15 higher regular rate of pay. Specifically, Plaintiff and Class Members earned additional non-
16 discretionary incentive pay, including “Shift Pay” wages in work weeks in which Plaintiff and Class
17 Members also earned overtime wages. Defendant, however, failed to factor such incentive pay into
18 the regular rate of pay for purposes of paying overtime wages to Plaintiff and Class Members. Rather,
19 Defendant paid Plaintiff and Class Members only 1.5x their base rate of pay for the overtime rate.
20 Therefore, Defendant owes Plaintiff and Class Members additional overtime pay. Further, Defendant
21 violated Labor Code § 226(a)(9) by failing to list the applicable rate and hours with respect to the
22 “Shift Pay” wages on wage statements issued to Plaintiff and Class Members. Rather, whenever “Shift
23 Pay” wages were paid to the employees, the pay stubs only showed a flat amount without any
24 applicable rate and hours to show how the “Shift Pay” amount was calculated. Moreover, the pay
25 stubs issued to Plaintiff and Class Members do not identify the legal name of the employer. While the
26 paystubs that were issued to the employees identified by a company named Sims Metal Management-
27 Northwest, this company does not appear on the California Secretary of State website. As such,
28 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor Code

1 §§201-203, 226, 510, 558, and 1194. Therefore, Defendants have violated California Labor Code §§
2 201-203, 226, 510, 558, and 1194.

3 42. On or about January 2, 2019, Plaintiff sent written notice to the California Labor &
4 Workforce Development Agency (the “LWDA”) of Defendants' violations of Labor Code §§ 201-203,
5 226, 510, 558, and 1194, pursuant to the PAGA.

6 43. As of the date of this filing, the LWDA has not provided written notice regarding
7 whether it intends to investigate the Labor Code violations set forth in Plaintiff's written notice and
8 thus allowing Plaintiff to proceed under PAGA against Defendants for said violations. Therefore,
9 Plaintiff may seek any and all applicable penalties under PAGA.

10 44. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
11 applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 226, 510, 558, and
12 1194 for the time periods described above, as a proxy for the State of California and on behalf of other
13 Aggrieved Employees.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf this
17 suit is brought against Defendants, jointly and severally, as follows:

- 18 1. For an order certifying the proposed Class;
- 19 2. For an order appointing Plaintiff as the representative of the Class as described herein;
- 20 3. For an order appointing counsel for Plaintiff as Class counsel;
- 21 4. Upon the First Cause of Action, for damages and penalties pursuant to statute as set
22 forth in California Labor Code §§201-203, 510, 558, and 1194 according to proof;
- 23 5. Upon the Second Cause of Action, for damages or penalties pursuant to statute as set
24 forth in California Labor Code § 226, and for costs and attorneys’ fees;
- 25 6. Upon the Third Cause of Action, for restitution to Plaintiff and other similarly effected
26 members of the general public of all funds unlawfully acquired by Defendants by means of any acts or
27 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 28 7. Upon the Fourth Cause of Action, for penalties to Plaintiff, the State of California and

1 all similarly aggrieved employees, and for costs and attorneys' fees as set forth in Labor Code § 2699;

2 8. On all causes of action, for attorneys' fees and costs as provided by California Labor
3 Code §§ 226, 1194, 2699, and Code of Civil Procedure § 1021.5; and

4 9. For such other and further relief as the Court may deem just and proper.

5
6 DATED: April 26, 2019

LAW OFFICES OF CHOI & ASSOCIATES


7
8 By: 
9 Edward W. Choi
10 Attorneys for Plaintiff and the Class
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EXHIBIT 2

1 Larry W. Lee (State Bar No. 228175)
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9 *Attorneys for Plaintiff Ricky Manier, Jr.*
10 *and the Proposed Plaintiff Class*

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 RICKY MANIER, JR., individually and on
14 behalf of all other similarly situated,

15 Plaintiff,

16 vs.

17 SIMS METAL MANAGEMENT
18 NORTHWEST, an unknown corporate entity;
and DOES 1 through 50, inclusive,

19 Defendants.

Case No.: 4:19-cv-00718-JST

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date:

Time:

Judge: Hon. Jon S. Tigar

Crtrm.: A – 15th Floor

1 The Court, having read the papers filed with regard to Plaintiff’s motion for preliminary
2 approval of a class action settlement, and after hearing argument regarding that motion on
3 _____, hereby FINDS AND ORDERS as follows:

4 1. The Stipulation of Settlement and Plaintiff’s Request to Certify the Class for
5 Purposes of Settlement Only (“Settlement Agreement”) (Dkt No. ___) filed on _____
6 resulted from extensive arms-length negotiation and is within the range of possible approval, and,
7 subject to further consideration at the final approval hearing described below, is preliminarily
8 approved as fair, reasonable and adequate.

9 2. In accordance with the settlement agreement, the Court hereby conditionally
10 certifies a class pursuant to Federal Rules of Civil Procedure 23(b)(3) consisting of: (1) all of
11 Defendant’s past and present non-exempt California employees who were paid shift pay and
12 overtime in the same workweek at any time from August 11, 2015 through the date of this Order,
13 (“Shift Differential Overtime Class”); and (2) all of Defendant’s past and present California
14 exempt and non-exempt employees who worked for Defendant and were paid wages by
15 Defendant from January 3, 2018, through the date of this Order, and who are not members of the
16 Shift Differential Overtime Class (“Wage Statement Class”). The Class shall exclude individuals
17 that previously executed a general release of claims against Defendant, and have not worked for
18 Defendant since they executed such release. Such individuals are excluded from the definition of
19 Class or Class Member, including the definitions of Shift Differential Overtime Class and Wage
20 Statement Class. Collectively, the Shift Differential Overtime Class and the Wage Statement
21 Class shall be referred to as the “Settlement Class.” The Court finds that this Settlement Class,
22 consisting of more than 450 individuals, is so numerous that joinder of all members is
23 impracticable. The Court further finds that the Settlement Class is ascertainable having already
24 been identified by Defendant.

25 3. The Court finds that there are questions of law or fact that are common to the
26 Settlement Class that predominate over any individualized questions of law or fact. Such
27 questions include whether Defendant SIMS Group USA Corporation (“Sims”) failed to pay all
28 overtime wages based on a higher regular rate of pay; whether Sims failed to provide accurate

1 wage statements; and whether Sims otherwise engaged in unlawful conduct prohibited by the
2 California Business & Professions Code.

3 4. The Court finds that the claims of Plaintiff Ricky Manier, Jr. are typical of the
4 claims of the members of the Settlement Class and that he will fairly and adequately protect the
5 interests of the Settlement Class. Certification of the Settlement Class is superior to other
6 available methods for the fair and efficient adjudication of the controversy. Accordingly, Ricky
7 Manier, Jr. is hereby appointed Class Representative; his counsel of record, Diversity Law Group,
8 P.C., Polaris Law Group LLP, Hyun Legal, APC, and Law Offices of Choi & Associates are
9 adequate counsel and are hereby appointed counsel for the Settlement Class.

10 5. The Court finds that in the present case mailed notice via first class mail is the best
11 practicable method of notice that is reasonably calculated to apprise members of the Settlement
12 Class of the settlement agreement and their rights. The Court also finds that the proposed notice
13 is sufficient to inform members of the Settlement Class of the terms of the settlement, their rights
14 under the settlement, including, but not limited to, their right to object to the settlement, and the
15 processes for doing so; and the date and location of the final approval hearing. Accordingly, the
16 proposed notice and notice plan set out in the settlement agreement, which includes updating class
17 member addresses through a national change of address search, is approved.

18 6. Pursuant to the terms of the Settlement Agreement, Phoenix Settlement
19 Administrator shall act as the Claims Administrator in this case. The Claims Administrator is
20 hereby directed to mail the approved notice by first-class mail to members of the Settlement Class
21 as specified by the Settlement Agreement. The Claims Administrator shall use reasonable efforts,
22 including tracing, to identify the correct address and re-mail all returned, undelivered mail within
23 five (5) days of receiving notice that a Notice of Preliminary Approval was undeliverable. The
24 parties are further directed to carry out and comply with the terms of the settlement agreement,
25 particularly with respect to providing the Claims Administrator the information and data
26 necessary to carry out its duties.

27 7. Any Settlement Class member who wishes to comment on or object to the
28 settlement or Class Counsel's proposed fees and costs award shall have until forty-five (45) days

1 after the mailing of the notice to submit his or her comment or objection, pursuant to the
2 procedures set forth in the Settlement Agreement and class notice. Any request to opt out of the
3 settlement must include the class member's (1) name, (2) mailing address, (3) written statement
4 that he or she requests to be excluded from the settlement, and (4) dated signature.

5 8. A hearing is hereby set for _____, 2020 at __:00 __.m. in Courtroom 6
6 of this Court to consider any objections that may be filed and to determine whether the proposed
7 settlement is fair, reasonable and adequate and should be finally approved, and to determine the
8 amount of attorneys' fees, costs, and expenses to be paid to Class Counsel, and the amount of the
9 service award to Plaintiff. The Court reserves the right to continue the date of the final approval
10 hearing without further notice to the Settlement Class.

11 9. Any class member may appear at the final approval hearing in person, or by his or
12 her own attorney, and show cause why the Court should not approve the settlement, or object to
13 the motion for the award of the class representative payment and the Class Counsel fees and costs.
14 Any attorney representing the class member must file a notice of appearance with the Court and
15 serve the notice of appearance on Class Counsel and counsel for Sims, no later than seven days
16 prior to the hearing set above in paragraph 8.

17 10. Good cause appearing, the proceedings in this case are hereby stayed, except for
18 proceedings for purposes of effectuating the settlement.

19 IT IS SO ORDERED.

20
21 DATED: _____

22 HON. JON S. TIGAR
23
24
25
26
27
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EXHIBIT 3

NOTICE OF PENDENCY OF ACTION AND PROPOSED SETTLEMENT

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

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

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

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

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

BASIC INFORMATION

1. What is this notice about?

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

2. What is the case about?

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

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

3. What is a class action?

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

4. Why is there a settlement?

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

5. Am I part of this class?

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

YOUR RIGHTS AND OPTIONS

6. What does the settlement provide?

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

7. How do I participate in the settlement?

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

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

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

[address and phone number]

Your request to be excluded from the settlement must include: (1) your name, (2) the last four digits of your social security number, (3) your address, (4) your written statement that you request to be excluded from the Settlement, and (5) your dated signature. **To be effective, your request must be postmarked no later than <<date>>.**

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

9. May I object to the settlement?

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

Your objection must include: (1) the case name and number: *Manier v. Sims Metal Mgmt. Northwest*, Case No. 4:19-cv-00718-JST; (2) your name, (3) the grounds for the objection, (4) a

statement of whether you intend to appear at the final approval hearing, (5) a list of any documents or witnesses that support the objection, and (6) a dated signature. To be effective, your objection must be mailed or filed with the Court no later than <<date>>. Do not telephone the Court or Sims counsel. You cannot object to the settlement and exclude yourself from the settlement. If the Court rejects your objection, you will still be bound by the terms of the settlement and you will not be able to exclude yourself from the settlement.

10. When will I receive my payment?

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

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

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

As to the Shift Differential Overtime Class, the Claims Administrator will calculate the amount of each individual’s award based on the number of weeks worked during August 11, 2015 through [the date the Court grants Preliminary Approval] (“the Class Period”), as reflected by Defendant’s payroll data. Specifically, each Shift Differential Overtime Class Member’s Settlement Award will be calculated by multiplying the fraction x/y by the total of the Net Settlement Amount allocated to the Shift Differential Overtime Class, where “x” equals the total number of workweeks during the Class Period in which the Shift Differential Overtime Class Member was employed and receiving wages and “y” equals the total number of workweeks during the Class Period in which all Shift Differential Overtime Class Members were employed and receiving wages during the Class Period. As to the Wage Statement Class, the Claims Administrator will calculate the amount of each individual’s award based on the number of weeks worked between January 3, 2018, through [the date the Court grants Preliminary Approval], as reflected by Defendant’s payroll data. Specifically, each Wage Statement Class Member’s Settlement Award will be calculated by multiplying the fraction x/y by the total of the Net Settlement Amount allocated to the Wage Statement Class, where “x” equals the total number of workweeks between January 3, 2018, through [the date the Court grants Preliminary Approval] in which the Wage Statement Class Member was employed and receiving wages and “y” equals the total number of workweeks between January 3, 2018, through [the date the Court grants Preliminary Approval] in which all Wage Statement Class Members were employed and receiving wages between January 3, 2018, through [the date the Court grants Preliminary Approval]. Checks will be valid for 180 days.

According to Sims’ records, you are a member of [Shift Differential Overtime Class or Wage Statement Class] and worked a total of __ workweeks during the applicable period. **If this information is incorrect and you wish to correct it, you must submit a signed, written statement explaining why you dispute this information.** Attach copies (not originals) of any relevant documents supporting your dispute. You must mail the signed and completed statement to the settlement administrator at the address provided above in section 8 no later than <<date>>.

If your signed and completed statement is not postmarked by this date, you will not be able to dispute the calculation of your Settlement Share. After consultation with you, Class Counsel, and Sims, the settlement administrator will make a final determination that will be binding on you and Sims that you will not be able to appeal. All determinations by the settlement administrator in calculating any individual award shall be final.

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

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

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

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

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

RELEASE OF CLAIMS

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

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

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

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

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

FINAL SETTLEMENT APPROVAL HEARING

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

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

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

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

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

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

To Plaintiff:

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

LAW OFFICES OF CHOI & ASSOCIATES

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Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885

17. May I get my own lawyer?

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

FURTHER INFORMATION

18. How do I get more information?

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

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

EXHIBIT 4

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5 William L. Marder (State Bar No. 170131)
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7 Hollister, California 95023
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8 (831) 634-0333 facsimile

9 *Attorneys for Plaintiff Ricky Manier, Jr.*
10 *and the Proposed Plaintiff Class*

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 RICKY MANIER, JR., individually and on
14 behalf of all other similarly situated,

15 Plaintiff,

16 vs.

17 SIMS METAL MANAGEMENT
NORTHWEST, an unknown corporate entity;
18 and DOES 1 through 50, inclusive,

19 Defendants.

Case No.: 4:19-cv-00718-JST

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; FINAL JUDGMENT**

Date:

Time:

Judge: Hon. Jon S. Tigar

Crtrm.: 6

1 The Court, having read the papers filed with regard to Plaintiff’s motion for final approval
2 of a class action settlement and Plaintiff’s separate motion for award of attorneys’ fees, costs, and
3 class representative payment, and after hearing argument regarding the motions on
4 _____, 2020, hereby FINDS AND ORDERS as follows:

5 1. The Court has jurisdiction over the subject matter of this litigation and over all
6 parties to this Action, including the members of the Settlement Class.

7 2. The Court finds that the Stipulation of Settlement and Plaintiff’s Request to Certify
8 the Class for Purposes of Settlement Only (“Settlement Agreement”) (Dkt No. ___) filed on
9 _____, 2020, is the product of arm’s length negotiations between the parties and that the
10 terms of the settlement are fair, reasonable, adequate, and in the best interests of the Settlement
11 Class. The Settlement Agreement is therefore finally approved, and its terms are incorporated
12 herein. The Court orders the parties to the Settlement Agreement to perform forthwith each of
13 their obligations as set forth therein.

14 The following class, provisionally certified by the Court in its order granting preliminary
15 approval, is hereby certified under Rule 23(b)(3) of the Federal Rules of Civil Procedure for
16 purposes of settlement only: (1) all of Defendant’s past and present non-exempt California
17 employees who were paid shift pay and overtime in the same workweek at any time between
18 August 11, 2015 and the date of the Preliminary Approval Order (“Shift Differential Overtime
19 Class”); and (2) all of Defendant’s past and present California exempt and non-exempt employees
20 who worked for Defendant and were paid wages by Defendant from January 3, 2018, through the
21 date of the Preliminary Approval Order, and who are not members of the Shift Differential
22 Overtime Class (“Wage Statement Class”). The class shall exclude individuals that previously
23 executed a general release of claims against Defendant, and have not worked for Defendant since
24 they executed such release. Such individuals are excluded from the definition of Class or Class
25 Member, including the definitions of Shift Differential Overtime Class and Wage Statement
26 Class. Collectively, the Shift Differential Overtime Class and the Wage Statement Class shall be
27 referred to as the “Settlement Class.”
28

1 3. [No Class Member has]/[The following individuals have] requested to be excluded
2 from the Settlement Class. The Court adjudges that Plaintiff and the members of the Settlement
3 Class, to the extent provided by the Settlement Agreement, other than any individual who has
4 requested to be excluded from the class, be conclusively deemed to have released and discharged
5 Sims from any and all settled claims.

6 4. The Claims Administrator is hereby directed to distribute the individual shares as
7 calculated pursuant to the proposed allocation plan within approximately twenty-five (25)
8 business days of this Order. Checks that are left uncashed after the void date shall be
9 redistributed as set forth in the Settlement Agreement. No funds shall revert to Sims.

10 5. The hourly rates claimed by Class Counsel are reasonable and appropriate and
11 consistent with the rates charged in the Northern District of California for attorneys with similar
12 qualifications, skills and experience. The hours expended on the litigation also are reasonable.
13 Accordingly, the Court approves the request for an award of attorneys' fees in the amount of
14 \$300,000 and costs in the amount of \$_____. Such amount shall be paid within the time
15 frames set out in the Settlement Agreement to be distributed by the Claims Administrator among
16 Class Counsel as necessary.

17 6. The request for a class representative payment to Plaintiff Ricky Manier, Jr. is
18 reasonable given the risks Plaintiff took and the amount of time Plaintiff spent in conjunction with
19 prosecuting this case. The requested amount is also within the range of such awards approved in
20 similar cases. Accordingly, the Court approves the request for a class representative payment in
21 the amount of \$10,000 to be paid within the time frames set out in the Settlement Agreement care
22 of Diversity Law Group, P.C.

23 7. Without affecting the finality of this Order or final judgment in any way, the Court
24 retains jurisdiction over: (1) implementation and enforcement of the Settlement Agreement
25 pursuant to further orders of the Court until the final judgment contemplated hereby has become
26 effective and each and every act agreed to be performed by the parties hereto shall have been
27 performed pursuant to the settlement agreement; (2) any other action necessary to conclude this
28 settlement and to implement the Settlement Agreement; and (3) the enforcement, construction,

1 and interpretation of the Settlement Agreement. Except as otherwise stated in this Order, this
2 matter shall be dismissed with regard to Sims with prejudice.

3 8. Neither this Order nor the Settlement Agreement on which it is based is an
4 admission or concession by any party of any fault, omission, liability, or wrongdoing. This Order
5 is not a finding of the validity or invalidity of any claims in this action or a determination of any
6 wrongdoing by any party. The final approval of the parties' settlement will not constitute any
7 opinion, position, or determination of this Court, one way or the other, as to the merits of the
8 claims or defenses of any party.

9 9. Plaintiff Ricky Manier, Jr., along with the Settlement Class consisting of all class
10 members who have not opted out, shall take nothing from Sims except as set forth in the
11 Settlement Agreement filed on _____, 2020. The Court shall retain jurisdiction over the
12 parties to interpret, implement and enforce this order and judgment.

13 IT IS SO ORDERED.

14
15 DATED: _____

16 HON. JON S. TIGAR
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